

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

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

**THE FOOTBALL ASSOCIATION**

**and**

**BIRMINGHAM CITY FC**

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

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<b>Regulatory Commission:</b>	Graeme McPherson QC (Chairperson) Alison Royston Ken Brown
<b>Secretary to Appeal Board:</b>	Paddy McCormack (Regulatory Commissions & Appeals Manager)
<b>Date:</b>	12 August 2019
<b>Venue:</b>	Wembley Stadium
<b>Appearances:</b>	Michael Rawlinson (FA Regulatory Advocate) Ciara Gallagher (Observer - Club Secretary Birmingham City FC) Stuart Baird (Birmingham City FC's Advocate)

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## **(A) Introduction**

### **i) The match and the Incident**

- 1) On 10 March 2019 Birmingham City FC (*'the Club'*) played Aston Villa FC (*'AVFC'*) in the Football League Championship (*'the match'*). The match took place at the Club's home ground, the St Andrew's Trillion Trophy Stadium (*'the stadium'*) and was attended by approximately 26,400 spectators.
- 2) In the 9<sup>th</sup> minute of the match a spectator from the Club – Paul Mitchell (*'PM'*) – ran from his seat onto the pitch and assaulted Jack Grealish, an AVFC player, knocking him to the ground (*'the Incident'*). PM was detained, arrested and charged with various offences relating to the Incident, to which he pleaded guilty before the Birmingham Magistrates. He was subsequently sentenced to 14 weeks imprisonment, fined and banned from attending any football match in the UK for 10 years. In addition, the Club has imposed a lifetime ban on PM attending any Club fixture.

### **ii) The Charge**

- 3) By letter dated 14 March 2019 the FA charged the Club with Misconduct for a breach of FA Rule E20 (a) & (b) (*'the Charge'*):
  - a) FA Rule E20 provides as follows:

*'Each Affiliated Association, Competition and Club shall be responsible for ensuring*  
*(a) that its directors, players, officials, employees, servants, representatives,*  
*spectators and all persons purporting to be its supporters or followers conduct*  
*themselves in an orderly fashion and refrain from any one or combination of the*  
*following: improper, violent threatening, abusive, indecent, insulting or provocative*  
*words or behaviour ... whilst attending at or taking part in a Match in which it is*  
*involved, whether on its own ground or elsewhere; and*  
*(b) that no spectators or unauthorised persons are permitted to encroach onto the*  
*pitch area, save for reasons of crowd safety ...'*
  - b) FA Rule E21 begins  
*'Any ... Club which fails to discharge its said responsibility in any respect*  
*whatsoever shall be guilty of Misconduct'*
  - c) In its letter dated 14 March 2019 the FA alleged that the Club had  
*'... failed to ensure that its spectator(s) and/or person(s) purporting to be its*  
*supporter(s)*

- a) conducted themselves in an orderly fashion; and/or*
- b) refrained from improper and/or violent behaviour; and/or*
- c) refrained from encroaching onto the pitch area.'*

- 4) At the Club's request, the FA subsequently clarified that the Charge related to the Incident, and not to any other event that had occurred during the match.

iii) Procedural history post-Charge

- 5) By its 'Disciplinary Proceedings: Reply Form' dated 29 March 2019 the Club
- a) Denied the Charge, and
  - b) Requested a personal hearing before an Independent Regulatory Commission.
- 6) We consider the Club's response to the Charge in greater detail below. However, in essence the Club relied on FA Rule E21, which provides

*'It shall be a defence in respect of charges against a Club for Misconduct [under FA Rule E20] by spectators and all persons purporting to be supporters or followers of the Club if it can be shown that all events, incidents or occurrences complained of were the result of circumstances over which it had no control or for reasons of crowd safety and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged'.*

In these Written Reasons we refer to that as the '**FA Rule E21 defence**'.

- 7) With its Reply Form the Club served
- a) A witness statement from David Hoult, the Club's Safety Officer. In that witness statement Mr Hoult set out the steps that, on his evidence, the Club had taken to discharge its responsibilities under FA Rule E20
  - b) Various documents which the Club contended demonstrated the steps that the Club had taken to discharge its responsibilities under FA Rule E20 and the adequacy of those steps
  - c) Written Submissions dated 29 March 2019 setting out in great detail (1) the steps that the Club had taken to discharge its responsibilities under FA Rule E20, and (2) why the taking of such steps meant that the FA Rule E21 defence on which it relied had been made out in this case.

- 8) The FA responded on 30 April 2019. It served

- a) A report from Graham White dated 3 April 2019 and an addendum report dated 10 April 2019. Those reports set out Mr White’s evidence as to where, in his opinion, the Club had not used all due diligence to discharge the relevant responsibilities under FA Rule E20, and
  - b) Written Submissions dated 30 April 2019 summarising
    - i) Why, the FA contended, the Club had failed to make out its FA Rule E21 defence to the Charge, and so
    - ii) Why the FA contended the Charge should be found proven.
- 9) The Club replied on 30 May 2019. As well as Written Submissions
- a) Responding to the FA’s position, and
  - b) Setting out its position on what it listed as the ‘Key Issues’
- the Club also served (1) a supplemental witness statement from Mr Hoult. That witness statement was in large part a response to Mr White’s report and addendum report and to the alleged deficiencies of the Club identified by Mr White, and (2) various further documents in support of its FA Rule E21 defence. The Club maintained its position that it had used all due diligence to discharge its responsibilities under FA Rule E20 and so had made out its FA Rule E21 defence.
- 10) On 12 June 2019 the FA served further brief Written Submissions in reply to the Club’s Written Submissions dated 30 May 2019. In large part those further Written Submissions comprised a rebuttal of certain high-level criticisms of Mr White that had been made by the Club.
- 11) Finally, on 27 June 2019 the Club served further short submissions by email in light of the decision of an Independent FA Regulatory Commission in Case CC/18/1437 The FA v Arsenal FC that had been published on about 10 June 2019

*iv) The hearing and our Decision*

- 12) The personal hearing of the Charge requested by the Club took place at Wembley Stadium on Monday 12 August 2019 before us. Having considered the documentary evidence and Written Submissions, and having heard oral evidence from Mr White and Mr Hoult and oral submissions on behalf of the FA and the Club (to which we refer further below) we informed the parties

- a) That we had concluded that the Club had not made out its FA Rule E21 defence, and
- b) That we had found the Charge to be proved i.e. that the Club had been guilty of Misconduct for a breach of FA Rule E20(a) & (b).

We informed the parties that the written reasons for our Decision would follow. These are those written reasons.

**(B) FA Rules E20 & E21 and the test to be applied for ‘all due diligence’**

13) The burden of establishing the Charge of course rests with the FA; it is for the FA to prove on a balance of probabilities

- a) The facts upon which it relies in support of the Charge, and
- b) That the Charge is in fact made out on the basis of those facts.

14) In that regard

a) The bare facts of the Incident were not in dispute:

- i) The Match Referee’s Extraordinary Incident Report Form described the Incident as follows:

*‘In the 9<sup>th</sup> minute of the match a spectator from [the Club] ran onto the pitch and threw a punch at [Mr Grealish]. The spectator came from behind the player and he made contact with his punch knocking the player to the ground. This resulted in a number of players from both team surrounding the spectator, before a steward restrained the spectator and he was taken off and the Police arrested him’*

- ii) The Club confirmed in its Written Submissions dated 29 March 2019

*‘... the Club accepts that the incident occurred as described [in the Match Referee’s Extraordinary Incident Report Form]’*

b) It was thus common ground between the parties

- i) That PM had been a spectator/person purporting to be a Club supporter at the match,
- ii) That PM had not conducted himself in an orderly fashion,
- iii) That PM had not refrained from behaving improperly and violently,
- iv) That PM had not refrained from encroaching onto the pitch, and
- v) That the Club had ‘*failed to ensure*’ that PM (1) had conducted himself at the match in an orderly fashion, (2) had refrained from behaving improperly and violently, and (3) had refrained from encroaching onto the pitch

- c) The Club accordingly accepted that the FA *prima facie* discharged in this case the burdens imposed on it under FA Rule E20.

15) In such circumstances – as was common ground between the parties – the Club is guilty of the Charge unless it is able to establish the defence afforded to clubs by FA Rule E21. In that regard, it was also common ground

- a) That the burden of establishing an FA Rule E21 defence rests with the club in question, and
- b) That the standard to which that burden must be discharged by the Club is the balance of probabilities.

16) It was also common ground between the parties that FA Rule E21 comprises 2 conjunctive limbs, namely

- a) That the incident complained of was the result of circumstances over which the relevant club had no control (*‘the First Limb’*), and
- b) That the relevant club’s responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged (*‘The Second Limb’*) and that accordingly, in order to establish its FA Rule 21 defence, it was necessary for the Club to satisfy us on both the First Limb and the Second Limb.

i) The First Limb

17) The Club contended that, for the purposes of the First Limb, a distinction should be drawn between

- a) (on the one hand) its players and employees, over whom it accepted it *prima facie* had control, and
- b) (on the other hand) supporters, over whom it contended it had little or no control.

The Club contended

*‘Ultimately, save to the extent that a club can control its spectators and all persons purporting to be its spectators or followers via its ticketing and ground regulations/policies and signage in and around the stadium, a club has limited means by which to ‘control’ such persons at matches. It can take steps to encourage/discourage certain types of behaviour by its spectators and all persons purporting to be its supporters or followers, but it is submitted this is relevant to the Second Limb as to whether all due diligence was exercised ...’*

18) The FA accepted that, in this case

- a) There was a valid distinction to be drawn between (on the one hand) the Club's players and employees and (on the other hand) the Club's spectators and persons purporting to be supporters/followers, and
- b) '*... that neither [the Club] nor those responsible for security had 'control' over the supporters, much less an individual supporter, for present purposes*'.

The FA accordingly accepted that in this case the Club discharged the burden imposed on it under the First Limb.

19) We agree that on the facts of this case the Club satisfies the First Limb. However, we wish to make clear that in reaching that conclusion we are not saying that a club could never be found to have 'control' over its supporters for the purpose of the First Limb of FA Rule E21. Each case will turn on its own facts.

ii) The Second Limb

20) In light of the parties' agreement that the burden of proving the First Limb was discharged by the Club in this case, the focus of the written evidence and submissions, and of the oral evidence and submissions at the hearing before us, was on the Second Limb.

21) As we have said above, in order to satisfy the Second Limb of an FA Rule E21 defence the burden is on the Club to demonstrate that it used '*all due diligence*' to ensure that its responsibilities under FA Rule E20 were discharged. The question then becomes – what is meant by '*all due diligence*' in such circumstances ?

22) In that regard we were referred by both parties to a number of previous decisions of FA Independent Regulatory Commissions and authorities, namely

- a) Decisions of FA Independent Regulatory Commissions in The FA v Reading Football Club (5 August 2015), The FA v West Ham United FC (13 & 18 January 2019), The FA v Aston Villa FC (18 May 2015), The FA v West Ham United FC & Millwall FC (15 January 2010), The FA v Blackpool Football Club (13 July 2015) and The FA v Arsenal Football Club plc (10/11 June 2019). While such decisions do not create strict legal precedent, it is plainly desirable that there should be a degree of consistency in the



approach of separate Regulatory Commissions. It is on that basis that we have considered those previous Decisions

- b) The decisions of the House of Lords in *Tesco Supermarkets Ltd v Natrass* [1972] AC 153 and of the Divisional Court in *William Smith v T&S Stores plc* (17 October 1994). Each party set out in their respective Written Submissions what points of principle it submitted we should derive from those authorities.

23) Having considered those decisions and the parties submissions we concluded as follows:

- a) Whether ‘*all due diligence*’ was used by a club prior to/at the time of an incident is to be judged by reference to what was known, or should have been known, by the club at the relevant time. The club is not to be judged with the benefit of hindsight;
- b) While ignoring hindsight does not prevent us from considering matters that have occurred since the Incident (such as steps taken by the Club to prevent a recurrence of the Incident) we should exercise care when considering such matters. Just because a club has, since the occurrence of an incident, decided that something could/should be done differently in the future does not automatically mean that the fact that the club did not do it that way before the incident was the result of a failure by the club to use ‘*all due diligence*’ – although of course, it might mean that;
- c) Using ‘all due diligence’ does not equate to perfection or require that a club should eliminate all risk altogether; merely because
- i) Something could have been done differently or ‘better’, or
  - ii) A risk that in fact came to fruition could have been avoided
- does not of itself mean that a club failed to use all due diligence by acting as it did. The test is whether all reasonable precautionary steps were taken;
- d) The fact that an FA Rule E21 defence requires a club to demonstrate that it has used ‘*all due diligence*’ (emphasis added) does however impose a heavy burden on a club seeking to make out an FA Rule E21 defence;
- e) The individuals whose conduct is to be assessed for the purpose of determining whether ‘*all due diligence*’ has been exercised by a club are the club’s ‘*responsible officers and*

*agents*'. Thus a failure by an individual properly-selected, properly-trained, properly-equipped, properly-briefed and properly-supervised steward, who had been properly deployed by a club pursuant to an appropriate strategy or plan, to fulfil his role (even due to carelessness on the part of that individual steward) would not of itself mean that the club (or its responsible officers or agents) had failed to exercise '*all due diligence*' in the discharge of its responsibilities under FA Rule E20 – although depending on the facts of the case, it might evidence such a failure. The focus should however in each case be on the club and its responsible officers and agents, not on every individual employee;

- f) The relevant question to address is therefore whether those responsible for (in this case) security and safety at the Club had taken all reasonable steps to ensure (in this case) that spectators/persons purporting to its supporters (1) would conduct and did conduct themselves in an orderly fashion, (2) would refrain and did refrain from improper and/or violent behaviour, and/or (3) would refrain and did refrain from encroaching onto the pitch;
- g) It will not automatically follow that, merely because a club has engaged an appropriate level of resources to deter/prevent misconduct such as a pitch incursion, the club will be found to have used all due diligence to discharge its responsibilities under FA Rule E20. In such circumstances the club must also show that it utilised and deployed those resources competently

iii) One final observation on the previous decisions to which we were referred

24) As well as referring to the previous decisions of FA Independent Regulatory Commissions to support its submissions as to how we should interpret the '*all due diligence*' test in FA Rule E21, the Club also sought to rely on extracts from those decisions – particularly the decision in The FA v Arsenal Football Club plc (10/11 June 2019) - to demonstrate that, as a matter of fact, it had used all due diligence in this case.

25) We did not find that a helpful exercise. Whether a club has used all due diligence to discharge its FA Rule E20 responsibilities will always be dependent on the facts of each case, to be judged by reference to the contemporaneous circumstances of that case and what was known/should have been known to the club in that case. What might suffice as an

exercise of ‘all due diligence’ in one case might not be sufficient in another. The decision in *The FA v Arsenal Football Club plc* is a good illustration of that. While that case has a passing similarity with the present case – in that in each case a lone spectator was able to make his way onto the pitch and make contact with players on the pitch – that ‘similarity’ is in reality of little consequence:

- a) The fact that an individual was able to make his way onto the pitch and make contact with players on the field *may* constitute evidence of an absence of all due diligence on the part of the relevant club, but it is but one factor to be weighed in the balance
- b) Of far greater weight and relevance are the circumstances in which the incursion took place i.e. why the incursion was able to occur
- c) As we set out below, the view that we reached of the adequacy and reasonableness of the Club’s conduct in this case was very different to the view reached by the Independent Regulatory Commission of Arsenal’s conduct in *The FA v Arsenal Football Club plc*.

**(C) The issues that we were tasked with determining at the hearing**

26) As we have set out above, the burden of proving its FA Rule E21 defence fell on the Club. Although there was thus no burden on the FA to assert, let alone prove, particular failings on the part of the Club to use all due diligence to ensure that its responsibilities under FA Rule E20 had been discharged, the FA helpfully identified (in advance of the hearing and the hearing itself) where, in its view (and in the view of Mr White)

- a) The Club had not exercised all due diligence to prevent the Incident, and so
- b) The respects in which the Club ‘fell short’ on its FA Rule E21 defence.

That enabled both parties to focus their evidence and submissions at the hearing on those alleged deficiencies in the Club’s due diligence.

27) In summary those alleged deficiencies were as follows:

- a) The area from which (and the route by which) PM had entered the pitch (*‘the Void’* – see below) ought to have been risk-assessed by the Club as a ‘weak point’ in terms of the risk of a potential pitch incursion due to the lack of any physical barrier in the Void and between the seating in the area and the pitch. The risk of pitch incursion at that ‘weak point’ ought to have been addressed by the Club by the installation of temporary,

moveable barriers and/or the deployment of a sufficient number of properly-briefed, properly-positioned stewards to act as a ‘human barrier’

b) The Club’s plans and procedures

i) to prevent pitch incursions (whether via the Void or otherwise), and  
ii) to respond to pitch incursions (whether via the Void or otherwise)  
were insufficiently detailed, inadequately documented and inadequately communicated to the stewards and other individuals around the ground who would be tasked with implementing such plans and procedures and so actually preventing/responding to pitch incursions

c) Despite (1) a sufficient total number of stewards being engaged by the Club for the match, and (2) several stewards and police being present in and around the Void during the match

i) An insufficient number of stewards were deployed for the purpose of addressing the risk of pitch incursion via the Void, and  
ii) Such stewards as were present in and around the Void were not adequately deployed or positioned to address or meet the risk of pitch incursion

d) Although the reaction of the pitch runner deployed in the north-east corner of the ground was swift and appropriate, overall the Club’s response to the Incident was uncoordinated and deficient.

**(D) Factual background in more detail**

*i) The ground*

28) In order to properly consider the Incident and the Club’s FA Rule E21 defence in context it is necessary to have an understanding of various parts of the ground. In that regard we were greatly assisted by the provision of a plan of the ground. We reproduce that plan as part of our Decision and Written Reasons.



29) In his oral evidence before us Mr Hoult helpfully identified a number of areas which the Club viewed – both historically and for the purposes of the match – as ‘*high-risk*’. Those areas included:

- a) Blocks 6 & 7 of the Gil Merrick Stand:
  - i) The Gil Merrick Stand is the ‘away stand’, and so was to be occupied by AVFC fans for the match
  - ii) Blocks 6 & 7 of the Gil Merrick Stand are the blocks closest to the players tunnel (which emerges between the Gil Merrick stand and the Main Stand) and to the Club’s supporters in the Main Stand
- b) Blocks 38-40 of the Spion Kop Stand:
  - i) The Spion Kop Stand is a home stand, and so was occupied by Club supporters for the match
  - ii) Blocks 38-40 of the Spion Kop Stand are upper-tier blocks adjacent to the end of the Gil Merrick stand. Club supporters in those blocks are thus in relatively close proximity to away fans in the Gil Merrick stand<sup>1</sup>

<sup>1</sup> We noted that for the match a number of rows in Block 1 of the Gil Merrick Stand – those closest to Blocks 38-40 of the Kop Stand – were netted, thus increasing the separation between Club and AVFC supporters and so reducing the risk of trouble between them.

c) Block 4 of the Tilton Road Stand:

- i) The Tilton Road Stand is a home stand, and so was occupied by Club supporters for the match
- ii) Accordingly to Mr Hoult, the reason for Block 4 of the Tilton Road Stand being considered a '*high-risk*' area within the ground was/is '*because of the fans known to be located in those areas*'. In his oral evidence he explained that historically Club supporters located within Block 4 of the Tilton Road Stand had caused problems within the ground, including by attempting to access the pitch.

30) Prior to the Incident PM was seated in the East Paddock of the Main Stand. He appears to have been seated approximately 6 rows back from the pitch and on the end of that row, adjacent to what we describe below as '*the Void*'.

31) The East Paddock is immediately in front of Block A of the Main Stand and together those areas form what the Club has designated the '*Family Zone*' at the ground; indeed, on the plan Block A is marked '*Family*'. Various '*labels*' were used in evidence to describe this area of the ground – the Main Stand, the Family Stand, the East Paddock and the Lower Paddock. For consistency we refer in these Written Reasons to the area in which PM was seated as '*the East Paddock*', which we acknowledge was part of the larger Family Zone at the ground.

32) Mr Hoult's evidence was

- a) That the East Paddock was intended as seating for families with children. During the course of the hearing we enquired as to how PM had obtained a ticket to sit in the East Paddock. Unfortunately despite the Club having carried out what Ms Gallagher described in the Club's letter to the FA dated 13 March 2019 as a '*thorough review of the ticketing system and archives ... in order to aid with identification of [PM] and the collation of background information*', no clear answer to that question emerged. All we were told was
  - i) That PM had not attended the match with any children. That was despite the fact that, according to Mr Hoult, only individuals accompanying children ought to have been seated in the Family Zone

ii) That, having been a season ticket holder at the Club from 2005 to 2016 (purchased under his father's name), PM had since 2016 attended 2 home games under his own client reference number, and

iii) That the Club had *'no record of any previous issues concerning [PM]'*.

We found the Club's inability to explain how PM – reported in the media as being 27 years old at the time of the Incident - had come to be seated in the East Paddock troubling. It did not reflect well on the Club;

b) That the East Paddock was *'not classed as a particularly high-risk area'* – as Mr Hoult put it *'you would think the behaviour would be better in there'*, and

c) That he could not recall any attempt being made in the past to access the pitch from the East Paddock.

33) The final part of the ground to which we refer at this stage is the area between Block A of the Main Stand/the East Paddock and Blocks 1 and 2 of the Tilton Road Stand. At the hearing before us that area was generally referred to as *'the Void'*, and we adopt that term in these Written Reasons.

34) At our request Mr Hoult gave a detailed description of the Void. The key features of the Void prior to and at the time of the match were as follows:

a) There was no physical barrier between (1) the end seats on the rows of the East Paddock adjacent to the Void and (2) the Void itself. In other words, there was nothing to prevent an individual sitting on the end seat of a row in the East Paddock from stepping from his/her seat into the Void

b) That was the only location in the ground where that was the case. At the end of every other row of seats in the ground - other than where a row adjoined a gangway - there was a physical barrier in place to prevent an individual leaving his/her seat and moving around the ground. The rows of seats at the western end of the Main Stand/West Paddock adjacent to the void between the Main Stand and the Gil Merrick stand had a barrier or a handrail in place to prevent spectators leaving their seats and entering that void

- c) There was no physical barrier separating the Void from the pitch; in particular, there were no perimeter hoardings around the corner of the pitch in front of the Void. In order to reach the Void from the pitch one simply had to pass through the ‘neck’ of the Void – a gap of approximately 3 metres – and cross the 5 metres or so to the corner of the pitch
  
- d) There were thus no physical barriers whatsoever between an individual seated on an end row of the East Paddock and the pitch itself. Once again, that appeared to be the only location in the ground where that was the case; Mr Hoult confirmed as much in his oral evidence. At every other location in the ground spectators were separated from the pitch
  - i) By a barrier, a handrail, a wall and/or permanent or moveable perimeter boards,<sup>2</sup> and
  - ii) By pitch side stewards.

Indeed, in many – and on our findings, most – locations around the ground spectators were separated from the pitch by pitch side stewards and multiple physical features (e.g. a wall and perimeter boards). That was because, as Mr Hoult readily accepted, such physical features

  - (1) Deter spectators from attempting to reach the pitch from their seats, and
  - (2) Prevent (or at the very least, hamper and thus slow) spectators from reaching the pitch from their seats
  
- e) The Club’s claimed practice was to compensate for the lack of physical barriers between the East Paddock and the pitch by using stewards as a ‘*deterrent/human barrier*’ in and in front of the Void. We consider that further below
  
- f) There were no signs in the Void – or at least, none visible to spectators sitting on the end of rows of the East Paddock – to warn that entering the pitch area was forbidden or to warn of the criminal consequences of entering the pitch.

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<sup>2</sup> In light of the steps subsequently taken by the Club to block the neck of the Void, it is relevant that in his oral evidence Mr Hoult explained that at the match, and historically, the Club used moveable A-frame advertising hoardings across the front of the Eastern and Western Paddocks in front of the Main Stand as a barrier between the seats in those locations and the pitch.



*ii) The Club's approach to match safety and security: overview*

35) The Club's case before us was to the effect

- a) That it had '*established tried and tests methods in its planning and hosting of matches at the ground, including robust safety and security procedures which it has developed and implemented over a number of years with the close involvement and assistance of West Midlands Police and the Local Authority*',
- b) That in advance of each match that it hosted at the ground it was the Club's practice to undertake a risk assessment and rigorous planning process alongside West Midlands police and the Local Authority in order to ensure that its safety and security procedures were tailored accordingly to the particular requirements of that match, and
- c) That having (correctly) recognised that this match posed a high risk in terms of fan disorder, it developed and implemented procedures that were appropriate to meet the particular risks of the match.

36) The particular focus in this case was – for obvious reasons – on the Club's procedures

- a) To deter and prevent pitch incursions, and
- b) To deal with pitch incursions should they incur.

37) The procedures developed and operated by the Club in that regard – both generally and specifically for this match - were explained to us

- a) In a number of written documents prepared (in the main) by the Club, and
- b) By Mr Hoult in his written and oral evidence.

38) Given their importance to the FA Rule E21 defence in this case we summarise such matters below. However, given the volume of evidence put before us in such regard we emphasise that what is set out below is intended only to be a summary. Prior to reaching our Decision, and again in the course of preparing these Written Reasons, we did however consider with great care the entirety of the materials and evidence that each party put before us. If we do not explicitly refer to a particular document, piece of evidence or submission below, it

should not be inferred that we have overlooked or ignored it; as we say, we have considered the entirety of the materials put before us.

iii) Match safety and security: the Club's documented general approach

39) The Club's general approach to match safety and security has historically, it was said, been undertaken with all due regard to

- a) The Guide to Safety at Sports Grounds (*'the Green Guide'*),
- b) The FA's Crowd Management Good Practice Guide 2010 (*'the FA Guidance'*), and
- c) The Club's duties and obligations set out in its General Safety Certificate.

40) The Green Guide was primarily relied upon before us for its recommendations as to management and stewarding:

- a) It recommends the provision of discrete categories of staff and identifies the following categories: supervisory staff, stewards on static posts, stewards on mobile posts, specialist stewards and additional stewards. It is not disputed that the Club categorised its staff in that way
- b) For mobile stewards it recommends
  - i) A ratio of 1 mobile steward per 250 anticipated attendees, although
  - ii) In the event that a risk assessment shows a need for a higher level of safety management, an increase in that ratio to 1 mobile steward per 100 anticipated attendees.

It is not disputed that the number of stewards deployed by the Club at the match met (and indeed exceeded) those ratios

- c) It recommends additional stewards if needed for deployment in particular circumstances or for particular events.

41) Little reference was made before us to the FA Guidance. We infer that each party – in our view rightly – considered that the relatively high-level guidance contained in that document was of only limited relevance in the particular circumstances this case.

42) The Club's General Safety Certificate contained a number of relevant provisions. In particular, Schedule B3 '*Stewards*' of that Certificate provided that

- a) *‘in no case shall the number of mobile stewards be less than 1 to every 250 spectators or part thereof attending the specified activity ...’* and *‘the provision of mobile stewards must be increased up to a ratio of 1 to every 100 of the anticipated attendance where the risk assessment shows a need for a higher level of safety management, for example a high profile match ...’*. As we have said, it is not in dispute that the number of stewards deployed by the Club at the match met/exceeded those ratios
- b) *‘the Club shall identify any potential areas within the ground, for each specific fixture, that may pose an increased or decreased risk from that identified at the commencement of the season’*. We consider below the extent to which the Club assessed the risk of pitch incursion via the Void (1) adequately or at all, and (2) at all/prior to the match
- c) *‘All stewards shall be trained and assessed to a level 2 spectator qualification within the National Qualifications Framework, or undergoing such training ...’*. According to Mr Hoult, all stewards deployed at the match met those criteria
- d) *‘Before beginning duty at a specified activity each steward shall be briefed thoroughly, be handed a copy of his/her instructions and be made fully aware of his/her general responsibilities and his/her duties in the event of an emergency’*. We consider below the extent to which individual stewards were briefed before the match, whether adequately or at all
- e) *‘Stewards shall be located throughout the sports ground and particularly at key points where control is most needed, such as in gangways, vomitories, tops of staircases, gateways onto the pitch or providing access from one part of the ground to another, and at each exit or entrance’*. We consider below the adequacy of the Club’s deployment of stewards in and around the Void.

43) The Club also had in place prior to the match

- a) A generic risk assessment:
  - i) That risk assessment included a section titled *‘Pitch Incursion’* which read  
*‘Documented procedure for handling such an incident. Most likely in higher risk game where additional stewarding and alertness would be in place. Monitor*

*crowd for risk. If seems possible, would identify high risk locations and site Stewards accordingly, Would eject culprit(s) and may involve Police. Seats nearest to pitch netted off to create a gap between the seats and the pitch parameter'*

- ii) The 'Likelihood' of a Pitch Incursion was rated '2'. That equated to 'Possible' on the scale appearing in the risk assessment's introductory paragraphs.

The risk assessment did not make any specific reference to the Void;

- b) A contingency plan for dealing with pitch incursions in the event that they arise. That plan read as follows:

***'PITCH INCURSION***

***14 Pitch Incursion***

*14.1 In the event of being informed or it appears a pitch incursion is likely, the Safety Officer will*

- a) liaise with the Police Commander, if present, regarding the use of Steward/Police resources. Assess whether the pitch incursion is likely to be celebratory or hostile*
- b) Deploy all Stewards to area(s) concerned to prevent or limit the numbers of spectators gaining accesses to the pitch. The police may assist Stewards in this course of action*
- c) Consider the use of the PA system for warning messages or advising spectators to clear the pitch area*
- d) If a considerable number of spectators have intruded on to the pitch during play ...'*

- 44) Finally, at various locations around the ground the Club had in place signs to deter individuals who might be considering entering the pitch. Those signs read '*PLEASE RESPECT THE PITCH. No unauthorised accessed permitted*'.

*iv) Match safety and security: the specific documented preparations for this match*

- 45) There is a long-standing rivalry between the Club and AVFC. Regrettably, that rivalry has resulted in a significant previous history of disorder between the supporters of those clubs. While no specific intelligence was received – by the Club or by West Midlands police – prior to the match that there would or might in fact be a pitch incursion at the match, the Club nonetheless quite reasonably anticipated that the animosity between the rival supporters meant there was an increased possibility of supporter misconduct and/or one or more pitch incursions taking place at the match.

- 46) Because of the history between the Club and AVFC, the Club categorised the match as ‘*Category C – a ‘HIGH’ risk categorisation match in terms of fan disorder*’. The match was the only ‘Category C’ fixture hosted by the Club in the 2018/2019 season. In his evidence before us Mr Hoult described the ‘*challenges*’ posed by a fixture between the Club and AVFC as ‘*serious*’ and ‘*exceptional*’.
- 47) In order to meet the ‘challenges’ posed by the match the Club took a number of steps in the months prior to the match, as described by Mr Hoult in his evidence:
- a) It held regular one to one discussions with the Club’s Football Intelligence Officer;
  - b) It held various meetings with other representatives of the West Midlands police;
  - c) It held various meetings with representatives of AVFC.
- 48) In the weeks prior to the match the Club prepared an Operational Plan for the match. That Operational Plan was finalised on Monday 4 March 2019. A copy was provided to us. From the Operational Plan it can be seen that
- a) (under ‘*Information*’) the Club intended to deploy 500 stewards before, during and after the match and anticipated that a ‘*significant amount of police officers*’ would be on duty for the event:<sup>3</sup>
    - i) Of that 500 stewards, 350 stewards were to be provided by K2 (an agency), 130 stewards were to be provided by the Club and 20 stewards were to be provided by AVFC. That number was said to represent a ‘*substantial increase*’ from a typical match.<sup>4</sup> All stewards – whether provided by the Club or by K2 – were either qualified to at least NVQ Level 2 standard in Spectator Safety or working towards such a qualification (in which case, they were posted alongside a fully qualified steward at all times); and
    - ii) The Comparison Table recorded a total of 5 inspectors, 12 sergeants and 88 police constables in the ground;

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<sup>3</sup> Appendix A to the Operational Plan identified the roles that police were to play. Various ‘*Contingencies*’ were anticipated, including how the police would react ‘*in the event of a pitch incursion of any significance (circa over 10) ...*’

<sup>4</sup> The Club helpfully produced a table titled ‘*Comparison of BCFC’s stewarding and policing numbers for Home Matches 2018/2019*’ (‘*the Comparison Table*’). The Comparison Table identified the ‘*Total Stewards*’ for the match as being 450 (300 K2 stewards and 150 Club stewards. While there was no explanation as to why that figure (450) differed from the figure in the Operational Plan (500), it is correct that, whichever figure is correct, the total number of stewards deployed at the Match was higher than for any other home fixture. The stewarding presence for other home fixtures during the 2018/2019 season varied from 280 to 391 stewards.

- b) (under ‘*Intention*’) the stated intentions behind taking the described steps included ‘*to protect Players and Officials*’, ‘*to maintain public order and to prevent any pitch incursion and take positive action to deal with any offenders*’ and ‘*to enforce Ground Regulations*’
- c) (under ‘*Method*’) the Club
  - i) Intended stewards to be posted pre-game ‘*in accordance with the in-house stewarding plan*’, with ‘*particular emphasis*’ being placed on ‘*meeting the Club Safety Certificate ‘Green Guide’ ratios requirement of 1:100 stewards in pre-identified high-risk areas and 1:250 elsewhere*’.<sup>5</sup> The Operational Plan continued ‘*Attention will also be given to substantially increasing a visible stewarding presence around the pitch perimeter 90 minutes before kick-off. Those stewards will remain in situ throughout the entire event*’
  - ii) Intended stewards to be posted during the game ‘*... to make sure that all static positions and key posts are covered*’.

49) On Wednesday 6 March 2019 a final Safety Meeting took place for the match attended by Mr Hoult (and other employees of the Club), the Head of West Midlands Police Football Unit and two representatives from the Local Authority. The notes of that meeting record that one of those Local Authority representatives raised the question ‘*what is in place to prevent pitch incursions ?*’ to which Mr Hoult and Kevin Jennings, the Club’s Safety Advisor, responded

‘*Stewards will be placed around the pitch perimeter from the start and dependent on the results a decision will be made as to what time to bring additional stewards down to pitch side for additional support*’.

50) Following this meeting the Club Secretary, Ciara Gallagher (‘**Ms Gallagher**’) completed and distributed a ‘*Match Arrangement Form*’.<sup>6</sup> The following was recorded in the ‘*Safety & Stadium*’ section of that Match Arrangement Form:

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<sup>5</sup> This was also repeated in the ‘*Specific Risk Assessment for [the Club] v AVFC*’ section of the Operational Plan

<sup>6</sup> In the Club’s letter to the FA dated 13 March 2019 Ms Gallagher suggested that that document was prepared by her following a pre-match briefing on Thursday 7 March 2019. That is not right; Ms Gallagher distributed the Match Arrangement Form by email at 12.47 on 6 March 2019, meaning that the pre-match briefing/safety meeting must have taken place on the morning of Wednesday 6 March 2019.

- a) *‘Category of Fixture: the match is Category C. This is deemed a HIGH risk categorisation match in terms of fan disorder’*
- b) *‘Previous history of disorder between supporters: Yes – significant’*
- c) *‘Pitch perimeter monitoring: Stewards will be briefed with regards to any supporter whom is sitting on the front row i.e. near to the perimeter, will be carefully observed during the game and if there is any suggestion whatsoever of a potential pitch incursion by an individual they will be taken aside, spoken to and relocated if possible’*
- d) *‘Contract stewards: Approx 350 x K2 contract stewards will be deployed. 130 x [Club] stewards have been requested for duty. 20 x AVFC stewards will be in attendance to assist with meeting and greeting and identifying high risk individuals’*
- e) *‘Potential Pitch Incursion: Risk level is deemed HIGH RISK for this fixture in terms of a pitch incursion. The circulars distributed by the FA<sup>7</sup> are presented during the pre-match briefing. Additional stewards will be in place pitch side’*
- f) *‘Supporter Messages: ... A message about missiles and general behaviour will also be going out closer to the time’.*

51) On 8 March 2019 a ‘Pre-Match Safety Briefing: Match Officials’<sup>8</sup> was finalised by Mr Jennings and circulated to the match officials:

- a) The briefing document purported to set out *‘the brief given by the Club stewards in the event of spectator incursions, both individual and multiple’*, namely
  - i) *‘The main objective is to protect players and officials. ANY supporter going onto the field of play to remonstrate with any player and/or official must be stopped and detained. In the event that no player or official is involved, the offender should still be detained’*
  - ii) *‘Two stewards are positioned in each corner of the ground and are issued with the above directive (pitch response team).’*

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<sup>7</sup> This, it was confirmed during the hearing, was a reference to a letter dated 27 September 2018 by the FA to all Premier League, EFL and National League Clubs (1) expressing concern at having received reports of incidents of pitch incursions by spectators, and (2) warning that, should such an incursion occur, the FA would thoroughly investigate *‘with the primary focus on the home club’s plans and preparations for such an incident’*. The letter ended *‘Given the potential seriousness of such incidents, we would ask that all clubs ensure that they have the necessary risk assessments in place and that these plans are continually reviewed’*.

<sup>8</sup> Although somewhat oddly we noted that that document is dated 29 March 2019

We say '*purported to set out*' because, as set out below, those words did not in fact accurately reflect the arrangements in fact put in place by the Club on 10 March 2019 for the match. Mr Hoult accepted as much during cross-examination;

- b) The briefing document also made reference to Andrew Warwick (***Mr Warwick***). Mr Warwick was identified in the briefing document as the individual
  - i) Who had responsibility for the safe access and egress of all match officials and players/coaching staff to and from the field of play via the player's tunnel between the Gil Merrick Stand and the Main Stand, and
  - ii) Who would be positioned at the dug-out area in front of the Main Stand during the match.

The briefing document made no mention of Mr Warwick having any role in the event of a pitch incursion.

52) The '*Pre-Match Safety Briefing: Match Officials*' is the only document in which Mr Warwick's name appears in any relevant context.

53) Also in advance of match day the Club published a number of messages on its website and via social media warning

- a) That pitch encroachment was forbidden and against the law, and
- b) That spectator misconduct at the match would not be tolerated.

54) The Club's preparations to meet the challenges created by the match continued on match day itself.

55) At 9.15am on the day of the match all Stand Managers and Executive Stewards – described by Mr Hoult as being '*solely responsible for guarding and escorting the players and officials during a fixture*' – attended what Mr Hoult described in his evidence as '*the usual pre-match briefing*'. We were provided with the Stewards Briefing Notes used at the pre-match briefing. Those Stewards Briefing Notes – which were communicated by Mr Hoult to the Stand Managers and Executive Stewards



- a) Began with the following statement: *‘If you have any questions regarding this briefing, please ask them at the end. Please make sure that all match day information is cascaded to your staff ...’*
- b) Included a section titled *‘Match Day Intelligence’*. While in his oral evidence Mr Hoult confirmed that, to the best of his knowledge, there had been no intelligence prior to the match which suggested that a pitch incursion might take place, the Briefing nonetheless cautioned (with our emphasis added):

*‘Known Factors: Background History – conduct by the visitors away from home has been variable since the start of the season. There is no reason to expect that their conduct for this fixture will be any different from previous visits, but many measures have been introduced to militate against that behaviour. Every football fixture attracts a minority group of ‘risk’ &/or anti-social fans who have the potential to misbehave and try to see confrontation with the opposition, Our job is to manage any such groups and negate any threat they pose through intelligence led, positive and proactive stewarding. All stewards and encouraged to positively engage with the crowd and ground staff throughout the fixture. At the same time I need ALL stewards to be highly vigilant given the continued background terrorist threat to the public*

*Intel: HIGH risk profile game’*
- c) Included a section titled *‘General Matters’* which read

*‘All the pitch perimeter stewards will be K2 staff to allow Stand Managers to concentrate on their own spectator issues. However, Stand Managers will still retain responsibility for the perimeter stewards in front of their stand, and they will need to continually assess high risk areas. Make sure your gangway stewards regularly patrol up and down the stairways’*
- d) Included a section titled *‘Stand Managers – Crowd Management Arrangements’* which cautioned Stand Managers
  - i) to ensure that their staff were facing the stands, and not watching the game, so that antisocial behaviour could be reported to the control room
  - ii) to brief pitch perimeter staff to be *‘extra vigilant and be prepared to challenge fans occupying seats in front rows in order to prevent people entering onto the pitch’*
- e) Contained further specific instructions for stewards who were to be posted at certain specified locations around the Ground. No specific instructions were included

- i) For any stewards who were deployed to/around the Void, or
  - ii) For pitch runners (to whom we make further reference below)
- f) Contained a summary of the Matchday Operational Plan:
- i) The fixture was identified as High Risk
  - ii) 9 '*intentions*' were identified, including '*to protect players and officials*' and '*to prevent any pitch incursion and take positive action to deal with any offenders*'.

56) In addition, Mr Jennings emphasised to all Stand Managers the need to remain extra vigilant and to review the plans for the match to ensure that they were adequately prepared.

57) One obvious question which arises from the above is – how, if at all, was the information that was communicated by Mr Hoult and Mr Jennings at the Stewards Briefing and contained in the Stewards Briefing Notes passed on to the 450-odd individual stewards who were to be deployed around the ground ?

- a) From Mr Hoult's witness statements, the answer to that question was said to be that
  - i) The Club's stewards were to be briefed by the Stand Managers after the Stewards Briefing had been completed, and
  - ii) The K2 stewards
    - (1) Were to be briefed '*in groups upon arrival at the [ground] and prior to being deployed to their allocated posts*', and
    - (2) May also have been briefed '*in advance*', because the Pre-Match Briefing had already been provided to K2 on Thursday 7 March 2019
- b) The difficulty for the Club with that 'evidence' however is that during his cross-examination it became apparent that Mr Hoult was in reality unable to say
  - i) What had, or had not, been communicated to individual stewards in advance of the match, and
  - ii) (of particular relevance for present purposes) what, if any, instructions had been given to the stewards and pitch runner deployed in and around the Void as regards
    - (1) Their role,
    - (2) Their positioning,

- (3) How they were to conduct themselves to prevent pitch incursions via the Void, and/or
- (4) How they were to respond in the event of a pitch incursions via the Void.

58) In addition, the Club's Generic Risk Assessment to which we have referred above was updated specifically for the match:

- a) The '*Match Day Intelligence*' section of the Stewards Briefing Notes was reproduced in the Risk Assessment against the heading '*Match Day Intelligence Profile for Championship fixture [Club v AVFC] on Sunday 10 March 2019*'. A further paragraph was added warning that '*Recent reports from other games indicate that the visitors will attempt to commit a wide range of offences if not policed/stewarded firmly but fairly*'
- b) The '*Pitch Incursion*' section of the Risk Assessment was updated as follows: '*Stewarding briefing contains an extensive briefing notice posted by the Safety Officer giving clear and specific advice on the action to be taken in the event of an incursion. This briefing notice has been created in accordance with FA guidelines*';
- c) Still no reference was made to the Void.

59) Before we leave the documents that the Club had in place and/or drew up for the purpose of preparing to meet the challenges of the match, it is useful to identify certain matters which Mr Hoult frankly accepted in cross-examination were not addressed by/in any document. In particular, while the documents to which we have referred above made reference to the possibility of pitch incursions taking place (both *per se* and at the match),

- a) It was accepted that the Club did not have a self-contained, documented pitch incursion plan
- b) It was accepted that no reference was made in any document
  - i) To the Void or to any particular risk of pitch incursion posed by the unique configuration of the East Paddock and the Void, or
  - ii) To how that risk was to be addressed and minimised

- c) It was accepted that nowhere in any document were there written instructions to any steward engaged for the match
  - i) As to where he/she should stand
  - ii) As to the role that he/she was to perform during the match
  - iii) As to how he/she should act in order to deter or prevent a pitch incursion
  - iv) As to how he/she should react if a pitch incursion was to occur.

*v) Stewarding on the day*

60) We have already explained above how the number of stewards engaged by the Club for the match met (and in fact exceeded) the ratios recommended by the Green Guide and required by the Club's Safety Certificate. However, engaging an adequate number of stewards is only one piece of the jigsaw when one considers the adequacy of the stewarding put in place for the match by the Club. No less important is how those stewards were briefed and deployed for the match.

61) Some evidence relating to how the 450-odd stewards were deployed for the match was contained in Mr Hoult's witness statements, but at our request Mr Hoult clarified in his oral evidence exactly how the matchday stewards were deployed by the Club for the match:

- a) The Club had 186 designated 'static locations' within the ground to which stewards were allocated:<sup>9</sup>
  - i) 43 stewards were allocated to be 'static' stewards at designated static locations within and outside the stadium
  - ii) A further 143 stewards were allocated to be mobile stewards at/within the static locations
- b) The remaining stewards were deployed as mobile stewards across the rest of the ground - for example, around the perimeter of the pitch, on gangways, in the Stands. A (small) number of stewards were designated Executive Stewards whose sole responsibility was to guard and escort the players and officials during a fixture

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<sup>9</sup> We were provided with a list of those static positions. They comprised (1) various Entrance/Exit gates (2) various specific locations within the ground, and (3) various internal positions.

c) In addition

- i) 20 individuals were appointed as members of the Club's '*dedicated response team*' for the match; for a lower-risk match that team would have comprised 12 members. Their role was to be available to deal with any incidents and disorders arising during a match for which a '*robust response*' was thought to be required, including incidents of fans encroaching onto the pitch. According to Mr Hoult

(1) 5 members of the response team were deployed across the front of the Gil Merrick Stand i.e. in front of the AVFC supporters

(2) 5 members of the response team were deployed in the south west corner of the ground at the junction of the Gil Merrick and Spion Kop Stands (i.e. at the boundary between the Club's and AVFC's supporters)

(3) 10 members of the response team were deployed across the front of the Tilton Road stand i.e. in front of the Club supporters

although members of that team could be moved around the ground, presumably on the instruction of the Club's Control Room

- ii) 6 individuals were appointed to the role of '*pitch runners*':

(1) Those individuals were located in each corner of the ground and either side of the halfway line. For present purposes it is relevant to note that (A) one pitch runner was deployed to the north-east corner of the pitch immediately in front of the Void, and (B) at the time of the Incident that pitch runner was located to the side of the neck of the Void

(2) Their role was exclusively to deal with/respond to pitch incursions

(3) They were, according to Mr Hoult's witness statement, selected, trained and equipped for that specific role. The Club used the same individuals on a regular basis for that role

(4) According to Mr Hoult's witness statement, those individuals were also briefed with '*clear instructions*', although as we have said above, (1) the Club did not have any self-contained pitch incursion plan, and (2) none of the Club's documents set out what particular individuals were to do in the event of a pitch incursion. However, in his oral evidence Mr Hoult rather back-tracked on the extent of the '*instructions*' given to pitch runners. Those instructions

(a) Were in effect limited to '*if someone gets on to the field of play, get after them and take them down*', and

- (b) Did not extend to when or how each pitch runner should respond to different types of incursion or to incursions onto different parts of the pitch – for example, in the event of an incursion onto a part of a pitch to which a particular pitch runner might be closest, there was no instruction as to which (if any) other pitch runners should assist and which should ‘stay put’.

62) A number of the stewards engaged by the Club for the match were deployed in and around the Void. In his supplemental witness statement Mr Hoult identified ‘*a total of 8 stewards in and around this area (including 1 fire steward) and 2 police officers*’ – which number, he explained, was an increase on the usual number of stewards in the area around the Void.

63) We were shown various video footage of the Incident, including

- a) The footage broadcast during the live coverage of the match
- b) Various non-broadcast footage
- c) Footage from the Club’s Tactical Cam

from which it was possible to ascertain, albeit not easily, the number and location of stewards in and around the Void at the time of the Incident. It appeared to us that at the time of the Incident

- i) There were approximately 6 stewards (presumably including the fire steward) and 2 police officers within the Void itself
- ii) 1 steward was situated to one side of the neck of the Void
- iii) 1 pitch runner was situated on the other side of the neck of the Void.

64) Given that it was a key part of the Club’s case that, in order to address any risk of pitch incursion from the Void given the lack of any physical barrier between the East Paddock, the Void and the pitch, (1) its practice was to deploy stewards to act as a deterrent/human barrier in the Void, and (2) it had increased the number of stewards deployed for that purpose to meet the challenges of the match, there was considerable focus at the hearing on the roles that each of those individuals located in and around the Void had been deployed and briefed/instructed by the Club to play during the match. Our findings in that regard are as follows:

- a) The purpose for which the pitch runner had been deployed to the north-east corner of the ground was clear; he was to ‘*deal with/respond to*’ actual pitch incursions in that

area. His role was not to deter or prevent incursions; indeed, Mr Hoult made clear that he would not even have expected that individual to be facing the crowd during the match with a view to spotting the early stages of any attempted pitch incursion

b) Aside from the pitch runner, the evidence as to the role that each steward in and around the Void was in fact playing at the time of the Incident – or had been deployed and instructed by the Club to play – was wholly unclear. By that, we mean that Mr Hoult was unable to explain to us in any coherent fashion

- i) Why those various stewards had been deployed to stand in the Void,
- ii) What role those various stewards had been instructed to play, and
- iii) Which, if any, of the various stewards were supposed to be performing the role of acting as a ‘*deterrent/human barrier to try to prevent pitch incursions*’ from the Void (to use the words from Mr Hoult’s supplemental witness statement)

c) Ignoring for one moment

- i) The pitch runner, and
- ii) The steward located to one side of the neck of the Void

we cannot see how any other steward located in the Void could possibly be said to have been acting as a ‘*deterrent*’ or ‘*human barrier*’ to prevent pitch incursions from the East Paddock:

(1) First, all are standing on the other side of the Void to the ends of the rows of seats in the East Paddock (i.e. several metres away from the ends of those rows) and crucially not between the ends of the rows and the pitch. While such positioning might have afforded those stewards a better view of how individuals were behaving further into the East Paddock, it meant that their value as a deterrent/barrier to prevent pitch incursions from the end of the East Paddock was effectively nil

(2) Secondly, at least 3 of those stewards, possibly 4, are standing behind all or most of the rows of seats in the East Paddock. Once again their value as a deterrent/barrier to prevent pitch incursions from the end of the East Paddock of the Main Stand was effectively nil

d) In light of such matters we had no hesitation in rejecting the view of Mr Hoult that the video footage showed that those stewards had been ‘*well-positioned*’ and ‘*strategically*

*positioned*’ in the Void and the area around the Void for the purpose of deterring/preventing a pitch incursion from the Void

- e) The truth as to why those stewards had been deployed to stand the Void emerged in cross-examination. They were not deployed to that location to counter any perceived risk (or increased risk) of pitch incursion from/via the Void. They were deployed to the Void to watch for, deter and stop disorder within the Stands on either side of them.

65) That leaves the steward who was positioned at the mouth of the Void. Was he deployed and instructed by the Club to act as a ‘*deterrent*’ and a ‘*human barrier*’ to prevent pitch incursions from the East Paddock ? We had little difficulty in concluding that the Club had failed to satisfy us that that steward had not been deployed for that purpose or to fulfil that role:

- a) Despite (on the evidence contained in Mr Hoult’s witness statements) the Club having been aware that the absence of a physical barrier in front of the Void created ‘risks’, none of the Club’s pre-match documentation made any reference to the need to locate an individual (or individuals) at the neck of the Void to fulfil that role. In particular, despite that claimed awareness on the part of the Club
  - i) There was nothing in the Club’s generic risk assessment documentation
    - (1) Which identified the existence of any risk of a pitch incursion emanating from the Void, or
    - (2) Which identified the need for one or more stewards to be positioned as a ‘*deterrent/human barrier*’ in and around the Void to address such risk, or
    - (3) Which identified the process by which such stewards would be appointed, briefed, deployed and positioned in and around the Void, and
  - ii) There was nothing in the Club’s match specific documentation
    - (1) Which identified any increase in the risk that a pitch incursion might emanate from the Void, or
    - (2) Which identified any increased need for stewards to be positioned as a ‘*deterrent/human barrier*’ in and around the Void to address such increased risk, or
    - (3) Which identified the process by which such stewards would be appointed, briefed, deployed and positioned in and around the Void for the match



- b) Had the Club genuinely been aware at any stage that there was a risk of pitch incursion via the Void (let alone an increased risk of that happening at the match) it is inconceivable that the documentation
  - i) Would not have referenced the same, and
  - ii) Would not have referenced the need to address such risk by the deployment of a ‘*human barrier*’ at the neck of the Void
  
- c) In fact the evidence before us plainly established that the Club had not formed any such view, and indeed had not even attempted to risk assess the Void for the possibility of pitch incursion. Although in his witness statements Mr Hoult had purported to explain that the Club
  - i) Had recognised and anticipated that having ‘*a gap in the perimeter barrier*’ in front of the Void gave rise to ‘*risks*’ – specifically, a risk that an individual might attempt to leave his/her seat and make his/her way on to the pitch – that were not present elsewhere in the ground;
  - ii) Had ‘*anticipated and planned for*’ such risks; and
  - iii) Had endeavoured to meet those risks by (in the words of his second witness statement) ‘*... ensur[ing] there were stewards positioned so as to act as a deterrent/human barrier to try to prevent pitch incursions ...*’
 that evidence was completely undermined by Mr Hoult’s oral evidence. In cross-examination
  - (1) He accepted that the Void had never been risk assessed by the Club
    - (a) To assess the likelihood of a pitch incursion from/via the Void, or
    - (b) To assess what steps the Club might take to reduce or minimise the risk of a pitch incursion from/via the Void
  - (2) He explained that that was because the Club’s attitude to risk assessment was based on ‘*what has happened in the past*’ and initially went so far as to try to justify the lack of any such risk assessment by reason of the fact that in his time at the Club no attempt had been made by a spectator to enter the pitch via the Void. However, in cross-examination he accepted (and was plainly right to do so)
    - (a) That the fact that something had not happened in the past did not mean that it could not happen in the future, and

- (b) That the primary purpose of ‘risk assessments’ was to identify risks that could come to fruition in the future, and to enable steps to be taken to prevent/minimise such risks, before they in fact occurred for the first time
  - d) There was absolutely no evidence before us that that individual steward standing at the neck of the Void was ever informed that his role during the match was to be a ‘human barrier’ to prevent incursion onto the pitch from the Void. Had that been the very purpose for which he was so deployed to that location, we would have expected him (at the very least)
    - i) To have been assessed for his suitability for that role (just as pitch runners were assessed for their suitability for their roles). That did not happen; and
    - ii) To have been given clear instruction to that effect. No such instruction appears to have been given, either for the match or at all
  - e) It is inherently unlikely that a single steward would be deployed or instructed to perform the role of ‘deterrent’ or ‘human barrier’ across the Void. Mr Hoult readily accepted in cross-examination that multiple individuals would be needed to achieve that.
- 66) Any doubt that we might otherwise have had about whether the Club had in fact intentionally deployed stewards to the Void as properly-briefed ‘*deterrents/human barriers*’ was erased during a further passage of the FA’s cross-examination of Mr Hoult:
- a) During its cross-examination of Mr White the Club drew attention to the fact that a few seconds before PM had left his seat and run onto the pitch, ‘2 *stewards*’ (sic) had been standing almost shoulder to shoulder in the centre of the neck of the Void. That, it was suggested to Mr White, showed that those individuals had been deployed by the Club for the purpose of forming a ‘*deterrent/human barrier*’ to prevent incursion from the East Paddock/the Void onto the pitch
  - b) Mr Hoult ‘s witness statements contained a similar suggestion. In those witness statements he asserted
    - i) That the positioning of those individuals (‘*stood closely together at the bottom of the stairway*’) had been deliberate – he described them as being ‘*strategically positioned to try to prevent access to the pitch*’,

- ii) That their positioning in such manner by the Club had been '*intended to prevent such an incident*',
- iii) That it had simply been '*unfortunate*' that '*just before the incident*' one steward had taken '*a few steps to the right, leaving a gap*' meaning that PM had been able to '*run between [the] two stewards (sic) to enter the pitch*', and
- iv) That '*had the stewards stayed closer together, [PM] might not have been able to get through*'.

The evidence in Mr Hoult's witness statement was thus clearly to the effect that at least 2 individuals had been instructed and deployed by the Club to act as a '*deterrent/human barrier*' between the Void and the pitch

- c) However, once Mr Hoult had explained as best he could the roles of the individuals in and around the Void and had been cross-examined, it became clear that the evidence to such effect in Mr Hoult's second witness statement could not be taken at face value:
  - i) First, one of the 2 'stewards' who had been standing close together shortly before the Incident was in fact the pitch runner for the north-east corner of the ground. His role was thus not one of '*deterrent/human barrier*', either in conjunction with the other steward or otherwise. It was thus misleading to suggest that those 2 individuals had, together, been tasked by the Club with the role of forming a '*deterrent/human barrier*' between the Void and the pitch. They plainly had not, as Mr Hoult accepted in cross-examination
  - ii) Secondly, as we have already set out above, there was no basis whatsoever on which to assert that either steward – let alone the 2 of them together – had been briefed by the Club, or deliberately 'positioned' by the Club, to stand close to one another and/or form a '*deterrent/human barrier*' to try to prevent access to the pitch from the Void. The fact that, a few seconds before the incident, the steward and the pitch runner had been standing shoulder to shoulder was pure coincidence – as it was put by the FA and accepted by Mr Hoult in cross-examination, that occurred by accident, not by design.

67) We therefore reject any suggestion by the Club that prior to the match

- a) It had identified the absence of physical barriers (1) between the East Paddock and the Void, and (2) between the Void and the pitch, as giving rise to a risk of pitch incursion

from the East Paddock *per se*, let alone to an increased risk of pitch incursion during the match

- b) It had considered what, if any, measures were needed in and around the Void to counter that increased risk
- c) It had concluded that ‘strategic’ positioning of 2 (or any) stewards at the neck of the Void as ‘deterrents/human barriers’ would suffice to address and minimise the risk of pitch incursion via the Void
- d) It had in place any sort of plan or procedure to brief or deploy 2 (or any) stewards to the Void for that purpose.

vi) The Incident and the immediate response to the Incident

- 68) The Incident occurred at a time when AVFC had won a corner to be taken from immediately in front of the Void, and a number of AVFC players were thus relatively close to the Void. PM had to run only a relatively short distance before reaching Mr Grealish and assaulting him from behind.
- 69) The period that elapsed between PM leaving his seat and being apprehended was short – from the time clock superimposed on the video footage, it was a little under 9 seconds. That it was so short was almost exclusively the result of the actions of the Club’s pitch runner deployed to the north-east corner of the pitch in front of the Void. He reacted immediately PM came past him, sprinting after PM and apprehending him swiftly and effectively.
- 70) Having apprehended PM the pitch runner handed PM over to Mr Warwick (see below). Mr Warwick then marched PM off the pitch and handed him over to a police officer. The total time between PM entering the pitch and being arrested by that police officer was a little over 30 seconds.
- 71) The Club’s case before us was that, as well as the pitch runner, ‘*two other stewards quickly followed to assist*’. That was not however borne out by the video footage. While it is correct that (1) 2 further individuals did enter the field of play and make their way to the site of the

Incident, and (2) one of those individuals marched PM off the pitch to be arrested by a police officer

- a) The first other individual who responded to the Incident was Mr Warwick. As above, he was neither a pitch runner nor a steward; on match day his responsibility was for the safety and security of the match officials. It is not clear what, if any, training he might have received or what instruction he had received as to how he should react in the event of a pitch incursion by one or more individuals; the only reference in the written evidence to such matters was (1) a passing mention at paragraph 18 of Mr Hoult's second witness statement, and (2) in Mr Hoult's oral evidence, where he asserted that Mr Warwick was a member of the Pitch Response team, tasked with entering the pitch to protect players and officials if/when necessary. No reference was however made in any of the documents to which we have referred above to Mr Warwick playing any role in the event of a pitch incursion, let alone being the individual tasked with physically marching pitch invaders off the playing surface. While it is therefore to Mr Warwick's credit that he sought to assist, the Club's inability
  - i) To explain how or why Mr Warwick came to react as he did, or
  - ii) To justify Mr Warwick's reaction as being part of any pre-planned strategy to apprehend and remove individual pitch invaders in the event of an incursionraised more questions than answers in this case;
- b) The second other individual who responded to the Incident was another of the Club's pitch runners. He entered the pitch from the south-east corner of the ground. However
  - i) He appears to have done so only sometime after PM had entered the field of play, and he arrived at the site of the Incident well after PM had already been apprehended by the first pitch runner. It took the second pitch runner some time to reach the site of the Incident – that is not a criticism, it is simply a fact
  - ii) Once he had arrived at the scene of the Incident, it is difficult to see what (if any) role the second pitch runner played or what (if any) assistance he in fact gave to the first pitch runner
  - iii) The evidence once again failed to demonstrate why the second pitch runner had reacted and acted as he did. Mr Hoult accepted in cross-examination that the second pitch runner had probably simply 'reacted to what he saw'. There was no evidence from the Club

- (1) As to what instructions had been given to pitch runners as to when they were and were not to 'react' in the event of a pitch incursion to which they were not the closest pitch runner/in the event of a pitch incursion from particular parts of the ground
- (2) As to what instructions had been given to secondary pitch runners as to what they were to do upon reaching an already-apprehended individual who had entered the field of play.

Thus once again the Club's inability to explain why the second pitch runner had reacted and acted as he had (and why other pitch runners, such as the one positioned at halfway in front of the Main Stand, had not reacted) raised more questions than answers.

72) The Club's match day log of the Incident was provided by Mr Hoult. The relevant entries read as follows:

- a) '12.05 Aisles to be kept clear – reminder to all staff'
- b) '12.06 Reminder [Mr Hoult] – centre walkways kept clear and stewards to walk up and down to clear stairs'
- c) '12.09 Blues player – pitch invasion – hit villa player'
- d) '12.11 [Mr Hoult] – requested police in front of Tilton [Stand]'
- e) '12.12 [Mr Hoult] – Tilton Stewards to stand'.

In both its Written Submissions and Mr Hoult's witness statement the Club contended that those entries demonstrated an immediate request by Mr Hoult for '*a higher police presence in front of the area where the encroachment occurred*' (emphasis added). That is however not correct. The pitch incursion had not in fact originated from the Tilton Stand. It had originated from the Void/East Paddock.

73) Before leaving this section of the Written Reasons, we record that the Club put before us an email from Bob Eastwood, the Security and Operations Advisor of the EFL, to the Club dated 11 March 2019. Mr Eastwood wrote as follows:

*'I ... have seen footage of the very unsavoury actions of one spectator.*

*...*

*I have seen the incident from a number of angles and have no hesitation in applauding the first line response I have seen. Your steward 'pitch runner' reacted in a timely manner and helped apprehend the spectator therefore safeguarding other players and match officials and immediately removed him from the playing surface. It was very*

*reassuring for me to see that the advice I and the FA issued was effectively administered.*

*I have spoken with [Mr Hault] to debrief with him the circumstances. I am told that the spectator ran from the stair well without any warning or obvious pre-planning. These facts demonstrate the difficulties, if not impossibilities, all Clubs from both leagues face in keeping lone spectators from the playing surface. The measure of success for me on this occasion was how the security and safety team responded and dealt with the problem. It is my view that the response was to a high standard and therefore prevented the situations from escalating, especially within the opposing groups of fans'*

74) We derived only very limited assistance from that email:

- a) We noted Mr Eastwood's view that the pitch runner had reacted in a timely manner. That accorded with the view that we reached independently of Mr Eastwood
- b) Save in that one respect, we placed no weight on Mr Eastwood's comment that '*the response*' was of a high standard. No explanation was offered as to the standard against which Mr Eastwood had judged '*the response*' or as to what he in fact meant by '*the response of the security and safety team*'
- c) We acknowledge the significant difficulties that a club will always face in preventing a determined lone spectator from making his way on to the pitch, particularly if that spectator acts spontaneously. However, whether that task is easy or difficult is not the issue in this case; the issue is whether the Club exercised all due diligence to prevent a spectator from making his way onto the pitch and assaulting a player in this instance.

vii) The Club's post-match response to the Incident

75) Following the Incident the Club issued a number of statements on its website:

- a) The Club publicly apologised to Mr Grealish and to AVFC for the Incident,
- b) The Club made it clear that it deplored the conduct of PM and welcomed the sentence imposed on him by the Magistrates Court
- c) The Club published a statement from its manager condemning the conduct of PM.

76) The Club also instigated a review of its stewarding, safety and security procedures. As a result of that review

- a) The Club was said to have been ‘revisiting’ the positioning and number of stewards in the area in which PM was seated. No further detail was however given to us by the Club in that regard
- b) Mr Hoult was said to have been liaising with the SGSA to discuss the implementation of hand rails (presumably on the end of the rows in the East Paddock) as a preventive measure. However, once again no further detail was given to us by the Club in that regard
- c) The Club introduced movable A-frame perimeter boards to ‘plug the gap’ in front of the Void and devised procedures and training for stewards located in that area to remove the same swiftly and safely in the event of an emergency. We were told that that step had been implemented *‘in time for the Club’s next home game after the match’*:
  - i) The Club’s next home match was against Millwall on Wednesday 13 March 2019
  - ii) The Club thus were able to take such steps, and did such steps, within 4 days of the Incident.

77) Given that the East Paddock/the Void was the only location in the ground where there was no physical barrier between seats and the pitch, the question of why such moveable boards – or some other barrier – had not been used by the Club to ‘fill the gap’ in the perimeter around the pitch in front of the Void before the match had taken place was explored with Mr Hoult in cross-examination:

- a) In his witness statements Mr Hoult gave 2 reasons for why there had historically been no physical barriers (in particular, perimeter hoardings) in place between the Void and the pitch at/before the match, and so why a gap to the pitch had historically always been left in front of the Void:
  - i) First, to provide an *‘easy access point for medical emergencies’* in that corner of the pitch, and
  - ii) Secondly, to allow practice equipment (such as practice goals) to be moved on and off the pitch in that corner;



- b) Neither purported justification stood close scrutiny;
- c) While we can understand why it might have been convenient for the Club to be able to move practice equipment on and off the pitch in the corner in front of the Void, there was (as Mr Hoult accepted in his oral evidence) no need to have a ‘permanent gap’ left in the perimeter barriers for that purpose. Moveable perimeter hoardings could have been placed there – as they already were elsewhere around the ground. Alternatively, there would have been nothing to prevent fixed, hinged perimeter hoardings being placed at that location, which could be swung open when practice equipment was to be carried on or off the pitch, but closed to provide a physical barrier at other times, including during matches;
- d) As to the suggestion that a gap was necessary to facilitate urgent medical assistance being given in the event of an incident on the relevant part of the pitch:
  - i) In the event of a medical or other emergency in the north-east corner of the pitch, Mr Hoult explained (1) that assistance would come from the area of the dug out at the half-way line, and (2) that any individuals intending to give such assistance would make their way from the dug out to such incident by the fastest route i.e. across the pitch. He agreed that such individuals would not make their way to such an incident by travelling along the front of the Main Stand, through the gap in the perimeter hoardings in front of the Void, and then on to the pitch;
  - ii) Likewise, Mr Hoult was unable to provide any example of when urgent egress from the pitch via the ‘gap’ in front of the void might be needed for medical or other reasons. We could not think of any such example
  - iii) Even if there could conceivably be an occasion when individuals who had attended to an incident in the north-east part of the pitch needed to leave the pitch urgently via the corner in front of the void, there would be ample time (for example, while those individuals made their way to the incident and dealt with the incident) for temporary, moveable perimeter hoardings to be moved or for hinged perimeter hoardings to be swung open by properly briefed stewards.

78) Having heard the evidence we were thus wholly unconvinced that there had ever been any necessity or justification for the Club

a) To maintain a permanent ‘gap’ in the perimeter around the pitch in front of the Void,  
or

b) To treat the area in front of the Void any differently to other parts of the ground.

Indeed, we formed the clear impression from his oral evidence that, once he had thought about it, Mr Hoult also formed the view that in truth there had not been at any time been a need for the Club to maintain a permanent ‘gap’ in the perimeter around the pitch in front of the Void.

### **(E) Our assessment of Mr White and Mr Hoult**

79) As we have set out above

a) In his reports Mr White

i) Considered and analysed (1) the steps that Mr Hoult described in his first witness statement as having been taken by the Club to discharge its responsibilities under FA Rule E20 and (2) the documents relied on by the Club in support of its FA Rule E21 defence, and

ii) Identified what he believed to be deficiencies in the due diligence used by the Club to discharge its responsibilities under FA Rule E20.

He expanded on his reports in his oral evidence;

b) The Club served

i) Further evidence in response from Mr Hoult responding to Mr White’s evidence and addressing those alleged deficiencies identified by Mr White, and

ii) Further Written Submissions addressing those alleged deficiencies.

80) While we address the substance of Mr White’s evidence below, it is convenient to deal first with certain overarching contentions made by the Club about Mr White and his evidence – in particular

a) That Mr White’s evidence was not fair or independent – it was said that Mr White ‘works for the FA’,

b) That Mr White’s evidence was not reliable – *inter alia* it was said that Mr White lacked sufficient familiarity with the Club and the ground to enable him to give a reliable view on the Club’s preparations for the match and decision-making processes, and

c) That we should either reject Mr White’s evidence, or treat it with great caution.

81) We reject those contentions:

- a) Mr White has been an FA Safety & Security Officer for 16 years, during which time he has monitored numerous matches in the UK and abroad. Prior to that he had been a Commander in the Greater Manchester Police, with responsibility for a number of clubs. He was also the UK Police Commander for England matches abroad. He was in our view eminently qualified to give an opinion on
  - i) What steps one might expect to see taken by a Club in order to discharge its responsibilities under FA Rule E20, and
  - ii) Whether the due diligence used by the Club in this case to discharge its responsibilities under FA Rule 20 was sufficient or deficient
- b) We found Mr White's evidence to be measured and fair, and there was no reason for us to conclude that he had consciously or unconsciously favoured the FA. Mr White was by no means universally critical of the Club's conduct in this case, and where Mr White felt that the Club had done something well, he said so. By way of example
  - i) Mr White described the Club's planning and preparation for such a high-risk match as '*rigorous*' in numerous important respects, and
  - ii) Mr White acknowledged that, once PM had emerged onto the pitch, the individuals involved in apprehending him and handing over to a police officer had dealt with the Incident '*effectively*'
- c) Mr White gave his evidence in a careful way and, by and large, we accepted his evidence. Where his evidence conflicted with the evidence given by Mr Houlton, we generally preferred the evidence of Mr White. We found Mr White's evidence to be extremely helpful.

82) We took a rather different view of the quality of Mr Houlton's evidence. While we say straight away that we found Mr Houlton to be an honest witness who was trying to do his best to give accurate evidence at the hearing before us, we were reluctantly driven to conclude that we should treat the evidence given by him in this case with the very greatest of care. There were 3 principle reasons for that

- a) First, on several occasions the oral evidence that he gave at the hearing on key issues was entirely or substantially inconsistent with the evidence contained in his witness statements. We have set out examples of that above. While we did not form the view that he had in any way intended those witness statements to mislead, those inconsistencies did suggest at the very least that a lack of care and thought had gone into the preparation of his witness statements
- b) Secondly, on occasion the written and oral evidence that he initially gave – until he changed that evidence in cross-examination – was plainly at odds with the documents and video footage before us, including documents and footage that he himself exhibited to his witness statements. We have once again set out examples of that above. While once again we did not form the view that Mr Hoult had intended his original evidence to mislead, we did form the view that in at least some of those instances Mr Hoult had been attempting to put forward an interpretation of the documentary or video evidence that was favourable to the Club’s position, regardless of how that ‘sat’ with the documents and video footage itself;
- c) Thirdly, Mr Hoult on occasion sought to give evidence about matters of which he had no knowledge – in a nutshell, he speculated about events rather than acknowledging the limitations of his own knowledge and of the evidence that he could give before us. While he no doubt did so in an effort to assist us, there were occasions – for example, when he sought to speculate about what stewards deployed in and around the Void ‘must have been told’ - when such speculation was demonstrably wrong.

83) Our concerns over the reliability of Mr Hoult’s evidence did not however mean that we simply rejected without further thought the entirety of the evidence given by him; far from it. Rather, on each of the key issues (i.e. those issues on which there was a material difference between the Club and the FA over whether the Club had exercised all due diligence to ensure that it discharged its responsibilities under FA Rule E20) on which he provided evidence

- a) We asked ourselves whether there was other evidence – generally in the form of contemporaneous documents or video footage – to corroborate or support Mr Hoult’s evidence, and
- b) Where there was no such evidence, we nonetheless still asked ourselves

- i) Whether – despite the concerns that we have described above – we could rely on the relevant parts of Mr Hoult’s evidence, or
- ii) Whether we were of the view that such evidence was unreliable and should be rejected.

**(F) The alleged deficiencies in the Club’s due diligence**

84) At paragraph 70 of its Written Submissions the Club invited us to conclude that

*‘... the steps the Club took for the match demonstrate the ‘very best conduct’ and that the Club did all that could reasonably be expected of it to minimise the risk of misconduct by its spectators/pitch incursion and to ensure order and security at the match’.*

That remained the Club’s position throughout.

85) We had no hesitation in rejecting that submission. The Club did not use all due diligence – and in our view did not even come close to using all due diligence – to discharge its responsibilities to ensure that its spectators and/or persons purporting to be its supporters

- a) Conducted themselves in an orderly fashion,
- b) Refrained from behaving improperly and violently, and
- c) Refrained from encroaching onto the pitch.

Much of the reasoning for our conclusion is already set out in section (D) of this Decision and Written Reasons. However, we address below each of the broad ‘deficiencies’ in the Club’s due diligence identified by the FA and which we have found to be justified.

**i) Assessment of the risk of pitch incursion via the Void**

86) The Club failed to use all due diligence when ‘assessing’ the possibility that a pitch incursion might come from the East Paddock and/or via the Void. Had it made any effort to risk-assess the Void, it would inevitably have identified

- a) A risk of pitch incursion emanating from the Void, and
- b) A need to address that risk.

87) We accept Mr White’s view that the Void was an obvious ‘weak point’:

- a) We accept Mr White’s view that, as a general rule, no spectator ought to be able to access a void from a seated area. A physical barrier – whether a handrail, a wall or some

other impediment – ought to prevent direct egress from a seat into a void. The lack of any barrier between the ends of the rows of seats in the East Paddock and the Void created an increased risk of potential pitch incursion

- b) The magnitude of that risk was increased yet further in this case given
  - i) The lack of any physical barrier between the Void and the pitch, and
  - ii) The high-risk nature of the match and the exceptional challenges posed by the match
- c) Remarkably, despite the fact that the East Paddock and the Void was the only location in the entire ground that had no physical barriers between seats and the pitch, the Club made no attempt
  - i) to risk assess the possibility of a pitch incursion from that location, or
  - ii) to consider what steps should be taken to reduce/minimise the risk that plainly existed
- d) We found the Club's purported justification for this lack of risk assessment – that there had been no previous pitch incursions via the Void – extremely worrying. It suggested
  - i) that the Club's approach to 'risk assessment' and 'risk prevention' had in the past been reactive instead of (as it plainly ought to have been) proactive, and
  - ii) that the Club had been minded to equate the fact that something had not happened in the past with a certainty that it could not/would not happen in the future
- e) There was no necessity, or even good reason, for the absence of a physical barrier between the Eastern Paddock, the Void and the pitch. A physical barrier – even if 'only' moveable perimeter boards - could and should have been installed in that corner of the ground long before the match took place, just as it was (swiftly and easily) after the Incident. That is not a conclusion that we have reached with hindsight. It is a conclusion that any reasonable, prudent club would have reached had it carried out any sort of relevant risk assessment of the Void.

ii) Use of stewards to prevent a pitch incursion via the Void

- 88) While we accept that one way to block a potential route for pitch incursion could be by the planned deployment of appropriately-positioned and adequately-briefed stewards as a deterrent/human barrier, the Club fell well short of satisfying us that it had used all due

diligence in that regard in this case. Indeed, by the end of the evidence it was clear that (contrary to the impression given in Mr Hoult's written evidence) the Club had never really planned or intended to utilise that method in the Void to address any perceived risk of pitch incursion – not least because, as above, the Club had never given any thought

- a) To the possibility that a pitch incursion might come via the Void, and so
- b) To the question of how the risk of a pitch incursion via the Void should be addressed.

89) Even if we were to ignore that fundamental difficulty for the Club's FA Rule E21 defence in that regard, we would have rejected the Club's attempts to persuade us that it had used all due diligence in relation to its deployment of stewards to the Void in this case. We accept Mr White's view

a) That while

- i) The number of stewards engaged by the Club for the match met/exceeded the ratios recommended in the Green Guide and specified in the Club's Safety Certificate, and was adequate *per se*, and
  - ii) The total number of stewards deployed in the Void *could* have been sufficient to address the risk of a pitch incursion via the Void
- a plan to deploy stewards in and around the Void could only have operated as an effective deterrent/human barrier if they had been briefed (1) that that was to be their role, and (2) as to how they were to fulfil that role;

b) The Club did not satisfy us of any of those matters in this case. The Club

- i) Did not 'plan' to use stewards as a deterrent/human barrier to address an identified risk of pitch incursion from the Void
- ii) Failed to demonstrate that it had briefed any steward that his role was as 'deterrent/human barrier' against pitch incursion from the Void (let alone how he should carry out that role, whether alone or in conjunction with others). We had no hesitation in concluding that the Club did not do so;

c) That the Club had given no adequate thought – and in reality, no thought at all – as to how the stewards located in the Void should be positioned to address any risk of pitch incursion via the Void

- d) That the number of stewards in fact located at the neck of the Void – in reality, only 1 – was wholly inadequate if the Club intended stewarding alone to be the deterrent/human barrier against pitch incursion in that area.

iii) Inadequate overall planning to prevent/respond to pitch invasions

90) While the Club's pre-match planning was in many respects admirable, we concluded that it had nonetheless failed to use all due diligence when planning

- a) Exactly how it intended to prevent pitch incursions from occurring *per se*, and
  - b) Exactly how it would respond to a pitch incursion in the event that one in fact occurred.
- We would have reached that conclusion even had the Club been playing a low-risk fixture. However, the fact that the match carried with it such a high risk of crowd disorder made the inadequacies in those aspects of the Club's pre-match planning even more stark.

91) We agree with the view expressed by Mr White

- a) That the Club's documented procedures for the prevention of pitch incursions were insufficiently detailed, particularly to guard against the risk of a pitch incursion by a sole spectator
- b) That while such incursions are fortunately rare, they are nonetheless possibilities which the Club – any club – must address if it is to be able to demonstrate that it exercised all due diligence to ensure that it had discharged its responsibility to prevent spectators from encroaching onto the pitch. In this case there was little in the documents prepared by the Club addressing such matter. The only written instructions were for stewards to 'be vigilant' and 'keep a particular eye on the front row' of their Stands. Nothing was said about how stewards were expected
  - i) to identify individuals who might be proposing to invade the pitch, or
  - ii) to deal with such individuals, and prevent them entering the field of play, if they did so identify such an individual
- c) That the Club ought to have had in place a documented, detailed procedure setting out precisely
  - i) Who was (and was not) to respond in the event of a pitch incursion, and
  - ii) How and when such individuals should respond.



The existence of a pre-prepared, documented procedure maximises the likelihood that all such responders will act in a coordinated, effective manner and so maximises the likelihood of a pitch incursion being stopped quickly and without further risk to those on the pitch. Leaving individuals around the ground to simply ‘react to what they see’ (as happened in this case) inevitably increases the risk of delay in apprehending an individual who has been able to make his way onto the pitch. That in turn increases the likelihood

- iii) Of harm being caused by that individual to others on the pitch, and
- iv) Of further disorder within the crowd being provoked and encouraged.

*iv) The immediate response to the Incident*

92) As we have said, we applaud the actions of the pitch runner who chased and apprehended PM. However, the fact that he acted as he did does not mean that the Club used all due diligence to ensure an adequate response to a pitch incursion such as the Incident. In our view, it did not.

93) Our view is that Mr White was right to describe the immediate response to the Incident as uncoordinated. That is not intended as a criticism of either Mr Warwick or the pitch runner who came from the south-east corner of the ground; they were no doubt simply reacting to what they had seen in a manner that they considered would best help resolve the situation. Rather, it is a criticism of the Club for failing to use all due diligence to ensure that those tasked with responding to a pitch incursion – whoever they might have been –

- a) knew that that was their role, and
- b) were properly briefed as to how to respond.

That was not the case here.

*v) Other relevant matters ?*

94) The FA – and Mr White – were critical of the wording of the warning signs in place at the ground; they contended

- a) That more direct wording – that pitch incursion was a criminal offence and that offenders would be prosecuted – should have been used on warning signs by the Club, and
- b) That the Club’s failure to use more direct wording was a further illustration of its failure to use all due diligence to ensure that its FA Rule E20 responsibilities were discharged.

95) While it is correct that the wording of the warning signs could have been stronger, we would have been reluctant to conclude that the wording in fact used by the Club amounted to a failure on its part to use all due diligence to ensure that its FA Rule E20 responsibilities were discharged. However, ultimately the point became somewhat moot because no evidence was produced by the Club that there were in fact any visible warning signs between PM's seat, in the Void and the pitch, regardless of how such other signs around the ground might have been worded. That in our view is something which justifies criticism. On its own case, the Club

- a) Utilised warning signs as one of the means of deterring pitch incursions, and so
- b) Utilised warning signs as part of the package of 'all due diligence' that it took to deter and prevent pitch incursions.

An absence of any such signage from a 'weak point' in the ground further emphasised the Club's failure to use all due diligence to ensure that its FA Rule E20 responsibilities were discharged in the Void.

96) Finally, in his Addendum Report Mr White

- a) Noted that the steward located at the neck of the Void had not reacted to prevent PM from reaching the pitch,
- b) Inferred that such lack of reaction was '*indicative of inattentiveness*', and
- c) Identified such '*inattentiveness*' as being a further reason why, in his view, the Club had '*failed in their due diligence*'.

97) That was not a conclusion with which we agreed:

- a) We were not satisfied that it was correct to conclude that the absence of reaction by the steward at the neck of the Void was indicative of inattentiveness on his part. To reach such a conclusion we would have had to be satisfied that that steward ought to have been focussing on the ends of the rows of the East Paddock and the Void (so as to look out for the possibility of attempts to access the pitch from those areas) because that was the role that he had been instructed by the Club to fulfil, yet was not so focussing. We were not satisfied on the evidence that that was case. As we have said above, there was no evidence before us as to what role stewards deployed in and around the Void were briefed to play and the conclusion that we reached was

- i) That the steward had not been briefed that his role that was to be ‘deterrent/human barrier’ at the neck of the Void
  - ii) That the steward had not been briefed that he should focus exclusively on the ends of the rows of the East Paddock and the Void so as to look out for the possibility of attempts to access the pitch from those areas
  - iii) That in the absence of such a briefing, the steward would have understood his role to be that of an ordinary ‘pitch side steward’ i.e. to monitor the entirety of the crowd in his section of the East Paddock for trouble, misconduct or inappropriate behaviour, and thus
  - iv) That the steward’s lack of reaction was the result not of inattentiveness *per se*, but simply the result of his attention being elsewhere
- b) Even had we concluded that the steward’s lack of reaction was due to inattentiveness on his part, we still would not have found that such inattentiveness *per se* demonstrated a failure on the part of the Club to use all due diligence in the discharge of its FA Rule E20 responsibilities. That is because, as set out above, a mere failure on the part of an individual employee to carry out a task or a role will not of itself generally be visited on the employer, provided that the employer
- i) Had adequately assessed what that employee ought to be doing, and
  - ii) Had properly trained and instructed the employee to carry out that role or task.
- As Mr White accepted in cross-examination, nobody can criticise the Club for a moment of inattentiveness by an individual steward.

**(G) Would “better” due diligence have prevented the Incident ?**

98) It is impossible to answer this question with certainty. However, in our view the likelihood is that

- a) Had the Club exercised all due diligence in the respects that we have set out above, and in particular
- b) Had the Club made any adequate effort to assess the risk of pitch incursion via the Void and address that risk (whether by introducing moveable pitch side barriers between the Void and the pitch, and/or by deploying an adequate number of properly briefed stewards to the Void to operate as a ‘human barrier’, and/or by ensuring that warning signs were clearly visible in the Void)

PM would have been prevented from reaching the pitch. Whether he would still have tried is anyone's guess, but the presence of physical barriers, adequate stewarding and/or warning signs would in all probability have at least made him think twice.

### **(H) Conclusions**

99) The Club failed to satisfy us that it had used all due diligence to ensure that its FA Rule E20 responsibilities had been discharged. It therefore failed to make out the Second Limb of its FA Rule E21 defence.

100) For that reason we found that the Charge was proven against the Club i.e. we found that the Club had been guilty of Misconduct for a breach of FA Rule E20(a) & (b).

### **(I) Order**

101) At the end of the hearing we gave the following directions:

- a) By 4.00pm on Friday 30 August 2019 the FA shall serve on the Club and provide to Mr McCormack, the Regulatory Commissions & Appeals Manager of the FA, any written submissions as it may wish to make in relation to the sanction(s) to be imposed on the Club in respect of the breach of FA Rule E20 that we have found proven, and any evidence or documents on which it wishes to rely in such regard
- b) By 4.00pm on Tuesday 3 September 2019 the Club shall serve on the FA and provide to Mr McCormack
  - i) Any written submissions as it may wish to make in relation to the sanction(s) to be imposed on the Club in respect of the breach of FA Rule E20 that we have found proven, including any submissions in mitigation, and
  - ii) Any evidence or documents on which it wishes to rely in such regard
- c) The case shall be relisted for a personal hearing before us at 11am on Thursday 5 September 2019 for the purpose of determining the sanction(s) to be imposed on the Club in respect of its breach of FA Rule E20. In the event that either party
  - i) considers a further personal hearing to be unnecessary for that purpose, and
  - ii) wishes us to consider determining the sanction(s) to be imposed on the Club at a paper hearing

it shall notify Mr McCormack as soon as possible

d) Until

- i) We have determined the sanction(s) to be imposed on the Club in respect of the breach of FA Rule E20 that we have found proven, and
- ii) We have produced an updated Decision and Written Reasons to include our Decision on Sanction and our Written Reasons for our Decision on Sanction our Decision that the Club breached FA Rule E20 as set out in the Charge and these Written Reasons are to remain embargoed.

102) This decision – which is the unanimous decision of this Regulatory Committee – is subject to the relevant Appeal Regulations.

**Graeme McPherson QC (Chairperson)**

**Alison Royston**

**Ken Brown**

27 August 2019

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

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

**THE FOOTBALL ASSOCIATION**

**and**

**BIRMINGHAM CITY FC**

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**ADDENDUM TO THE DECISION AND WRITTEN REASONS  
OF THE INDEPENDENT REGULATORY COMMISSION:**

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<b>Regulatory Commission:</b>	Graeme McPherson QC (Chairperson) Alison Royston Ken Brown
<b>Secretary to the Regulatory Commission:</b>	Paddy McCormack (Regulatory Commissions & Appeals Manager)
<b>Date:</b>	13 September 2019
<b>Venue:</b>	By videolink
<b>Appearances:</b>	Neither party appeared or was represented. The hearing proceeded on the papers.

- 1) In this Addendum we adopt the same abbreviations as we used in our Decision and Written Reasons dated 27 August 2019 (*'the Breach Decision'*).

**(A) Introduction**

- 2) Following a personal hearing that took place at Wembley on 12 August 2019 we found the Club guilty of Misconduct for a breach of FA Rule E20(a) & (b) in relation to the Incident. We set out our reasons for that finding in the Breach Decision.

- 3) In the Breach Decision we gave directions for the service of such written submissions, documents and evidence as the parties wished to provide prior to us determining the sanction(s) to be imposed on the Club in respect of the breach of FA Rule E20 that we had found proven. Pursuant to those directions (as subsequently varied) we have received

- a) Submissions on Sanction from the FA, and
- b) Submissions on Sanction (with 2 Annexes) from the Club.

Those Submissions in turn make reference to (1) various Decisions of other Regulatory Commissions and Appeal Boards (*'the previous Decisions'*), and (2) the FA's '*Guidance for Clubs 2018/2019*' (*'the Guidance'*) and we have been invited by the parties to consider those documents as part of our consideration of the appropriate sanction(s) to be imposed on the Club in this case.

- 4) We also directed in the Breach Decision that a further personal hearing should take place for the purpose of determining sanction unless both parties wished us to proceed by way of a paper hearing. That is in fact what both parties have chosen to do. No further personal hearing attended by the parties has therefore been held; instead, we met as a Regulatory Commission by videolink on 13 September 2019 to make our decision on sanction.

- 5) In reaching our decision on sanction – which was unanimous - we considered carefully
  - a) The written Submissions and Annexes,
  - b) The previous Decisions, and
  - c) The Guidance.

### **(B) The Approach**

6) There was little between the parties as to the approach that we should take when considering the appropriate sanction(s) to impose on the Club. It was common ground that we should consider

- a) The seriousness of the breach committed by the Club
- b) The culpability of the Club
- c) The harm caused by the Incident
- d) The mitigation available to the Club.

We did so, and we set out our conclusions in such regards below.

7) The Club also addressed us on 2 further points of principle relating to the approach to be adopted for the purpose of determining appropriate sanction:

- a) First, the Club submitted that any sanction must be proportionate and go no further than is necessary in order to achieve the legitimate aims that are sought to be achieved by the sanction. We accept that, and have applied that principle when determining the appropriate sanctions to be imposed on the Club in this case
- b) Secondly, the Club made submissions as to whether ‘deterrence’ should be a factor to which we should have regard when determining sanction in this case. We agree that this is not a case where there is justification for us imposing a sanction which has the objective (or an objective) of
  - i) Deterring the Club from repeating the Misconduct in the future, or
  - ii) Deterring others from committing similar Misconduct.

There is thus no ‘deterrent element’ in the sanctions that we have imposed on the Club.

### **(C) Seriousness of the breach**

8) The FA submits that, for the reasons set out in its written Submissions, we should categorise seriousness of the Club’s breach of the FA Rules in this case as ‘high’. The Club disagrees; its position is

- a) That while any pitch incursion is by definition a ‘*serious matter*’, a distinction should be drawn between
  - i) An incident of a lone spectator invading the pitch, and



ii) An incident of a mass incursion.

The latter, it is suggested, is '*far more serious*';

b) That in truth its breach of the FA Rules was not as serious as the FA suggests.

9) As regards the first of those matters, we do not agree with the Club's submission. Each case must be judged on its facts, and it is simply not possible or appropriate to make sweeping statements to the effect that a mass incursion should be considered more serious than an incident of a lone spectator invading the pitch:

a) What is being assessed for this purpose is the gravity of the Club's breach of the FA Rules, not the consequence (mass incursion/lone spectator invasion) that flows from that breach

b) In any event, a lone spectator invasion has at least the potential to be just as serious as a mass pitch incursion, if not more so.

10) As regards the second of those matters, we noted that the Club has – in both the 'Preliminary Remarks' and 'General Comments on the WR' sections of its written Submissions – identified a number of factors which, it says, addresses (or at least softens) certain of the conclusions that we reached in the Breach Decision as to the gravity and seriousness of the breach of FA Rule E20 committed by the Club. While we have

a) Carefully considered each of those Preliminary Remarks and General Comments, and

b) Reconsidered the findings set out in the Breach Decision at which those Remarks and Comments are addressed

nothing in those sections of the Club's written Submissions has caused us to change the view that we reached and set out in the Breach Decision about the seriousness of the Club's failings in this case.

11) Considering matters in the round, as we must, we agree with the FA's characterisation of the Club's breach of FA Rule 20

a) As 'serious', and

b) As being at the upper end of any scale of seriousness.

The reasons for our conclusion in that regard are clear from the Breach Decision (particularly sections (D) and (F)) and we do not repeat them here. While – as we describe further below – it is correct that the Club did many things 'right' in preparation for the

match, the conduct with which we are concerned and which has caused it to be in breach of FA Rule E20

- i) Involved a number of serious failings on the part of the Club, particularly given the nature of the fixture and the history of animosity between the clubs, and
- ii) Fell very significantly below the standard of ‘*using all due diligence*’ that the Club was obliged to meet in order to discharge its FA Rule E20 obligations.

12) While it is always possible to think of scenarios that would amount to a more serious breach than the one in question, we would nonetheless place the Club’s breaches of FA Rule E20 in this case at the upper end of the range of seriousness.

#### **(D) Culpability**

13) The FA drew our attention to the ‘sliding scale’ of culpability set out at paragraph 5 of the decision of the Appeal Board in Reading FC v The FA (7 October 2015). The Club did not suggest that the use of that ‘sliding scale’ was inappropriate in this case. Consequently we considered the culpability of the Club’s conduct by reference to that ‘sliding scale’.

14) We had little difficulty in concluding

- a) That this is not a Category 1 case (*‘the most serious [for example, a deliberate decision not to provide the necessary resources for financial reasons]’*). There is no suggestion that the Club deliberately decided to leave the Void as a ‘weak point’
- b) That this is not a Category 2 case (*‘a reckless disregard in respect of the Club’s duties’*). This was not a case where the Club suspected that an incursion might originate from the Void yet chose to turn a blind eye to that possibility and/or take no steps to investigate or address that suspicion. The Club’s failing is that it simply did not turn its mind to the question of what, if anything, needed to be done in the Void to address any possibility of a pitch incursion from that part of the Stadium
- c) That (at the other end of the spectrum) this is not a Category 5 case (*‘a situation where a club has marginally failed to avail itself of the “due diligence” defence set out in FA Rule E21’*). As we made clear in the Breach Decision, the Club fell a very long way short of establishing an FA Rule E21 ‘due diligence’ defence.

15) That leaves Categories 3 (*‘gross negligence’*) and 4 (*‘negligence simpliciter’*). Neither party sought to address us on where the dividing line between those Categories might lie (i.e. on when ‘simple’ negligence might become ‘gross’ negligence’) and ultimately we found it unhelpful to try to pigeon hole the Club’s conduct into one or other of those categories of culpability. As we said in the Breach Decision, and as we have alluded to above, we found that the Club to be significantly at fault in this case; in some respects<sup>1</sup> the Club’s conduct was almost cavalier. At the heart of the Club’s failings were serious deficiencies in the way in which it set about attempting to discharge its responsibilities to ensure that its spectators and/or persons purporting to be its supporters

- a) Conducted themselves in an orderly fashion
- b) Refrained from behaving improperly and violently, and
- c) Refrained from entering onto the pitch.

Whether one wishes to label that degree of culpability as ‘negligence’ or ‘gross negligence’ does not appear to us to matter very much; it is the substance of the failings, not the label attaching to it, that is relevant to determining the appropriate sanction to be imposed.

16) We also agree with the FA’s submission that a lack of insight on the part of the Club as to what was required of it

- a) Appeared to be present in this case (as we made clear in the Breach Decision), and
- b) Is a factor of which account should be taken.

17) Before we leave this section, we address 2 submissions made by the Club to the effect that its level of culpability was reduced in this case as a result of the involvement/lack of involvement of certain third parties.:

- a) First, the Club suggested that the fact that its *‘documented plans ... had been approved by the Local Authority’* should be taken into account by us when considering sanction. However, we have been told nothing about what *‘plans’* the Local Authority saw or approved, nothing about the purpose for which such plans were shown to the Local Authority, and nothing about the standard against which the Local Authority might have

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<sup>1</sup> By way of example, the fact that the Club had not considered it necessary to risk-assess the Void for the possibility of pitch incursion on the basis that there had never previously been an incursion via the Void.

been judging such plans when ‘approving them’. Reliance on the fact that Local Authority might have seen and approved plans (plans which, as we found, were of themselves inadequate when judged against the standard required of the Club for the purpose of the FA Rules) is thus of no material assistance to the Club for present purposes – the involvement of the Local Authority does not reduce the Club’s culpability

- b) Secondly, the Club contended that the level of its culpability should reflect ‘failures’ on the part of the FA
- i) To publish ‘*[up to date] guidance*’ to help clubs deal with issues such as pitch incursions,
  - ii) To share with all clubs examples of documented pitch incursion plans received by the FA from certain individual clubs.

We were not at all impressed by that submission. Every club is different. Every ground is different. Different matches present different challenges. Each club must take responsibility for planning to take, and in fact taking, the particular steps necessary for it to meet the ‘all due diligence’ standard in FA Rule E21 for each fixture. A suggestion that the FA should in some way share the blame for this Incident – thereby reducing the Club’s culpability – is without merit.

### **(E) Harm**

18) Once again, the FA and the Club invited us to reach very different conclusions as to the ‘harm’ that in fact resulted in this case from the Incident and so that was caused by the Club’s breach:

- a) The FA submitted that the level of harm caused was high
- b) The Club submitted that a lower level of harm had resulted from the Incident and from its breach.

19) At the outset it is perhaps useful to describe what is meant by ‘harm’ in this regard. Certainly ‘harm’ encompasses immediate adverse consequences of an incident – so

- a) Had physical injury been caused to Mr Grealish (or anyone else) in the Incident, or
- b) Had the Incident triggered crowd trouble or a further pitch incursion

that would certainly fall within the meaning of ‘harm’.

20) However, the fact that neither of those eventualities in fact occurred does not mean that no 'harm' was caused by the Incident. In our view 'harm' is wider than that. Harm would include for example

- a) The creation of a dangerous or hostile situation, even if that situation did not in fact escalate,
- b) The creation of a risk of 'copycat incidents',
- c) The creation of any longer term consequences, such as the elevation of tensions at future matches between rival supporters, and
- d) Any wider damage to the reputation of football.

21) It is of course correct that the Incident

- a) Did not in fact result in physical harm being caused to Mr Grealish (although the Incident was hostile and physical), and
- b) Did not in fact operate as a trigger for any more widespread or serious disorder within the Stadium.

However, given the wider meaning of 'harm' in this context, the fact that those eventualities did not in fact arise (1) does not mean that 'harm' did not occur as a result of the Incident, and so (2) is only of limited value for the Club as regards appropriate sanction. We in any event agree with the FA's submission that such matters were the result more of luck than judgment.

22) In our view the wider harm caused by the Incident can properly be described as significant. The match was televised. It was a high-profile local derby with a high risk of fan disorder which posed serious/exceptional challenges. The degree of tension – both within the Stadium on the day of the match and more widely between opposing fans – was plainly increased as a result of the Incident. The potential for harm (in both senses of the word) in the event of a pitch incursion was very significant indeed.

#### **(F) Mitigation**

23) The Club's written Submissions identify numerous factors which, it contends, should operate to mitigate against the gravity of any sanctions that we might be minded to impose.

24) We do not intend to analyse each individual paragraph of the Club's written Submissions; in our view that is unnecessary, not least because there is considerable overlap between

many of the factors relied upon throughout that document. We confirm that we have however considered each and every paragraph relied on by the Club in that regard, and simply because we do not refer to an individual paragraph or submission in this Addendum does not mean that we have overlooked it. Instead, we deal below with what we have concluded are the relevant broad strands of the Club's case on mitigation.

25) First, the Club relies on the fact that prior to the incident it had a good disciplinary record. In that regard we have been provided with the Club's Offence History. That discloses that although the Club has been found in breach of FA Rule E20(a) on a number of prior occasions, none of the Misconduct giving rise to such previous breaches has had at its heart any supporter misconduct. We therefore accept

- a) That we should treat this case as a 'first offence', and
- b) That the Club is entitled to credit for its good previous disciplinary record in this regard.

26) Secondly, the Club relies on the fact that the Incident was dealt with quickly and effectively by its staff once the Incident had begun to unfold. That is something for which the Club is entitled to credit.

27) Thirdly, the Club relies on the fact that it immediately condemned the Incident in various public fora and in the strongest terms, and also actively assisted in the prosecution and punishment of PM. The Club's reaction in that regard cannot be faulted, and it is entitled to credit for that.

28) Fourthly, the Club reminds us that in many respects, its preparations for a high-risk match that undoubtedly created serious and exceptional challenges

- a) Were extensive and rigorous,
- b) Were not criticised by the FA or Mr White, and indeed
- c) Were beyond criticism.

However, there is only very limited (if any) value to the Club in such a submission in a case such as this. What it boils down to is a submission that the Club ought to be given credit for discharging the majority of its FA Rule E20 obligations prior to/during the match competently, even if in fact it fell short in other aspects. That is not however 'mitigation'; a club cannot sensibly seek credit for acting in a manner which, under the FA Rules, it is obliged to act. Such matters are neutral.

29) The Club's submission in that regard is in any event further undermined on the facts of this case by the gravity of the failings of which the Club was in fact guilty, and the degree of the Club's culpability for those failings. We have addressed those matters in sections (C) and (D) above.

30) Fifthly, the Club has taken significant steps since the match (and is continuing to take steps) to address the deficiencies which (as we found) gave rise to the breach of FA Rule E20:

- a) Steps taken to date include the introduction of A-frame boards in the gap in the pitch perimeter in front of the Void, additional training for stewards in that area and the installation of additional, strongly-worded signage
- b) Steps still under consideration are the installation of moveable gates between the Main Stand and the Tilton Stand and the creation of a self-contained pitch incursion plan on which pitch runners will be briefed before each fixture.

The Club is entitled to credit for taking such steps (and for doing so quickly after the match).

31) A final broad factor which the Club submits ought to be considered as 'mitigation' is the fact that it had in place ticketing terms and conditions for the Family Stand which should have prevented PM from being in and around the Void at all. We are not at all persuaded by that submission:

- a) First, it is still wholly unclear to us how PM came to be seated in the Family Zone at all 'despite' such alleged preventative measures; as we described in the Breach Decision, there was (and still is) only minimal evidence from the Club on that issue
- b) Secondly, even now the sole 'barrier' to prevent individuals who are not accompanied by children from buying seats in the Family Zone appears to be as follows:
  - i) The Rules of the Family Zone require adults to be accompanied by a junior under the age of 16
  - ii) When an individual attempts to buy tickets in the Family Zone online, a message appears to make him/her aware of the Rules of the Family Zone
  - iii) The purchaser has to select a tick box to say that he/she has accepted those terms

- c) That ‘system’ to control who can and cannot end up seated up in the Family Zone seems to us to be flimsy at best. While conscious of the need to avoid hindsight, the very fact that PM was able to buy a ticket for the Family Zone in advance of the match and then access and sit in the Family Zone by himself without challenge demonstrates the weakness in the Club’s control system for the Family Zone. It certainly cannot be said (as the Club invites us to accept) that ‘... *imposing such a condition [in the Rules of the Family Zone] significantly reduces the risk of pitch incursion from that area ...*’
- d) The weakness of that system is troubling, as in our view is the Club’s apparent inability or unwillingness to see and address the same.

32) In summary therefore we accept that this is a case where the Club is entitled to some credit for a number of the mitigating factors that it has identified, albeit that

- a) We do not accept that the mitigation available in this case is anywhere near as extensive as that contended for by the Club in its written Submissions, and
- b) We are of the view that those factors that are available to the Club as mitigation do not justify a particularly substantial reduction in sanction in this case.

### **(G) Aggravating features**

33) There are in our view a number of features which might ordinarily be considered aggravating factors in a case such as this – for example

- a) The gravity of the Club’s breach i.e. the degree to which the Club fell short of the standard that it ought to have met
- b) The degree of culpability of the Club for the breach and the Incident
- c) The harm caused by the breach, including the fact that there was an assault on Mr Grealish.

34) However, such matters have already been take into account in the analysis carried out above for the purpose of assessing (before addressing issues of mitigation) the appropriate sanction to impose on the Club. It would therefore be wrong, and unfair to the Club, to ‘double count’ those factors by also taking them into account as matters

- a) Which might be said to aggravate the breach in this case, and so
- b) Which should be reflected by an upwards adjustment in sanction.



We confirm therefore that we have not double-counted any such matters when determining the appropriate sanction to impose on the Club in this case.

**(H) The Guidance and previous cases**

35) Neither party has suggested that the Guidance operates to constrain us in this case by imposing a rigid ‘cap’ on any financial penalty that we might otherwise consider appropriate in a case of Misconduct for a breach of FA Rule E20 resulting from a pitch incursion by a lone spectator. Instead, each party invites us to treat the Guidance as providing broad assistance to us in our task by virtue of

- a) The guidance that it provides as regards financial penalties appropriate in other (different, but said by the Club to be analogous) cases of Match Day Misconduct involving ‘player confrontations’, and
- b) How it treats clubs playing in the different tiers of English football.

36) In our view

- a) The Guidance does not impose on us any upper limit for any financial penalty that we might impose on the Club in this case
- b) The observations of the Regulatory Commission at paragraphs 62 to 67 of The FA v Reading FC (5 August 2015) as to the relevance of the Guidance in a case such remain accurate and relevant.

That is therefore the approach that we have taken when considering the Guidance and the figures in the Guidance in this case. We wish to make clear however that we did not find any of the scenarios described in the Guidance (dealing as they mainly do with ‘player confrontations’) to be terribly analogous to the present case.

37) Our attention was also drawn by the Club to various previous decisions of other Regulatory Commissions and Appeal Boards. In its written Submissions the Club helpfully

- a) Summarised what it says were key features of those previous Decisions,
- b) Set out the various sanctions imposed on clubs in those previous Decisions. Those sanctions ranged from
  - i) a £50,000 fine and an order to play 1 match behind closed doors (suspended for 12 months) imposed on Blackpool FC (2015)

ii) a £10,000 fine imposed on Preston North End

c) Identified where it contends this case should be found to ‘sit’ within the range of those previous Decisions.

38) We read each of the previous Decisions with care. Ultimately though we found them only of very limited assistance:

a) They confirm at very high level the order of magnitude of any financial penalty that a club might realistically expect to receive in the event of a breach of FA Rule E20 by reason of a pitch incursion. They confirm that a five-figure financial penalty is the norm where such a sanction is being imposed. To that extent, we found them useful

b) Each case will however depend on its own facts. We did not therefore find it useful to try to assess whether this case was more or less serious than other previous Decisions or to try to ‘apply’ or ‘adjust’ the financial penalties that were imposed in those previous Decisions to reflect similarities or differences between this case and previous cases.

### **(I) Our conclusions on sanctions**

39) As a starting point we considered whether a financial penalty alone would suffice as a penalty in this case. We concluded that it would. In our view

a) A financial penalty adequately reflects the gravity of the Club’s breach of FA Rule E20, the Club’s culpability for that breach and the harm caused by that breach, and

b) It is unnecessary to impose any other, more serious, type of sanction in this case. To do so would not be proportionate to the Club’s breach.

40) We concluded that, but for the mitigation available to the Club, a financial penalty of £50,000 would have been an appropriate sanction. That in our view would have been the appropriate penalty to reflect

a) The seriousness of the Club’s breach of Rule E20,

b) The Club’s culpability for that breach, and

c) The harm done by that breach.

In reaching that conclusion we also reminded ourselves that the Club had denied the Charge which had subsequently been found proven. There was thus no credit to be given for an early (or any) guilty plea.

41) However

- a) As we have said above, there are mitigating factors in this case for which the Club is entitled to credit, and
- b) Those mitigating factors justify a reduction in the financial penalty to be imposed on the Club.

42) We have concluded that the (limited) mitigation available to the Club in this justifies a reduction of 15% from the starting point that we have identified in paragraph 40 above. Applying that reduction, the financial penalty that we impose on the Club as sanction for its breach of FA Rule E20 is therefore £42,500.

43) Before we leave this section of the Addendum, we note that the Club has chosen not to put any financial information before us to consider when determining sanction. As a result, we have not considered the Club's financial position when arriving at the figure of £42,500.

44) We also conclude that it is appropriate to warn the Club as to its future conduct. While it is to the Club's credit that it has already sought to address the deficiencies that were highlighted by the Incident, it must ensure that no similar incident happens again, whether from the Void or any other part of the stadium.

**(J) Suspension of any part of the financial penalty ?**

45) The Club submits that we should exercise our discretion (pursuant to paragraph 42 of the General Provisions of the FA Disciplinary Regulations) to suspend a proportion of the financial penalty - although we note that paragraph 18 of the Club's written Submissions does not identify any particular features or factors which are in fact said to require or justify us exercising our discretion in that way in this case.

46) We agree that we have a discretion to suspend part of a financial penalty in an appropriate case. However, in our view there is no justification for doing so in this case. We do not

therefore suspend any part of the fine of £42,500 that we have concluded should be paid by the Club.

**(K) Final Order and Costs**

47) We order that Birmingham City Football Club

- a) Is warned as to its future conduct
- b) Is fined the sum of £42,500.

48) We have also concluded that the Club should pay the costs of the Regulatory Commission in full. The Charge was unsuccessfully opposed by the Club. The Club's attempts to persuade us to impose only a four-figure financial penalty have failed. We see no reason why

- a) The Club should not be ordered to pay the costs of the Regulatory Commission, or
- b) The amount of those costs should be reduced from their full amount.

49) In addition to the orders in paragraph 47 above we therefore also order that Birmingham City Football Club should pay in full the costs of the Regulatory Commission relating to this case:

- a) The sum so payable will be confirmed by the Regulatory Commissions and Appeals Manager in due course
- b) Those costs will be added to the Club's Fees and Fines Invoice.

50) This decision – which is the unanimous decision of this Regulatory Commission – is subject to the relevant Appeal Regulations.

**Graeme McPherson QC (Chairperson)**

**Alison Royston**

**Ken Brown**

16 September 2019