

FOOTBALL ASSOCIATION REGULATORY COMMISSION

THE FOOTBALL ASSOCIATION

- v -

BARNSELEY FC

Regulatory Commission: Christopher Quinlan QC - Independent Judicial Panel
Chairman
Alison Royston- Independent Football Panel Member
Matt Williams - Independent Football Panel Member

John Edmunds- FA Judicial Services, secretary

Date: 25 October 2022 and 8 November 2022

Venue: By Zoom video conference call

DECISION and WRITTEN REASONS OF THE REGULATORY COMMISSION

A. INTRODUCTION

1. On 16 August 2022 Barnsley FC ('the Club') played Bristol Rovers FC ('BRFC') in an English Football League 1 match ('the match'). The match took place at the Club's home ground, Oakwell Stadium ('the stadium').
2. During the 50th minute of the match supporters or followers of the Club within the crowd used abusive and/or insulting words which included a reference, whether express or implied, to gender. In consequence of the said conduct the Club was charged with misconduct for a breach of FA Rule E20. The particulars of the said charge are ('the charge'):

"It is alleged that in or around the 50th [sic] minute of the fixture Barnsley FC failed to ensure that its spectators, and all persons purporting to be its supporters or followers, conducted themselves in an orderly fashion and refrained from using improper and/or abusive and/or insulting words which included a reference, whether express or implied, to gender."

3. The Club admitted the charge and requested a ‘paper hearing’ which took place by Zoom on 25 October 2022 and 8 November 2022.
4. This document constitutes our final reasoned decision and written reasons. Necessarily, it is a summary. Nothing should be read into the absence of specific reference to any aspect of the material or submissions placed before us: we considered and gave appropriate weight to all the material and submissions placed before and made available to us.

B. FACTS

5. Following publication of this statement by the Club on its website - <https://www.barnsleyfc.co.uk/news/2022/august/club-statement-abusive-chanting/> - The FA wrote to the Club seeking details of the said conduct, any footage of the same and its observations.
6. The Club replied in writing by letter dated 31 August 2022 (‘31 August letter’). The 31 August letter was accompanied by fourteen images or attachments which detailed measures taken by the club before the match to prevent any such conduct and steps taken after in consequence. We have considered that letter and the attachments with care.
7. On 8 September 2022 the FA emailed the Club asking, *inter alia*, for specific details of the conduct and when it occurred. The following day the Club replied thus:
 - ***“Specific details of the chant(s) (words used)”***
We are of the belief that the words used are as follows:
“Get your tits out for the lads...”
 - ***“When it occurred during the match”***
Judging by the timestamped clip, the chant began in the 50th minute of the fixture. It was chanted by a minority of supporters for approximately 15 seconds.

8. The Club also provided a link to footage of the incident. When we asked, it was shared with us. We have watched the footage, which comprises two short clips. The chanting was aimed at a female BRFC staff member treating a BRFC player on the pitch. The chanting lasts for about 15 seconds, is clearly audible and repeated. The volume is such that a not insignificant number in the crowd must have been responsible. One of the two videos is the live broadcast feed on which the chanting can clearly be heard. None of the stewards reacted in any visible way to the obvious chanting.

9. On 29 September 2022 the Club replied to and admitted the charge. It requested a paper hearing. The Club asked The FA to place before the appropriate Commission a letter dated 29th September with five attached or supporting images ('29 September letter'). We have considered that letter and the attachments with care. Therein, it said the following, in summary:
 - a. The Club does not take the matter of discrimination lightly and does not condone improper conduct. It said it was "*extremely disappointed to learn of the regrettable chant*". Correctly, it said that the Club publicly condemned the discriminatory nature of the chanting and those involved by way of the statement, published on the Club website and social media channels on 18th August 2022 at 16:41 (copied as image 1).
 - b. It said it took the following measures pre-match to prevent such conduct. As detailed in the 31 August letter it followed its regular practice which included
 - i. the display of anti-discrimination posters throughout the stadium concourses (including the away end) – we have seen a photograph of such a poster which invites people to report such conduct by text.
 - ii. management of the Club's dedicated inbox for reporting discrimination.
 - iii. a pre-match anti-discrimination notice, as provided by the EFL, was included in the public announcer's script. We have read that.
 - iv. Prior to kick-off the Club's Safety Officer, Paul Davis, also undertook a safety briefing meeting with all Area Supervisors who subsequently disseminated all information to stewards. Incidents of how to manage racial complaints and wider areas of discrimination were both highlighted and discussed in these briefings, the letter states.

- c. The letter states that there were no reports of discriminatory chanting made on the evening of the game, including during the match.
- d. Post-match:
 - i. It states that the Club first became aware of the discriminatory chanting on Thursday 18 August 2022 when it received social media screenshots. The Club then contacted its 'Her Game Too Ambassador'; Lucy Thorpe and started to investigate the matter.
 - ii. The Club reviewed CCTV footage but said it could not identify those responsible. The camera recording the footage we have seen is not directed on those chanting; nor was it moved (if capable of being). However, based on its opinion as to the location of those responsible, the Club has implemented further targeting measures within that area of the ground including an increased number of stewards.
 - iii. Image 2 shows contact with Andy Downie at BRFC to ensure that both Clubs issued statements, publicly condemning the discriminatory nature of the chanting, at the same time.
 - iv. The Club has continued publicly to condemn such conduct across several platforms. The Club's Safety Officer issued a public statement in the Club's matchday programme on 13 September 2022 (image 3). The Chief Executive Officer has sent letters of apology to BRFC's Chief Executive Officer, Tom Gorringer, and the Sports Therapist, Leighanne Kelly.

10. The 29 September letter goes on to address the future or "Moving Forward" as it terms it. It states that the Club is "*committed to creating and maintaining an inclusive and supportive environment*". It has created a "Together Red" campaign launched on 27 August 2022 and developed alongside its #HerGameToo ambassador, will be stories created and shared to showcase the importance of equality across Barnsley FC. The stories will be published using the Club's social media accounts, website and matchday programmes. Image 4 is an advertisement for "Together Red" to advertise this campaign in our local newspaper, the Barnsley Chronicle.

11. Further, it states that all communications relating to racism and abuse, such as public announcer (“PA”) scripts and anti-discrimination posters, have been changed to specifically include reference to hate and discrimination of all natures. Similarly, it states the Club will continue:

- a. To develop specific LED board messaging, within the LED board running order, dedicated to ensuring all supports know how to report discrimination experiences before, during or after a match.
- b. To ensure rigorous ticketing checks are enforced within the affected area, while also deploying undercover stewards to aid in the identification of abusive supporters.
- c. The process of conducting further training with all stewards to ensure that it meets the requirements of the Green Guide and develops their knowledge and understanding of diversity, safeguarding and disability awareness. Extra time is being spent briefing stewards before matches and an additional handout, covering a range of diverse groups that are protected under the Equality Act, is now handed out to all stewards (as shown in image 5)

12. The Club has, and we are told is continuing to, engage with both the English Football League and #HerGameToo representatives to consider what additional appropriate steps that the Club may take to tackle discrimination in the modern game.

13. We convened on 25 October 2022 and considered the case materials. We adjourned and issued a direction in the terms set out below. We reconvened and considered matters further on 8 November 2022.

C. SANCTION

(1) FA Rules E20 and E21

14. FA Rule E20 provides:

“E20 Each Affiliated Association, Competition and Club shall be responsible for ensuring:

E20.1 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, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) whilst attending at or taking part in a Match in which it is involved, whether on its own ground or elsewhere; and

E20.2 ...”

15. FA Rule E21 states that any Affiliated Association, Competition or Club which fails effectively to discharge its said responsibility in any respect whatsoever shall be guilty of Misconduct. The due diligence defence contained in Rule E21 does not apply where the Misconduct by spectators or any other person purporting to be a supporter or follower of the Club included a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability. The Club accepts the charge and so has accepted, rightly, that the chanting in question expressly or impliedly contained a reference to gender. It was also abusive, insulting and indecent. Therefore, the Rule E21 due diligence defence does not apply in this case.

16. Though it did not provide it to us, in August 2020 the FA issued guidance on the applicable approach for breaches of FA Rule E20 involving ‘discriminatory crowd matters’. That guidance provides as follows (emphasis added):

“... FA Rule E21 is not applicable ... in cases of discriminatory behaviour of supporters in accordance with FIFA’s direction. It remains the case however that it will need to be assessed if FA Rule E20(a) has been breached.

Should a Club be charged under FA Rule E20(a) for discriminatory behaviour of their supporters, a Regulatory Commission (which will be chaired by a specialist panel member with the requisite experience in crowd management matters) will consider a range of factors including the following in determining what, if any, sanction should be imposed:

- a *The number of supporters involved*
- b *The nature of the behaviour of those involved*
- c *The duration of the incident(s)*
- d *Action taken against individual supporters either by club, police and/or courts*
- e *Whether the Club took all reasonable steps in their preparation and planning for the fixture*
- f *Whether the Club and/or its officers took all reasonable steps in dealing effectively with the issue/incident when it arose*
- g *The Club's actions post-event in identifying any supporters in discriminatory behaviour.*

In addition to the above case specific mitigating factors, other matters may also be taken into account including the level of assistance and co-operation with the investigation and process.

Should the Club establish to the Commission's satisfaction that all events, incidents or occurrences complained of were the result of circumstances over which it had no control and/or that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged, whilst this will no longer be a defence so that a Commission would be bound to find that a breach of FA Rule E20(a) has occurred, the primary focus for sanction would be to consider an action and/or operational advice and/or other practical measures as they see fit to be carried out by the Club. This will subsequently be monitored by the Football Association to ensure implementation and is likely to be taken into account in considering any future offences of a similar nature. Should a Club be found to have breached FA Rule E20(a) and a Commission finds that the Club has not satisfactorily discharged its said responsibility, then sanctions would be open to the Commission's discretion."

17. So, while an FA Rule E21 defence is not available to the Club in this case as a defence to the Charge, it is necessary for us to determine whether the Club in fact cleared the hurdles described in FA Rule E21 in respect of the said chanting as part of the process of determining the appropriate sanction, if any, to be imposed on the Club.

(2) Submissions

18. The FA made no submissions on sanction nor provided us with the relevant guidance. When we asked for any relevant previous decisions of Independent Regulatory Commissions, we were provided with copies of the following:
- a. *The FA v Barnsley FC* 14 February 2020 (“the 2020 case”).
 - b. *The FA v Millwall FC*, 24 June 2019.
19. We note that in both cases the Regulatory Commission had the assistance of The FA submissions on sanction. The Commission members appointed to this matter have experience in such cases.

(3) Factual findings on FA Rule E21

20. FA Rule E21 comprises 2 conjunctive limbs, namely
- a. Whether the incident complained of was the result of circumstances over which the relevant club had no control (*‘the First Limb’*), and
 - b. Whether the relevant club’s responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged (*‘the Second Limb’*).
21. The burden rests with the Club to satisfy us on both the First Limb and the Second Limb. The standard of proof for discharging that burden is the balance of probabilities.

(i) *First Limb of Rule E21*

22. As has been said in other cases, when considering the extent to which a club has ‘control’ over a third party
- a. There is a valid distinction to be drawn between (on the one hand) a club’s players and employees and (on the other hand) the club’s spectators and persons purporting to be supporters/followers, and
 - b. That 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 and stewarding in and around the stadium, a club has limited means by which to ‘control’ spectators and persons purporting to be supporters/followers at matches.

23. As we have said the parties have elected not to provide us with specific submissions on sanction. However, we are satisfied on a balance of probabilities that the said chanting was the result of circumstances over which the Club had had no control; the FA certainly did not suggest otherwise. We were therefore satisfied on the First Limb.

(ii) Second Limb of Rule E21

24. In order to satisfy the Second Limb the burden is on the Club to demonstrate that it used all due diligence to ensure that its relevant responsibilities under FA Rule E20 were discharged.

25. What is meant by “*all due diligence*” in such circumstances has been considered by other FA Independent Regulatory Commissions in *The FA v Millwall FC* (23 May 2019), *The FA v Birmingham City FC* (12 August 2019), *The FA v Hartlepool United FC* (9 January 2020) and the 2020 case. We agree with the approach in those cases which are helpfully set out in paragraph 41 of the Decision of the Independent Regulatory Commission in the 2020 case:

- a. That the question of 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. That while ignoring hindsight does not prevent an Independent Regulatory Commission from considering matters that have occurred since the incident under scrutiny (such as steps taken by a club to prevent a recurrence of the incident) it 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. That 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. That the fact that FA Rule E21 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 rely on FA Rule E21.
- e. That 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. That the relevant question to address is therefore whether those responsible at the Club for managing the conduct of spectators/persons purporting to its supporters had taken all reasonable steps to ensure that spectators/persons purporting to be its supporters (1) would conduct and did conduct themselves in an orderly fashion, and (2) would refrain and did refrain from *inter alia* abusive or insulting behaviour.
- g. That it will not automatically follow that, merely because a club has engaged an appropriate level of resources to deter/prevent misconduct of a type that nonetheless still occurred, 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.

26. When assessing this aspect of the case we do appreciate that it may be difficult – even impossible – to prevent every individual who purports to be a supporter or follower of a club from using inappropriate language and/or from behaving in an inappropriate way. However, there are obvious proactive efforts that any club can make in that regard to prevent such behaviour before it happens, particularly when a club has reason to know that there is a risk of such language being used and/or of such behaviour occurring. For example, the steps a club can take include:

- a. Appropriate anti-discrimination signage being placed at entrances to the stadium and/or around the stadium.
- b. Displaying appropriate anti-discrimination messages on advertising hoardings and on the stadium's big screen.
- c. Placing prominent and clear anti-discriminatory wording in the matchday programme.
- d. Making clear and regular anti-discriminatory PA announcements before and during the match (and generally).
- e. Emphasising to spectators that discriminatory behaviour would not be tolerated and would be severely punished.
- f. Specific training of stewards to ensure that inappropriate language is not ignored or missed and is to be dealt with effectively and quickly; in effect, promoting a proactive, 'zero tolerance' stewarding policy, and ensuring that such policy is understood and enforced by all stewards.

27. We were told that the Club has only one relevant previous finding, namely for Misconduct in 2020. It is necessary to look at the facts of that matter. The Club was charged with, and admitted Misconduct, for a breach of FA Rule E20. The charge arose out of a section of the crowd at a match played 9 November 2019 shouting abusive, insulting and discriminatory language at an opposing player who opposed the wearing of a poppy. The Independent Regulatory Commission imposed a fine of £20,000 and imposed an action plan which it ordered to remain in place until the conclusion of 2020/21 season. That action plan is annexed to the Independent Regulatory Commission's written Decision in that case. In 15 detailed particulars it required the

Club to undertake various measures (“the 2020 action plan”). We examine it in paragraph 31 below.

28. The Club served evidence as to what steps it had taken before and since the incident to prevent a recurrence. It did so in the 31 August and 29 September letters. However, those steps were, in our judgment, limited. They include the following, which must be read together with the other criticisms we make in this decision.

- a. The poster in image 1 (attached to 31 August letter) displayed at the stadium simply states “*report racism, protect your club*” with a text to report such. There is no reference to other form of discriminatory language or behaviour.
- b. The PA announcement (image 2 to 31 August letter) refers to “*racism or discrimination of any form*” which will not be tolerated and to report it to a steward or by text to a given number. It was made at 19.21 and half time which we consider to be insufficient.
- c. The stewards’ briefing was brief and simply counsels them to “*be vigilant*” in respect of “*discriminatory abuse*”. However, that does not advise what stewards should do if they encounter such behaviour. Nor is “*be vigilant*” especially helpful. Further, there is no reference at all to sexist language or behaviour. That briefing falls a long way short of the stewarding measures in paragraphs 1-4 of the 2020 action plan (see paragraph 31 below).

29. Further, we were concerned that several of the future steps suggested in the 29 September letter duplicated particulars in the 2020 action plan. By way of example, the 29 September letter states that the Club will “*continue*”:

- a. “*To ensure rigorous ticketing checks are enforced within the affected area, while also deploying undercover stewards to aid in the identification of abusive supporters*”. This is very similar to paragraphs 11 and 12 of the 2020 action plan.
- b. “*The process of conducting further training with all stewards to ensure that it meets the requirements of the Green Guide and develops their knowledge and understanding of diversity, safeguarding and disability awareness*”. This repeats paragraph 3 of the 2020 action plan.

30. We were troubled by the extent to which the 2020 action plan had been implemented by the Club. Indeed, neither letter referred to it. Further, the FA had not provided any material or information on this aspect. Therefore, after we met on 25 October 2022, we issued the following direction:

“No later than 16.00 on 2 November 2020 the Club must set out in writing with supporting evidence the precise steps it has taken to comply with the action plan imposed in February 2020.”

31. On 2 November 2022 we received a reply by way of a letter of the same date with appendices. Hereafter, we set out the said response, and where we consider it appropriate, our observations; the relevant particular of the 2022 action plan is in the emboldened text.

1. Barnsley FC (‘the Club’) shall forthwith conduct a review of its stewarding management, provision, deployments, and quality of steward training. In addition, existing processes should be closely examined to ensure quality steward incident reporting (verbal and written) is in place to support proportionate reactions to match day incidents and potential post-match investigations.

“The Club has made significant changes to its stewarding operation since February 2020. The Club moved away from the long-standing relationship it had with Doyle Security in May 2022, who were the main supplier for approximately 20 years. Around fifty per cent of the Club’s stewards are now employed ‘in house’ which subsequently enables the Club to have greater control over recruitment and training. It also assists in improving levels of continuity and consistency of staff. The Club aims to have seventy-five per cent of the Club’s stewards employed ‘in house’ by the end of the 2022/23 season and one hundred per cent by the start of the 2023/24 season.

Stewards are trained by our appointed ‘in house’ Training Manager in line with the national standards, as stipulated by the Sports Ground Safety Authority. All stewards are encouraged to report incidents to their supervisor or the control room immediately. This can be done via radio, or landline telephones which are located around the ground.”

We accept a review was conducted. We also note the changes said to have been implemented. However, we have set out above (paragraph 28c) our view on the content of the stewards' briefing. We have not been shown any debriefing reports or documents. Further from this sentence, which appears in the final paragraph of the 31 August letter – *“It is anticipated that this will be in place for the next home league fixture (Saturday 10th September 2022)”*– this was done only after the match.

2. **The Club shall review, develop and enhance all match day operational planning and steward briefing processes, all of which shall be fully documented to support and evidence due procedure; to ensure that the prevention and detection of any discriminatory or inappropriate behaviour is sufficiently addressed.**

“In advance of any fixture the Club’s Safety Officer carries out a risk assessment of the event (an example of which is enclosed) and seeks information from the Police, the Football Safety Officers Association (FSOA) and, on occasions, the Safety Officer from the opposing team. When carrying out a risk assessment, several factors are considered, including the potential for discriminatory and/ or inappropriate behaviour.”

We have not been provided with a risk assessment or evidence of a “fully documented” operational planning. Again, we have set out above (paragraph 28c) our view on the content of the stewards' briefing.

3. **The Club shall develop and improve match by match steward deployment plans in association with Green Guide guidance and also relating to intelligence-based information surrounding incidents of previous or expected discriminatory or inappropriate behaviour within the stadium.**

“As previously advised, during the planning stage of any event, historical information is sought via the Police, the FSOA and, on occasions, the Safety Officer from the opposing team. The Club utilises this information to continually develop and improve match by match steward deployment plans. For example, the Club has deployed undercover stewards to aid in the identification of abusive supporters.

The Club is also in the process of conducting further training with all stewards to ensure that we meet the requirements of the Green Guide and develop their knowledge and understanding of diversity, safeguarding and disability awareness. This training will continue to be rolled out over several weekends leading up to Christmas 2022.”

We have not been provided with any evidence as to when this training started or the nature of this on-going training, what it involves or contains.

- 4. In association with EFL guidance, the Club shall develop a detailed operational protocol in support of their safety management and stewarding teams; to be fully briefed to all stewards prior to every match and how to be implemented following any report of discriminatory, abusive or offensive chanting or behaviour within the stadium. This should include:**
- a) Step by step match day protocols**
 - b) Supporter/ Steward reporting methods**
 - c) Prepared public address messages (to assist in the prevention, reaction, towards and detection of offenders – pre-match/ during match or post any incident of discriminatory chanting or behaviour**

“Time is spent briefing stewards (an example of which is enclosed) before matches and an additional handout, covering a range of diverse groups that are protected under the Equality Act, is handed out to all stewards. The briefing notes highlight to stewards what they need to look out for and how to report incidents. Once an incident has been reported to the control room, the Safety Officer then decides on the most appropriate action to be taken for example, deploying response teams, directing CCTV, making a public announcement reminding fans of the Club’s zero tolerance approach to discriminatory behaviour.

Since these steps have been implemented, there has been an increase in stewards’ reports coming through to our Safety Officer and the Club is pleased to report that none of the reports have fallen into the category of gender discrimination.”

The Club has not provided us with a copy of any detailed operational protocol. Again, we have set out above (paragraph 28c) our view on the content of the stewards’ briefing.

We also note that it appears no action was taken by the stewards when this incident occurred. Further, there was no direction of the CCTV cameras to those who were responsible for the said chanting.

5. The Club's CEO and Safety Officer

a) Shall visit and liaise with other clubs from both Premier and English Football Leagues, to obtain best practice policies associated with the prevention and detection of discriminatory and inappropriate behaviour, and

b) Shall thereafter review and develop their own policies for the prevention and detection of discriminatory and inappropriate behaviour in light of the policies of other clubs.

"Following receipt of the aforementioned action plan, the Club Secretary and Safety Officer visited and liaised with a number of clubs to obtain best practice policies. Despite neither of these individuals now being in post, the Club's current Club Secretary and Safety Officer have regular dialogue with other Clubs within the English Football League who share best practice ideas."

This is yet another example of the Club asserting compliance with the action plan but there being no evidence supporting such. We have been provided with no evidence of any subsequent development of its own policies in light of any such visits.

6. The Club shall

a) Develop proactive supporter initiatives in addressing the potential for discriminatory or other inappropriate supporter behaviour.

b) Develop ongoing positive dialogue with Kick It Out and further enhance the relationship by seeking advice and ratification of new and developing associate policies and procedures.

c) Develop additional supporter and steward educational programmes in conjunction with Kick It Out to include the issues associated with the potential inappropriate usage of words, chanting, gestures or conduct associated with ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability, including supporter education programmes especially in the raised awareness of acceptable fan behaviour.

“Please refer to points raised in the remainder of this letter.”

We also address this below.

7. The Club shall evaluate their existing stadium CCTV capabilities and operator training in relation to match day crowd monitoring and evidence gathering. Furthermore, the Club shall consider appropriate CCTV infrastructure improvements to enhance its operational capabilities, in conjunction any potential ‘Stadium Improvement Plan.’

“Following an evaluation of the Club’s existing stadium CCTV capabilities, the CCTV system was upgraded in September 2021. This included the installation of 30 new cameras across the stadium and the integration of existing satellite systems merging with the main stadium system. These new additions to the system provide better coverage of both the internal and external areas of the stadium and thus, enhanced our operational capabilities.”

We note the improvements but are bound also to observe that they were of no benefit at all in respect of this incident. Further, there was no direction of the CCTV cameras to those who were responsible for the said chanting.

8. The Club shall review and update the ‘Discrimination section’ of its Club Supporter Charter to include relevant and specific information on discriminatory or offensive chanting, words or behaviour, in an effort to educate supporters on what language and actions are acceptable/ unacceptable at their stadium. Furthermore, the Club shall develop its Club Supporter Charter, listing appropriate match day offences and associated sanctions, in particular relating to discriminatory behaviour. The Club shall also create a Fan webpage on their Club website which will reference the revised Charter and any relevant match communications, likely to affect supporter behaviour as appropriate.

“Upon receiving the aforementioned fifteen point action plan, the Club immediately amended the published Club Supporter Charter. The most recent edition can be easily found on the Barnsley FC website, alongside the Club’s Equality Policy, by following the link listed as Appendices A.”

The said link takes one to the “Customer Charter” which we have examined. Two paragraphs on p12 appear under the title “*Barnsley FC against Discrimination*” It does not mention in terms chanting. It is also fairly formulaic in content. There is no reference to offences or sanctions. The response says nothing about having created a fan webpage.

9. The Club shall arrange for an appropriately advertised dedicated mobile phone number to be made available to enable fans to anonymously text or to ring the Club in real time, if they witness any racist or other discriminatory behaviour within the stadium or en route to it. This facility should be developed in tandem with the existing Kick It Out mobile telephone reporting application. Such initiatives should be developed to encourage the existing Barnsley “See it, Hear it, Report it” objectives to be effectively supported and thereby facilitating its supporters to expeditiously report on any abuse they hear in an effort to increase the probability of identifying any discriminatory abuse before it escalates.

“Barnsley Football Club has worked with TextLocal to create a dedicated reporting hotline. Media and staff positioned within the Control Room at Oakwell have direct access to the dashboard and all reports. Said reports can then be acted upon by the relevant department Posters (Appendices B), LED board messaging (Appendices C), matchday programme notices (Appendices D) and messages on digital platforms (web/social media) are shared at each home fixture to encourage supporters, home and away, to report discrimination of any nature. Please note, prior to 16 August 2022, the alert was TEXT ‘HATE’ – 60777. Since 17 August 2022, the alert is now TEXT ‘ALERT’ – 60777.”

We note the steps taken by the Club in this respect.

10. The Club shall develop and deploy

a) Match day PA announcements,

b) Printed messages in its match day programme, on its big screen, on advertising boards and

on stadium advisory posters

c) Content on the Club website and social media platforms to target the prevention, usage and detection of any potential racist or discriminatory words or behaviour. Such announcements, messages and content (i) shall make clear in plain effective language that discriminatory abuse is illegal, offensive and will not be tolerated by the Club, and (ii) must be supported by clear reporting methods and facilities.

“Similar to the points listed above, Barnsley FC acted upon the guidance and action plan provided. The Club took wording given from the EFL and incorporated it into every matchday script/PA announcement. The appendices provided are randomly selected from the fixtures played since supporters returned in 2021 (Barnsley FC vs Barrow – FA Cup, 8 Jan 2022). Note, the same wording is read both pre-match and at half-time. The Club also has adequate wording if a reported situation was to escalate (Appendices E) and is included within every script. Whilst the Club do not have suitable ‘big screen’ facilities, the following appendices (B, C, D) show different versions of printed messaging relative to reporting hate and discrimination. On Barnsley FC’s digital platforms specifically, there is a dedicated page to reporting hate crime (Appendices F). Following the imposed sanctions, Appendix G was included in each ‘matchday information’ article. Said article was routinely shared across social media.

Following the Bristol Rovers game on 16th August 2022, all communications relating to racism and abuse, such as PA scripts and anti-discrimination posters, were reviewed to specifically reference hate and discrimination of all natures. Similarly, the Club has developed specific LED board messaging, within the LED board running order (Appendices C), dedicated to ensuring all supporters know how to report discrimination before, during and/ or after a match. All website and digital messaging followed the same review and changes to reflect the alteration in wording. Across social media posts, ‘Kick It Out’ imagery is now prominent as Appendix H highlights.”

The Club only reviewed the content of the messaging after the match. However, the 2020 action plan required such action in 2020. It required the Club to target etc any potential racist or discriminatory words or behaviour in clear language. The LED messaging still does not do that. The programme message (Appendix D) refers solely to racism. None of the messaging refers to such behaviour being illegal¹.

¹ Though there is a reference to matters being reported to police in the announcement in Appendix E

11. The Club shall continuously review ticket sales policies to ensure that such policies do not increase the risk of discriminatory or inappropriate fan behaviour, and also to provide usable data to support post-match investigations and potential associated sanctions.

“The Club has an existing ticketing strategy in place (enclosed) whereby the Safety Officer and the Box Office Manager liaise in advance of any fixture. The Safety Officer will consider the number of tickets allocated to the away team and where a reduction in the number of tickets allocated is perceived to be required, this is authorised by the Club’s Chief Executive Officer. Factors considered in making such a decision include, but are not limited to, the following:

- *Whether the game is a local derby*
- *The importance of the match (i.e. Cup Final)*
- *Behaviour trends of both teams*
- *Any history of bad behaviour between the two sides*
- *Any current topical news issues*
- *Time of kick-off*

The Club will continue to ensure rigorous ticketing checks are enforced.”

Despite what is said, we have not been provided with a copy of the ticketing strategy. We have not seen any such data if it exists. We know not what the rigorous ticketing checks are or how they are said to be effective.

12. The Club shall consider the use of ‘professional witnesses’ and stewards’ use of body cameras to deter, detect and evidence any incidents of racist or discriminatory supporter behaviour.

“This facility can be further developed to address other potential incidences of inappropriate fan behaviour. The Club currently has two stewards who carry body worn cameras at every fixture and these are usually Security Industry Authority (SIA) licensed ‘response’ stewards. The body worn cameras are allocated to these stewards specifically as it is usually those staff who are deployed to deal with areas of the stadium where poor behaviour has occurred.

The use of body worn cameras in deterring, detecting and evidencing discriminatory supporter behaviour is reviewed regularly and at present, the Club considers that the number of cameras worn by stewards is adequate for the size of the crowds and general behaviour of most teams attending.

However, should the Club see an increase in the number of fans (both home and away) attending games, then we may look to increase the number of stewards wearing cameras.”

We had not been told this before the said letter. We know not how they were deployed during the match. We have seen no footage from them.

13. The Club shall develop and deliver an appropriate diversity education programme in conjunction with Kick It Out through their work in the local community and schools.

“Through the Club’s charitable arm, Reds in the Community (RITC), Barnsley FC actively engaged with ‘Show Racism the Red Card’, with the last educational event taking place at Oakwell Stadium on 5 October 2022 (Appendices I). Working annually with the charity, RITC welcomed local Primary schools from across Barnsley to take part in the half day session with the charity.”

We note the steps taken by the Club in this respect.

14. The Club shall endeavour to establish a Club “Anti-discrimination Task Force” (ATF) comprising members of the Barnsley Council, members of different Club supporters groups and the Club’s Safety Officer, to be chaired by the Club’s CEO. The ATF

a) Will work together with Kick it Out, the EFL, the FA and the police to successfully develop, initiate and enforce this action plan, and

b) Will continue to review, develop and devise policies and proactive plans to address issues of discriminatory language and behaviour.

“The Club have, and are continuing to, engage with the English Football League, Club supporter groups and #HerGameToo representatives to consider what additional appropriate steps that the Club may take in order to tackle forms of discrimination in the modern game. The Club is committed to creating and maintaining an inclusive and supportive environment. Within the Together Red campaign, which the Club has developed alongside our #HerGameToo ambassador, stories will be created and shared to showcase the importance of equality across Barnsley FC. These stories are published via the Club’s social media accounts, website and matchday programmes. Additionally, we have also advertised this campaign in our local newspaper, the Barnsley Chronicle.

We, as a Club, feel that this campaign is vital in promoting inclusivity in our community and continue to work with a range of organisations to develop innovative and proactive ways to address issues of discriminatory language and behaviour in the modern game.”

We note the steps taken by the Club, but the requirement was for the establishment of a “Task Force”. That appears not to have been done.

15. Upon publication of

a) The Regulatory Commission’s Written Reasons, and

b) This Action Plan

the Club shall communicate via the Club website, via social media and in the match day programme for its next home match an appropriate message and response to their supporters. Such message and response should explain the background to the Charge, the Club’s condemnation of the Chanting that underpinned the Charge, the sanction imposed on the Club by the Regulatory Commission and the initiatives the Club is to develop, to make the Club more inclusive and more proactive in the prevention and detection of any potential discriminatory or inappropriate words or behaviour going forward. The Club shall thereafter introduce an appropriate media campaign across the Club website and the Club’s social media accounts emphasising the Club’s policies and zero tolerance toward discriminatory abuse and including the promotion and success of the Football League’s ‘Code of Practice’ for “Inclusion and anti-discrimination.”

“Upon receiving the action plan prior to the obscuring of COVID-19 in 2020, the Club released two public statements, referring to the actions taken against them (21 February 2020, 06 March 2020). Both articles were subsequently shared on Barnsley FC’s social media accounts. Exact wording can be found via Appendices J and K.

Following the Barnsley FC vs Bristol Rovers game, the Club publicly condemned the discriminatory nature of the chanting and those involved by way of the statement, published on the Club website and social media channels on 18th August 2022 (16:41pm). The Club has since continued to publicly condemn such conduct across several platforms; with the Board of Directors highlighting the demeaning nature of the chants at a fan engagement forum held on Thursday 22nd September

2022. The Club's Safety Officer, Paul Davis, also issued a public statement in the Club's matchday programme on 13th September 2022 (Appendices L)."

The Club issues a statement. The message contained in Appendix L says nothing about this incident; it is about standing. We note that the phrase "*the Club does not condone any form of discrimination*" is used. With respect, it is not a matter of not condoning but rather expressly stating that such conduct is offensive, wrong and must not occur. Further, it should also state those responsible may be committing a criminal offence and will in any event be ejected and banned.

32. The extent to which the Club complied with the 2020 action plan is obviously relevant when assessing the seriousness of this matter and the appropriate sanction. We are disappointed and very surprised that the Club provided us with this information *only after* being directed by us to do so. That has caused delay. More importantly had we not asked for it, the Club would have been sanctioned on a false and more serious basis, to its obvious disadvantage. We received nothing from the FA on the Club's compliance with the 2020 action plan either.

33. Notwithstanding the extent to which it has complied with the 2020 action plan, for the reasons set out above the Club failed to discharge the burden of satisfying us on the Second Limb of the "*all due diligence*" test

(4) Approach to sanction

34. In light of our findings on the 'all due diligence test' above, we approached sanction on the basis that the Club was not entitled to benefit from the 'primary focus' provision in the FA Guidance. The Independent Regulatory Commission reached the same conclusion in 2020.

35. As a starting point we carefully considered the 7 factors set out in the FA's Guidance. In respect thereof we found as follows:

- a. We cannot identify the number of supporters involved in the said chanting with precision, but it was significant, measured in hundreds (Factor (a)).
- b. Those who were chanting were using the abusive, insulting and indecent expression set out above (Factor (b)).
- c. The said chanting lasted about 15 seconds (Factor (c)).
- d. That the Club has done little to identify the individuals responsible. We appreciate they are not shown on the CCTV we have seen but the Club suspected it knew the general area from which the chanting emanated. There is no evidence of any appeal having been made for assistance from members of the crowd to identify those involved and no action has been taken against any of them (Factors d and g).
- e. That the evidence did not demonstrate that the Club had taken all reasonable steps in its preparation and planning for the match (Factor (e)). As we have said above, the Club's preparations for the match fell short of amounting to 'all relevant due diligence'
- f. That the Club took no steps to dealing effectively or at all with the said chanting when it occurred (Factor (f)). Indeed, the Club states it did not know about it until it become aware of social media reports. We simply do not understand that, given the chanting was clearly audible in the stadium at the time. There could, for example, have been stewards deployed and/or announcements made over the public address system and/or displayed on the big screen condemning the chanting and saying it must stop and there must be no repeat.

36. The fact and circumstances of the 2020 case is an aggravating factor. The Club's failure fully to comply with and implement the 2020 action plan also aggravates the gravity of this Misconduct.

37. We considered the following mitigating factors are available to the Club in this case:

- a. The Club's guilty plea. However, only limited credit is appropriate given the given the strict liability nature of FA Rule E20 in cases of discriminatory crowd behaviour. Given that and the Club's inadequate efforts before and since the

match the credit for the guilty plea is limited. As with the 2020 case, it is certainly not a case where a traditional one-third discount is appropriate.

- b. The apologies the Club has made for the said chanting.
- c. The steps taken by the Club to comply with the 2020 action plan, while limited as we have observed above do mitigate this offence.
- d. The limited steps taken by the Club since the match to make efforts to prevent discriminatory and abusive behaviour and language from recurring in the future.

(5) Sanction

38. In light of the above matters, we considered it was appropriate to fine the Club. Having regard to

- a. All the matters set out above;
- b. The level of fines imposed in other discriminatory language or behaviour cases²; and
- c. the fact the Club plays in League 1

we assessed the appropriate fine at £35,000. We then reduced it to £30,000 to reflect the mitigation we have identified.

39. Given the facts as we have found them, and the Club's failure to implement the 2020 action plan in any meaningful sense, we also considered it appropriate to impose a new action plan on the Club. The action plan that we believe is appropriate is annexed to these Written Reasons. It repeats in large measure the 2020 action plan but has also been amended to reflect the facts of this case and the limited extent to which the Club did comply with the earlier version. We wish to emphasise two things:

- a. Should the Club commit a further like offence, we anticipate that the next Independent Regulatory Commission will expect evidence to support any asserted compliance with this action plan.
- b. We expect the FA to monitor this action plan, for otherwise it has little actual effect.

² To the limited extent assistance can be derived from factually different cases.

40. In drafting that action plan, we have also had regard to and incorporated aspects of, the Matchday Protocol in relation to discriminatory incidents issued to all clubs by the EFL on 31 October 2022. That Protocol was accompanied by an informed warning that there may be an increase in such incidents, together with an offer of further operational advice for any club that wishes it. All clubs are now on notice of the increased risk and will have little justification for failing to take proper steps to prepare for it.
41. We did not hear submissions at the hearing from the Club or the FA as to what should be contained in such an action plan. We have therefore prepared an action plan which we believe to be appropriate to reflect what needs to be done by the Club. However, given the absence of submissions, both the Club and the FA has 14 days from receipt of these Written Reasons to apply to us to vary the terms of that action plan if either considers it appropriate to do so.
42. The steps set out in the action plan must all be implemented by the Club by 31 December 2022. The action plan will remain in place for the remainder of this season, and until the end of the Club's final match of the 2022/23 season.
43. We warn the Club in strong terms as to the consequences of any further breach of FA Rule E20 especially by discriminatory language or behaviour of its supporters or followers. There will come a time, perhaps not in the distant future, when an Independent Regulatory Commission will conclude that the appropriate sanction will include playing a fixture/s behind 'closed doors'.
44. The Club shall pay the Commission's costs.
45. The Club has a right of appeal as provided by Disciplinary Regulations.



15 November 2022

Christopher Quinlan KC, Chair
Independent Judicial Panel Chairman
On behalf of the Regulatory Commission

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

THE FOOTBALL ASSOCIATION

- v -

BARNESLEY FC

ACTION PLAN

1. Barnsley FC ('the Club') shall forthwith conduct a full review of its stewarding management, provision, deployments, and quality of steward training. In addition, existing processes should be closely examined to ensure quality steward incident reporting (verbal and written) is in place to support proportionate reactions to match day incidents and potential post-match investigations.
2. The Club shall ensure all its match day operational planning, match by match risk assessments and steward briefing processes are fully documented to support and evidence due procedure; to ensure that the prevention and detection of any discriminatory or inappropriate behaviour is sufficiently addressed.
3. The Club shall properly document and continually review match by match steward deployment plans in association with Green Guide guidance and relating to intelligence-based information surrounding incidents of previous or expected discriminatory or inappropriate behaviour within the stadium.
4. In association with EFL guidance, the Club shall maintain a detailed operational protocol in support of their safety management and stewarding teams; to be fully briefed to all staff and stewards prior to every match and how to be implemented following any report of discriminatory, abusive or offensive chanting or behaviour within the stadium. This should include:
 - a. Step by step match day protocols
 - b. Supporter / Steward reporting methods

- c. Prepared public address messages (to assist in the prevention, reaction towards and detection of offenders – pre match/during match or post any incident of discriminatory chanting or behaviour)
5. The Club shall establish a pre-match and post-match management group, consisting of relevant heads of department, to share information, and plan for & review each fixture accordingly. Such meetings should have any action plans specifically allocated and be properly minuted. It shall be the responsibility of each head of department to convey properly relevant information arising from the pre-match and post-match meetings to their respective team members.
6. The Club's CEO and Safety Officer:
 - a. Shall visit and liaise with other clubs from both Premier and English Football Leagues on a regular basis, to obtain best practice policies associated with the prevention and detection of discriminatory and inappropriate behaviour.
 - b. Shall thereafter regularly review and develop their own policies for the prevention and detection of discriminatory and inappropriate behaviour in light of the policies and best practices of other clubs.
7. The Club Secretary and Safety Officer:
 - a. Shall liaise with the visiting club to establish the composition of the travelling party including, Players, Backroom staff, directors and Club guests in order to evaluate and risk assess any potential targets of discriminatory behaviour from the supporters.
 - b. Shall liaise with the appointed Match Officials to evaluate and risk assess any potential targets of discriminatory behaviour from the supporters.
 - c. Such information shall then be addressed at the pre-match meeting of both the management group and stewards.
8. The Club shall
 - a. Develop proactive supporter initiatives in addressing the potential for discriminatory or other inappropriate supporter behaviour.

- b. Develop ongoing positive dialogue with *Kick It Out*, *Her Game Too* and other local organisations to further enhance their relationships by seeking advice and ratification of new and developing associated policies and procedures.
 - c. Develop additional supporter and steward educational programmes in conjunction with *Kick It Out*, *Her Game Too* and other local organisations to include the issues associated with the potential inappropriate usage of words, chanting, gestures or conduct associated with ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability, including supporter education programmes especially in the raised awareness of acceptable fan behaviour.
9. The Club shall evaluate its recently upgraded stadium CCTV capabilities and operator training in relation to match day crowd monitoring and evidence gathering to ensure it is being properly utilised to its full effectiveness.
10. The Club shall review and update again the ‘Discrimination section’ of its Club Supporter Charter to include relevant and specific information on discriminatory or offensive chanting, words or behaviour, in an effort to educate supporters on what language and actions are acceptable/unacceptable at their stadium. Furthermore, the Club shall develop its Club Supporter Charter, listing relevant match day offences and associated sanctions, in particular relating to discriminatory behaviour. The Club shall also create a Fan webpage on their Club website which will reference the revised Charter and any relevant match communications, likely to affect supporter behaviour as appropriate.
11. The Club shall continue to deploy
- a. Match day PA announcements before and during a match
 - b. Printed messages in its match day programme, on its big screen, on advertising boards and on stadium advisory posters and
 - c. Content on the Club website and social media platform
- To proactively target the prevention, usage and detection of any potential racist or other discriminatory words and/or behaviour. Such announcements, messages and

content (i) shall make clear in plain effective language that discriminatory abuse is offensive, may be criminal and will not be tolerated by the Club, and (ii) must also be supported by clear reporting methods and facilities.

Should an incident occur, the following PA announcement should be deployed –

“For the attention of all supporters.

There has been racist, sexist, homophobic or religiously motivated chanting from fans in BLOCK area of the stadium. This is unacceptable and must cease immediately if you hear of any further incidents, please report this immediately to your nearest steward. We are using CCTV to gather evidence and will remind those involved we will both eject and report to the Police anyone we identify as being involved in criminal activity.”

12. The Club shall continuously review ticket sales policies to ensure that such policies do not increase the risk of discriminatory or inappropriate fan behaviour, and to provide usable data to support post-match investigations and potential associated sanctions.
13. The Club shall consider the use of ‘professional witnesses’ and continue to use stewards’ body worn cameras to deter, detect and evidence any incidents of racist or discriminatory supporter behaviour. This facility should be developed to address other potential incidences of inappropriate fan behaviour.
14. The Club shall develop and deliver an appropriate diversity education programme in conjunction with Kick It Out, Her Game Too and other local organisations through their work in the local community and schools.
15. The Club shall endeavour to establish a Club “Anti-discrimination Task Force” (ATF) comprising members of the Barnsley Council, members of different Club supporters’ groups and the Club’s Safety Officer, to be chaired by the Club’s CEO. The ATF will:
 - a. Work together with Kick it Out, Her Game Too, local organisations, the EFL, the FA and the police to successfully develop, initiate and enforce this action plan.
 - b. Continue to proactively review, develop and devise policies and proactive plans to address issues of discriminatory language and behaviour.

16. Upon publication of

- a. The Regulatory Commission's Written Reasons, and
- b. This Action Plan

the Club shall communicate via the Club website, via social media and in the match day programme for its next home match an appropriate message and response to their supporters. Such message and response should explain the background to this latest Charge and state in clear terms that such chanting is offensive and will not be tolerated by the Club. Further it should state that those responsible may be committing a criminal offence and will in any event be ejected and banned. It should also warn its supporters and followers that repetition may result in the Club being required to play match/es behind 'closed doors'. The Club shall thereafter introduce an appropriate media campaign across the Club website and the Club's social media accounts emphasising the Club's policies and zero tolerance toward discriminatory abuse of all kinds including sexist abuse and promote the Football League's Code of Practice for "Inclusion and anti-discrimination".