

**IN THE MATTER OF APPEALS FROM THE DECISION OF AN INDEPENDENT FA
REGULATORY COMMISSION**

BETWEEN:

(1) CHELSEA FOOTBALL CLUB
(2) TOTTENHAM HOTSPUR FOOTBALL CLUB

APPELLANTS

-V-

THE FOOTBALL ASSOCIATION

RESPONDENT

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Christopher Quinlan QC (Chairman)
Denis Smith
Tom Finn

A. INTRODUCTION

1. The Appeal Board was appointed under the Football Association's ('FA') Disciplinary Proceedings – Standard Directions, Appeal Board Procedures 2015/16 ('Standard Directions') to determine separate appeals brought by Chelsea FC ('Chelsea') and Tottenham Hotspur FC ('Tottenham').
2. By separate letters dated 4 May 2016 the Clubs were charged with breaches of FA Rule E20(a). The proceedings were heard before an FA Independent Regulatory Commission ("the Commission") at Wembley Stadium on 10 May 2016. The Commission announced its decisions that day and promulgated written reasons on 17 May 2016. In respect of Chelsea the Commission ordered the following sanctions: (1) a fine of £375,000, (2) a warning as to future conduct and (3) an order to pay 50% of the Commission's costs. In respect of Tottenham the Commission

imposed (1) a fine of £225,000, (2) a warning identical terms to that issued to Chelsea and (3) an order to pay 50% of the Commission's costs.

3. The Chelsea appeal was brought by way of undated Grounds of Appeal. Thereby it appealed against the size of the fine. The Tottenham appeal was brought by way of a letter dated 23 May 2016. Like Chelsea, Tottenham appealed against the size of the financial penalty. The FA opposed both appeals.
4. The proceedings before the Commission were "*consolidated*" pursuant to Regulation 3.3 of the FA Disciplinary Regulations 2015-2016. It follows that these appeal proceedings were consolidated. None of the parties suggested they should not be.
5. The appeals were heard at Wembley Stadium on 30 June 2016. At the conclusion of the hearing and after a period of deliberation, the Board reserved its decisions. This document constitutes our final reasoned Decision, reached after due consideration of the evidence, submissions and the other material placed before us.

B. BACKGROUND

(1) The Facts

6. On 2 May 2016, Chelsea played Tottenham in a Premier League match at Stamford Bridge. The match was drawn, 2-2. It was a bad tempered match. The match referee, Mark Clattenburg, issued nine cautions to Tottenham players, a Premier League record for a single match, and three to Chelsea. There were three mass confrontations between the opposing teams, which gave rise to the three charges at the heart of these proceedings.

7. Following the match, the referee Mark Clattenburg ('MC') prepared Extraordinary Incident Reports, in relation to each of those incidents.
- a. 45th minute: players from both teams were involved in an altercation, resulting in one player from each team being cautioned. MC did not witness the incident, which was subsequently brought to his attention. In short, a Tottenham player, Mousa Dembélé, had his hand in the face of Diego Costa of Chelsea and appeared to gouge the eyes of the latter. If he had seen the incident, MC would have sent off Dembélé for violent conduct.
 - b. 83rd minute: a mass confrontation occurred involving both sets of players. It followed a tackle by Eric Dier (Tottenham) on Eden Hazard (Chelsea). Dier was booked for the tackle.
 - c. After the final whistle: a further altercation, involving many players and coaching staff from both teams. There was a deal of pushing and shoving; the Chelsea Manager, Gus Hiddink, went to ground during the incident, which took place close to the dug-out area.

(2) Charges

8. Rule E20 states:

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, (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 (b) that no spectators or unauthorised persons are permitted to encroach onto the pitch area, save for reasons of crowd safety, or to throw missiles, bottles or other potentially harmful or dangerous objects at or on to the pitch.

9. The FA issued charge letters against both Clubs each dated 4 May 2016. Chelsea was charged with “*misconduct for 3 breaches of FA Rule E20(a)*”. It continued that “[i]t is alleged that”:

- a. *(i) That in or around the 45th minute of the said match, Chelsea FC failed to ensure that its players and/or officials conducted themselves in an orderly fashion and/or refrained from provocative behaviour;*
- b. *(ii) That in or around the 87th minute of the said match, Chelsea FC failed to ensure that its players conducted themselves in an orderly fashion and/or refrained from provocative behaviour; and*
- c. *(iii) Following the end of the fixture, Chelsea FC failed to ensure that its players and/or officials conducted themselves in an orderly fashion and/or refrained from provocative behaviour.”*

10. Thereafter the letter referred to “*this charge*” and “*the charge*”, namely charge in the singular rather than the plural.

11. Tottenham was charged in identical terms, save that the first alleged breach included an additional element, alleged as an additional or alternative component (i.e. “and/or”) namely “*violent behaviour*”. Thereafter that letter also referred to “*this charge*” and “*the charge*”,

12. Each charge letter stated that the case had been designated as Non-Standard for the following reasons:

- a. (i) The persistent nature of the reported behaviour;

- b. (ii) The cumulative nature of the reported behaviour;
- c. (iii) The level of aggression;
- d. (iv) The involvement of the technical area occupants;
- e. (v) The potential for crowd incitement;
- f. (vi) The proximity of the incidents to the crowd; and
- g. (vii) During the preceding twelve months, three previous breaches of FA Rule E20(a) committed by Chelsea, and one such breach by Tottenham.

13. Each Club admitted (in writing) breaching Rule E20. Both clubs requested personal hearings, which took place at Wembley Stadium on 10 May 2016.

C. DECISION OF THE REGULATORY COMMISSION

(1) Factual Findings

14. In paragraph 3.3 of its written reason the Commission stated:

On behalf of The FA, Mr Elagab submitted that blame for each of the three confrontations should be borne equally. That approximation was not seriously challenged by either Club, although both relied in mitigation on the context in which they occurred, in differing ways. It was therefore not necessary for the Regulatory Commission to dissect each of the three incidents in order to make formal findings and to forensically apportion responsibility. Following a consideration of the written and oral submissions, together with the video evidence, we make the following observations. [emphasis added]

15. The emphasised observation was the subject of criticism by both Chelsea (see Ground 2) and Tottenham. Mr Hunter QC submitted that it was wrong and contradicted by the Commission's own findings in relation to each incident.

16. As is clear from the final sentence of paragraph 3.3 the Commission examined each of the three incidents and made what it described as “observations” in relation to each. In light of the criticism made of its approach it is necessary to look at those in detail.

(a) First incident

17. The Commission summarised the first incident as follows:

3.4 The first incident was prompted by a display of aggressive body language between Willian of Chelsea and Danny Rose of Tottenham. It was followed by reciprocal physical acts of pushing one another’s chest. When this happened, the Tottenham Manager, Mauricio Pochettino, left his technical area and entered the field of play. He was the closest person to the incident and we infer from the footage, and accept, that his intention was to diffuse the altercation between the two players. Mr. Clattenburg did not report Mr. Pochettino for leaving his technical area.

3.5 What started as an altercation between two players quickly descended into a mass confrontation between a large number of opposing players. Technical staff also became involved as the incident happened close to the two technical areas. Mr. Pochettino’s involvement may have heightened tensions, although we noted from the video footage that a player from each team arrived at the incident very shortly after him. If he had not intervened they would have done so, potentially with similar consequences given the febrile atmosphere. Mr. Pochettino quickly found himself embroiled in a melee, holding his hands up in an attempt to diffuse what had become an ugly situation.

3.7 Moreover, one of the satellite individual confrontations that ensued between players involved Mr. Dembele [sic] and Mr. Costa. What sparked it is unclear, but the coming together between them culminated in Mr. Dembele’s [sic] eye gouge motion referred to above. Chelsea submitted that

the incident increased the volatility in the stadium. To those who witnessed the incident, that is conceivable, although the Commission was struck by Mr. Costa's rather sanguine reaction.

(b) Second Incident

18. In respect of the second incident the Commission stated *inter alia*:

3.10 There can be no dispute that this incident was triggered by Mr. Dier's challenge on Mr. Hazard. By this point in the match, Chelsea had drawn level with Tottenham, who had led 2-0. Mr. Dier was cautioned. Four Chelsea players can be seen rushing to the incident, including Jon Obi Mikel who had to cover some distance. Mr. Clattenburg was at one point surrounded by players. Again, a mass confrontation ensued, with satellite arguments developing. It is possible to discern some players attempting to placate others and/or to remove them from the centre of the main confrontation as it splintered. Mr. Mikel received a caution for his involvement.

(c) Third incident

19. Finally, in respect of the last incident, the Commission found:

3.13 Immediately after the final whistle, both sets of players conducted themselves calmly. Some can be seen shaking hands. The Tottenham players acknowledged their supporters. Players from both sides walked from the pitch in the direction of the tunnel. In doing so, there was a convergence of the two sets of players, together with Managers, technical staff, and unused substitutes.

3.14 Who or what sparked the mass confrontation at the mouth of the tunnel is difficult to identify with precision. Shortly before the end of the match, a Chelsea player, Cesc Fabregas [sic], claimed that a Tottenham

player, Erik Lamela, had deliberately stood on his hand as he (Mr. Fabregas) was crouching on the ground. Mr. Clattenburg did not see that particular incident, but one of his Assistant Referees did. As the incident had been witnessed by a match official, no further action could be taken pursuant to FA Regulations.

3.15 At the end of the match, it appears as if Mr. Hiddink may have been ushering Mr. Fabregas, towards the tunnel. As he was doing so, Mr. Rose moved quickly in their general direction. Mr. Hiddink was knocked over, either by Mr. Rose, or by another person with whom Mr. Rose first made contact. We were unable to infer any intention on the part of Mr. Rose, or any other person, to cause Mr. Hiddink to fall, although it does appear to have happened as a direct or indirect consequence of Mr. Rose's actions. There was no evidence before us as to why Mr. Hiddink may have been encouraging Mr. Fabregas to leave the pitch – if indeed he was doing that - or what prompted Mr. Rose to act as he did.

3.16 Some Chelsea players then came to Mr. Hiddink's assistance. Again there was no evidence before us as to whether they may have thought that he had been deliberately pushed. As with the two previous confrontations, this one deteriorated very rapidly. It is impossible to disentangle each and every subplot, but what is notable from the footage is the Tottenham substitute goalkeeper, Michel Vorm, in a highly agitated state. He became involved with Mr. Costa and the pair grappled with one another for some time, before they were eventually separated. Mr. Vorm remained very excitable as a member of Tottenham's technical staff attempted to remove him from the incident. The Commission also noted the involvement of an unidentified track-suited Chelsea official who, in common with others, took part in the multiple episodes of pushing and shoving that occurred.

3.17 Chelsea challenge Mr. Clattenburg's perception of Mr. Emenalo's intentions. It was claimed on his behalf that he was trying to beckon stewards to assist in quelling the incident - not encouraging players to

inflame it. On this issue, we had a report from Mr. Clattenburg, but which was un-tested in cross examination and no direct evidence from Mr. Emanalo, merely an assertion as to what his case was. If he had been beckoning players, it would represent an aggravating feature of Chelsea's involvement in this incident. Conversely, it would be a mitigating factor if he was asking stewards to help to diffuse the situation. In the context of the overall level of the sanction that we intend to oppose on the Club, a finding on this issue was unlikely to make a sufficiently material difference to justify an adjournment of the case to hear live oral evidence. We have no reason to doubt Mr. Clattenburg's understanding at the time, but beyond that it is not necessary for us to make any positive finding regarding Mr. Emenalo's actual intentions, one way or the other.

(2) Chelsea FC

20. The Commission found that Chelsea's disciplinary record for breaches of Rule E20 was "*abysmal*". Further, that a deterrent sanction was required. For the reasons set out in paragraph 4.10 of its written reasons it decided not to impose a points deduction.

21. The Commission imposed a fine of £375,000, warned it as to its future conduct, ordered it to make a contribution of 50% towards the costs and ordered the £100 hearing fee be retained by the FA. In arriving at the sum of £375,000 the Commission stated that it:

4.11 ...took into account the following factors:

(i) The relative seriousness of the three breaches as if they were discrete, stand-alone offences, absent the aggravating features at (ii) and (iii) below.

All three were non-standard offences;

(ii) The extremely serious aggravating feature of three mass confrontations in a single match, a factor which justifies a significant uplift in the level of the fines that would otherwise have been imposed for the second and third incidents;

- (iii) *The antecedents of each Club; and*
- (iv) *Mitigating factors.*

(3) Tottenham Hotspur FC

22. In paragraph 4.13 of its written reason the Commission observed

The reference to “violent conduct” in the Guidance referred to above is present in the first charge against Tottenham. If we were considering that offence alone, and all other things were equal, Tottenham could have expected to receive a significantly higher fine than Chelsea, to reflect its responsibility under Rule E20 for Mr. Dembele’s [sic] actions. We also reiterate our observations relating to the interpretation of “extended period of conduct” in the context of the third offence.

23. In paragraph 4.14 it continued:

As with Chelsea, the fact that three mass confrontations took place during the same match is an extremely serious aggravating feature. The imbalance in the number of respective cautions is strongly suggestive of a serious loss of self-discipline by Tottenham players during the match as a whole...

24. Dealing with the Club’s antecedents, in paragraph 4.15 it said:

If there had been relative parity in terms of their respective antecedents, the fine to be imposed on Tottenham would have been higher than Chelsea’s, by virtue of the more serious charge against the former arising out of the first incident. Their antecedents are, though, very clearly distinguishable: Tottenham’s two previous breaches for Rule E20 were both treated as non-standard offences [sic¹] (i.e. less serious than a non-standard case) and were separated in time by approximately 13 months.

¹ They were both treated as standard cases

25. In paragraph 4.16 it observed:

Nevertheless, the three latest breaches by Tottenham are extremely serious, and include the aggravating element of violent conduct relating to the first incident. A substantial fine is warranted, to include a punitive element and to act as a deterrent. As with Chelsea, the Club will need to consider what further education and training of its players is required in order to avoid a repetition.

26. The Commission imposed a fine of £225,000 and warned it as to its future conduct. It made orders identical to those made in respect of Chelsea in relation to costs and the hearing fee.

D. CHELSEA FC APPEAL

(1) Grounds of Appeal

27. Paragraph (d) of Schedule C, Appeal Board Procedures, Standard Directions 2015-2016 provides the grounds of appeal available to Participants. They shall be that the Regulatory Commission:

(1) Failed to give the appellant a fair hearing and/or

(2) Misinterpreted or failed to comply with the rules or regulations relevant to its decision; and/or

(3) Came to a decision to which no reasonable such body could have come and/or

(4) Imposed a penalty, award, order or sanction that was excessive

28. Chelsea appealed against the Commission's Decision on the grounds that

(1) it misinterpreted rules or regulations relevant to its decision (Ground 1); and/or (2) in relation to one factual finding, it made a finding which no reasonable body could have made (and which conflicted with other

findings made by it – Ground 2); and/or (3) it imposed a sanction which was excessive (Ground 3).

29. Ground 1 – maximum sanction:

- a. Complaint made was that the Commission misinterpreted the FA's 'Guidance for Participants and Clubs' ('the Guidance') in concluding that the maximum financial penalty was £750,000 (in respect of Chelsea). The Club submitted that on a correct construction of the Guidance, the maximum fine on these facts was "*at most*" £500,000.
- b. Chelsea submitted that the Guidance provided for doubling of the specified maximum sanctions only in the case of repetition. It did not provide for further multiplication (tripling for three incidents, quadrupling for four and so on) or for redoubling.
- c. Further, if the provision was ambiguous, then such should be resolved in the way as provides for the least strict penalty. That would also result in a maximum penalty of £500,000.
- d. The effect of this error was, it was argued, significant. If the maximum fine was £500,000, then £375,000 represented a sanction 75% of the maximum possible. On the facts of this case, that was excessive. The maximum penalty must be reserved for the very worst of repeated incidents i.e. where there is no mitigation, no prompt admission and significant aggravating factors (such as widespread serious violence and incitement of crowd violence). That, it was said, that was very far from this case and so (the argument ran) £375,000 was disproportionate.

30. Ground 2 – unreasonable finding of fact:

- a. By Ground 2, Chelsea argued that the assertion in paragraph 3.3 of the written reasons that it was "*not seriously challenged*" that "*the blame for each of the three confrontations should be borne equally*", was wrong and further "*unsustainable on the evidence*".

- b. First, it submitted that it was wrong for the Commission to find that Chelsea did not seriously challenge the assertion that blame for each incident should be borne equally. It submitted that it was argued before the Commission "*Chelsea vigorously submitted*" in writing and orally that Tottenham players provoked each of the three incidents and that the conduct of the Tottenham players was significantly more culpable.
- c. Second, it was submitted that the finding in this paragraph that "*the blame for each of the three confrontations should be borne equally*" conflicted with the Commission's own findings regarding the detail of each incident, all of which identified Tottenham players as provoking the incident and as being the more culpable. Mr Hunter reminded us of the context: nine Tottenham players were issued with yellows cards, a Premier League record. Specifically:
 - i. Incident 1 - paragraph 3.4 of the Written Reasons the Commission stated that following an initial square up between two players, Tottenham's manager left his technical area and joined the field of play and (at paragraph 3.5 of the reasons) that this "*may have heightened tensions*". Further, at paragraphs 3.7 and 3.9 of its reasons, the Commission found that Mousa Dembélé's was responsible for the most serious feature of the incident, namely gouging Costa's eye.
 - ii. Incident 2 - the incident was triggered by Eric Dier's tackle. Mr Hunter also took us to what he said was a Tottenham player stamping on the Cesc Fàbregas's hand.
 - iii. Incident 3 - the Commission found at paragraph 3.15 that the incident was triggered by Rose (Tottenham) causing Chelsea's manager to be knocked to the ground. At paragraph 3.16, the Commission found that the one "*notable*" feature of the ensuing melee was the "*highly agitated*" behaviour of Tottenham's goalkeeper, Michael

Vorm. Both, submitted, Mr Hunter demonstrated that Tottenham's fault was greater.

- d. Accordingly, it was submitted, that no reasonable Commission would have made such a finding on the evidence and material before it. The effect of the (claimed) error in this regard was that it *"led the Commission to ignore an important mitigating factor for Chelsea, and to reach the perverse overall outcome that the primary wrongdoer and instigator of the incidents should be sanctioned less severely than the team which they provoked"*.

31. Ground 3 – excessive sanction:

- a. Chelsea submitted that the financial sanction imposed on it - the highest ever imposed for this category of charge- was unfair and disproportionate in all the circumstances. In support of this Ground it was argued that the Commission
 - i. Failed to take into account Tottenham's greater culpability (as Chelsea argued was the case);
 - ii. Failed to give Chelsea any sufficient credit in mitigation for the fact its players were provoked;
 - iii. Gave undue weight to Chelsea's disciplinary record;
 - iv. Failed to give Chelsea sufficient credit for its admission; and
 - v. Imposed a sanction out of all proportion to its culpability. It relied, *inter alia*, on the decision of the Disciplinary Commission dated 18 May 2015 in the case of *FA v Aston Villa*. That case concerned serious crowd violence (multiple pitch invasions, smoke bombs and coins being thrown etc). Aston Villa's admitted breaches of the rules on crowd control. The Commission decided it was a very serious case offence with multiple aggravating features and assessed the correct entry point as £250,000, reduced by £50,000 for admission to the charge and mitigation presented.

(2) FA Response

32. The FA resisted the appeal.

33. In respect of Ground 1, the FA's position was that the Commission did not misinterpret the Guidance, in so far as the written reasons went. It argued that pursuant to the Guidance, the maximum penalty is £250,000 per charge, which can be doubled for repetition. Accordingly, the maximum penalty *"for each charge is £500,000 (taking into account the fact that CFC had a previous record and therefore that the first charge would be treated as repetition for the purposes of sanction)"*. It therefore sought to uphold the Commission's conclusion that the maximum penalty was £750,000 on the basis that it could then have gone on to double that sum (which the FA accepted it did not address in its written reasons). Therefore, it submitted that Chelsea received a sanction far below the available maximum, which it submitted as £1.5m.

34. It made a further point, namely that its submission - as it argued orally before the Commission - that *"repetition"* in the Guidance includes misconduct both within any one game and antecedent misconduct from previous games, went unchallenged when made before the Commission.

35. As for Ground 2, the FA submitted that the Commission did not make any unreasonable findings of fact. It submitted that the written reasons, *"clearly demonstrate the Commission correctly scrutinised the evidence and made appropriate observations where possible"*.

36. In respect of Ground 3, the FA submitted that the *"Commission took all the appropriate factors into consideration when arriving at the final cumulative figure imposed"*. It contended that the Commission gave appropriate weight to the Club's disciplinary record, and *"strongly resisted"* the submission that the fine imposed was excessive.

E. TOTTENHAM HOTSPUR FC APPEAL

(1) Grounds of Appeal

37. Ms Caplehorn spoke to Tottenham's appeal letter. She submitted that the financial sanction was excessive. Ms Caplehorn adopted Chelsea's submission on the maximum sanction. Further, she contended that

- a. The imposition of financial penalty by way of a "*global figure*" was "*prejudicial to [Tottenham's] ability to submit a more detailed appeal*".
- b. The Commission gave improper weight to the number of yellow cards issued to its players during the match, particularly as (1) it found the Clubs were equally culpable and (2) the Club was dealt with separately for the accumulation of yellow cards.
- c. The Commission's written reasons did not state clearly, as they should have done, the extent of credit for Tottenham's admission and its hitherto good disciplinary record.

38. In the context of the yellow cards point, Tottenham sought to rely upon the Commission's apparent finding that the Clubs were equally to blame. However, Ms Caplehorn also opposed Chelsea's contention that its players were more culpable in respect of any one of the incidents. She made specific submissions on the incidents. She informed us that Mousa Dembélé admitted the charge of violent conduct only upon the basis that he had put his hand into Diego Costa's face. She disputed that it was an eye gouge and invited the Board to consider Costa's reaction in which he appeared to cover the 'wrong' eye (namely he covered the one with which Mousa Dembélé did not make apparent contact).

39. Tottenham, also relied on the decision in *FA v Aston Villa*.

(2) FA Response

40. The FA resisted the appeal. It submitted that it could have been “*perverse*” for the Commission to ignore Tottenham’s yellow cards. As with Chelsea, it argued that each case must be assessed on its own facts. The *FA v Aston Villa* decision had to be viewed in that way. Further it submitted that the following paragraph in the *FA v Aston Villa* decision had to be viewed with care, for that Commission could not have intended to lay down any statement of general principle when it observed (at paragraph 156) that:

...We considered this type of breach [crowd disturbance] to be more serious than a mass confrontation of players...”

41. In any event, the Board was not bound by precedent. So far as credit for admission is concerned, like Chelsea, it submitted that in non-standard cases the Commission is not bound to apply a reduction for an admission. Further, both Chelsea and Tottenham had no real choice but to admit their respective breaches of Rule E20 and so any reduction should be minimal.

F. DETERMINATION

(1) Appeal Board’s Powers

42. Appeal Board’s powers are set out in the Standard Directions 2015-2016. Schedule C, paragraph (e) provides:

A decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

The Appeal Board shall have power to:

(i) Allow or dismiss the appeal;

(ii) Increase or decrease the penalty, award or sanction originally imposed;

(iii) Make such further or other order as it considers appropriate.

43. The Board approached the appeals individually, considering the merits of each separately. Each Club contended that the financial penalty imposed upon it was excessive. In making good that headline submission both submitted that the Commission erred in concluding that the maximum penalty as £750,000

44. That the Board has reached different conclusions is not to be taken as a criticism of the Commission. It was doing its very best to deal with an unprecedented case. It was (and remains) a factually and regulatory difficult case. The Board is also conscious that it had the benefit of arguments which may well not have been run before the Commission. That is well illustrated by the first Ground.

(2) Determination- misinterpretation of the Guidance

45. Both Clubs claim the Commission erred in this respect. It is not at all clear to the Board to what extent, if at all, this was in issue before the Commission. The maximum financial sanction the Commission was empowered to impose is not irrelevant when assessing whether the fines were excessive. Therefore the Board must deal with this issue on its merits.

46. The starting point is the Commission's power to sanction as provided by the Rules. Its powers derive from paragraph (e)B of Schedule B to the Standard Directions which provides:

Where a case is not designated as a Standard Case and the Charge is admitted or found proved, the Regulatory Commission shall have discretion to impose any such penalty as it considers appropriate.

47. Therefore in the Commission's discretion it may impose *any penalty* it considers appropriate.

48. However, for the 2015-2016 season (as with previous seasons) the FA published Guidance. The introduction to the Guidance states:

These guidelines have been prepared to provide helpful guidance to Clubs and Participants on the disciplinary procedures for the 2015/16 Season. This guidance does not alter or replace the actual FA Rules and Regulations which should be referred to for the full provisions relating to disciplinary matters. In the event of any inconsistency between this guidance and the Rules and Regulations, the Rules and Regulations apply.

49. Page 10 of the Guidance is headed “*Reminders for Clubs and Players*”. It continues thereafter to refer to three issues which are said to have been and to remain a “*cause for concern*”. The second of those is players in mass confrontations with other players. It states:

Players in mass confrontations with other players

Where two or more players and/or Club Officials from a team are involved in a confrontation with opposing players and/or Club Officials, so called “Mass Confrontations”, Match Officials are placed in a difficult position in seeking to deal with such incidents within the normal on-field discipline system. Accordingly a sanction may be imposed retrospectively. In such cases, clubs are responsible for the actions of individual players in collective situations and accordingly Clubs will be liable to sanction as a breach of FA Rule E20.

The Match Official will be responsible for reporting incidents of this nature, with The FA normally only initiating an investigation if such a report is received. However, The FA reserves the right to investigate an incident regardless of whether the Referee has reported the incident.

In non-standard cases you are reminded of the maximum sanction available to a Regulatory Commission where a case has been found proven:

- Premier League Clubs: £250,000
- Football League Championship Clubs: £50,000
- Football League One Clubs: £25,000
- Football League Two Clubs: £10,000
- Conference Premier & FA WSL Clubs: £2,500
- For serious cases involving discriminatory or violent behaviour or an extended period of disorder the deduction of **two** points will also be considered.

The above maximum penalties are doubled for a repetition.

50. It is to be noted

- a. The text states that the reader is “*reminded*” of the maximum sanction. On enquiry the FA informed the Board that the so-called maximum sanctions do not appear elsewhere. They do not, for example, appear in the relevant Rules or Regulations.
- b. The sanctions therein set out are described as “*maximums*” and not guideline maximums.

- c. The Guidance provides for the maximum to be “*doubled*” for “*repetition*”. The Guidance provides no assistance on what repetition means.
- d. The Guidance refers to “*case*” not charge or breach.

51. The Board’s conclusions are as follows:

- a. The Commission’s powers were, technically speaking, at large. Pursuant to paragraph (e)B of Schedule B to the Standard Directions the Commission was empowered to impose *any penalty* it considered appropriate.
- b. The exercise of that discretion must be exercised reasonably and subject to well-established principles such as consistency and proportionality.
- c. Insofar as the Guidance purports to set any maximum financial sanction, that is inconsistent with paragraph (e)B of Schedule B. As the introduction to the Guidance makes clear where there is inconsistency the relevant Rule/s and/or Regulation/s prevail.
- d. However, the Guidance purports to provide maximum financial sanctions. Save for the duplication provision, it does not qualify those maximum sums or subject them to caveat/s. The Board notes (i) the fact the Guidance was issued by the FA (ii) the absolute way in which the sums are expressed (namely as “the maximum sanction”) and (iii) that it was accepted before and by the Commission that the Guidance provided maximum sanctions. Further, there is also a powerful argument that given (i) and (ii), any participant would have a legitimate expectation that the figures would be treated as absolute maximums and not guidelines. In those circumstances, the Board concluded that it would not be right *now* to find that the Guidance did no more than provide guidelines and did not (and arguably could not) limit the Commission’s sanctioning powers which were (pursuant to paragraph (e)B of Schedule B) unlimited.

e. That leads to the (obvious) next question: pursuant to the Guidance, on the facts of this case what was the maximum financial sanction:

- i. The Guidance provides for the maximum sanction for a “*case*” not a charge or breach.
- ii. The wording of the final sentence (the duplication provision) is simple. Its meaning is less accessible; arguably it is opaque.

1. It refers to “*a repetition*” (*emphasis added*) not repetition.
2. It does not provide in clear terms for £250,000 to be the multiplicand for more than one repetition. By way of example, trebling or quadrupling of the sanction in the case of three or four breaches of E20.
3. It does not explain whether “*a repetition*” is within a match or season or seasons. In other words, it does not purport to address the relevance (in this context) of a club’s previous breaches of Rule E20.

iii. In the Board’s assessment its meaning is ambiguous. The provision is capable of being reasonably interpreted in different ways with different consequences. That much is demonstrated by the Commission’s conclusion that differs from the FA which differs from the Clubs’ submissions.

iv. There being such ambiguity, which the Board cannot resolve by ordinary principles of construction, and it being a penal sanction, it concluded that the provision must be construed in the way most favourable to the Clubs. Therefore the Board concluded as follows:

1. “*Case*” meant case not charge or breach.
2. There was one case in respect of each Club.
3. The maximum sanction for a single mass confrontation was £250,000.

4. Each Club was to be dealt with for repeated mass confrontations within the match.
 5. Therefore each Club's case involved repetition.
 6. Accordingly the maximum sanction for each Club's case was £500,000.
- f. Given that approach, it was not necessary to resolve the (interesting) argument as to whether the Clubs faced three charges contrary to Rule E20 or a single charge comprising three breaches.
 - g. It follows that the Board disagreed with the Commission that the maximum was £750,000, a total arrived at by multiplying £250,000 by (the) 3 (breaches).

52. Two further points. First, the actual Ground alleged by Chelsea (and adopted by Tottenham) was that the Commission "*misinterpreted or failed to comply with the rules or regulations relevant to its decision*". The FA did not suggest that the Guidance fell outside this, for it is neither a rule nor a regulation. The answer to any such submission would have been that in considering the Guidance the Commission was exercising its powers under the relevant regulation, namely paragraph (e)B of Schedule B

53. Second, the provision, as drafted, is not without its difficulties. The Board wrestled with them. It is not for this Board to suggest what the Guidance should say or how it is worded. With respect, that is for the Regulator. However, the Board anticipates the FA will want to look at it. It has the laudable purpose of assisting the participants. However, if the intention was that the maximum sanction of £250,000 should apply to *each* mass confrontation in a match, that would easily be achieved by amending the wording to delete the words struck through and substitute the words in square brackets: "*In non-standard cases you are reminded of the maximum sanction available to a Regulatory Commission [for each mass confrontation] where a case has been found proved:....The above maximum penalties are doubled for a repetition*". If previous breaches of Rule E20

are relevant to the level of the maximum fine, the wording could easily be amended to make that clear.

(3) Chelsea FC

(a) Ground 2- unreasonable findings of fact

54. The Board cannot now unpick what happened before the Commission. The proceedings before it were not recorded. The Board cannot know how and why the Commission understood neither club to have “*seriously challenged*” the contention that “*blame*” for each incident should be “*borne equally*”.

55. However in the Board’s judgment the real issues here is not what the Commission said but

- a. How it approached each incident;
- b. What findings it made in respect thereof;
- c. Were any of those findings unreasonable on the evidence; and if so
- d. What effect, if any, did those findings have on the sanction.

56. Therefore, the Board revisited each incident, informed and assisted as it was by the submissions made on the videos by both clubs.

57. Set out above (paragraphs 17-19) is the way the Commission summarised each incident in its written reasons.

58. In respect of the first incident the Commission stated:

3.8 Overall, the first incident lasted approximately 35 seconds before order was restored, but was long enough for the following aggravating features to have been present, and for which both Clubs were responsible:

(i) The potential incitement of the crowd;

(ii) The proximity of the incident to the crowd;

- (iii) The involvement of technical staff;*
- (iv) The level of aggression shown; and*
- (v) The overall context of the fixture, having regard to its significance.*

3.9 In addition, there was admitted violent conduct on the part of Mr. Dembele [sic]. He has been the subject of a separate individual misconduct charge by The FA, and given a six-match ban by another Regulatory Commission. We note that although Mr. Dembele [sic] admitted the charge of violent conduct, but contended that the standard punishment that would otherwise apply to the offence was sufficient. That argument was rejected. In its capacity as his Club, Tottenham also has a separate corporate responsibility for his conduct under Rule E20 and Mr. Dembele's [sic] actions represent a serious aggravating feature arising out of this incident.

59. The incident started with a poor, late challenge by the Tottenham player Danny Rose. Other than that, the Board agrees with the Commission's factual summary of the incident. The Board also agrees that each of the aggravating factors found by Commission was present.

60. In relation to the Chelsea submissions, the Board *would have* disagreed with the Commission *if it did in fact* find that the blame for the incident lay equally with both clubs. In the Board's assessment such a finding would have been unreasonable (within the meaning of paragraph (d)) for, with respect, it would be inconsistent with and fail properly to reflect the greater culpability of Tottenham.

61. However, reading the written reasons as a whole, the Board is not persuaded that the Commission did in fact find that the blame *for the incident* was to be equally apportioned. It appeared to say so in paragraph 3.3 of its written reasons. However, that remark appears to be by way an introduction. Thereafter it analysed the incident. When it did so, the Commission clearly (and rightly) identified that Tottenham's culpability was greater, namely its manager entering the field of play and the violent

conduct of Mousa Dembélé (which the Commission identified as a “*serious aggravating factor*”). Further, the effect of paragraph 4.13 of its written reasons is to make clear that Tottenham’s culpability for this incident was greater than Chelsea’s. It repeated that in the first sentence of paragraph 4.15 of its reasons (see paragraph 24 above).

62. It follows also that the Board rejects Tottenham’s argument that Mousa Dembélé’s conduct should in some way be separated from the incident. It should not; it was plainly part of it.

63. Turning to the second incident, the Commission found:

3.11 The second incident lasted approximately 20 seconds and on a like-for-like comparison was less serious than the first. It occurred just off-centre in the pitch, about half way between the centre circle and Tottenham penalty area. Consequently, it was further removed from the crowd than the first incident. There was no violent conduct. Additionally, no coaching or technical staff were involved. Nevertheless, the second incident shared the following aggravating features in common with the first:

- (i) The potential incitement of the crowd;*
- (ii) The level of aggression shown; and*
- (iii) The overall context of the fixture, having regard to its significance.*

3.12 Moreover, the fact that this was the second mass confrontation to occur during the match represents a very serious aggravating feature.

64. The Board agrees with the Commission’s assessment that – as a direct comparison (i.e. ignoring the fact it was second in the match) this incident, while serious, was not as serious as the first (or indeed the third). The Board agrees with the reasons, as set out in paragraph 3.11. This Board might not have found there was the “*potential incitement of the crowd*” but the Commission’s finding in that respect cannot properly be condemned as “*unreasonable*”.

65. When analysing the incident, the Commission did not expressly state that each Club was equally culpable. The Board's assessment is that in this instance, it was the Chelsea players who were more culpable. The incident started with Eric Dier's tackle. However, it was the Chelsea players who reacted, when they should not have done. Jon Obi Mikel ran an appreciable distance to get involved. Two other Chelsea players ran and joined immediately after Mikel. The Board agrees with the Commission's assessment that the Tottenham players appear largely to have been trying to placate and/or remove others. It is fair to observe that some of the Chelsea players appeared to be doing likewise.

66. Chelsea relied on what it said was a Tottenham player stamping on Cesc Fàbregas's hand. Whatever that incident amounted to, it was some distance from and not part of the mass confrontation. In the Board's judgment it is not relevant to the consideration thereof.

67. In relation to the third episode, the Commission found:

3.19 The third incident lasted somewhere in the region of one minute from start to finish, and contained multiple aggravating features:

- (i) The potential incitement of the crowd;*
- (ii) The proximity of the incident to the crowd;*
- (iii) The involvement of technical staff and reserves;*
- (iv) The involvement of stewards;*
- (v) The level of aggression involved;*
- (vi) The duration of the incident; and*
- (vii) The overall context of the fixture, having regard to its significance.*

3.20 Moreover, this was the third mass confrontation of the match, and represented an even greater and more serious aggravating feature than the second, if that were possible.

68. The Board agrees that each of the factors listed in paragraph 3.19 was present. The Board agrees that it being the third such incident in the match was a significant aggravating factor. Further, the Board cannot improve upon the Commission's factual analysis. In this incident it was impossible to say with any degree of confidence that either Club was more culpable. Put another way, the blame was equal.

(b) Ground 3 – excessive sanction

69. As a starting point, the Board agrees with the Commission's sentiments as expressed at paragraph 4.1 of its written reasons, namely

The match in question was watched, listened to, and followed by millions around the world. The potentially pivotal nature of the result meant that it assumed even greater significance and attention than a London derby between the two Clubs would otherwise have done. The image, reputation and standing of the Premier League and English football generally is seriously damaged by the shameful conduct of both Clubs which punctuated the match. Three mass confrontations in one match sets a new low point in terms of the bad example that it conveys, particularly to impressionable junior and youth footballers. Even when one makes generous allowance for the significance of the occasion, and the potential effect that the result proved to have on Tottenham's title challenge, the level of ill-discipline that was shown was grossly and repeatedly in excess of what could be regarded as acceptable robust conduct. In order to protect the best interests of the game, multiple breaches of this kind simply cannot be tolerated and nothing other than severe penalties are indicated.

70. The Commission imposed a single fine. By way of explanation of its approach the Commission stated:

4.18 We were invited by both Clubs to break the cumulative fines down between the three breaches. We decline to do so as the case turns on its own

unique facts. The charges relating to the first incident differ. The fines for the second and third incidents inevitably reflect the cumulative nature of the breaches. They will not be representative of other cases where there is a single breach, even in a non-standard case. There is then the additional aggravating feature of Chelsea's antecedents. As comparables, the individual fines for each offence would be of little use in future cases. In the light of our decision not to deduct points, the task of the Commission was to impose financial penalties which reflect the totality of the offences committed by each Club. Where a sporting sanction is imposed for two or more offences, the argument that a Regulatory Commission should specify the sanction to be applied to each one is more compelling.

71. In paragraph 4.11 it identified the factors it considered relevant to fixing the fine.

72. As for the specific submissions made by Chelsea, the Board has addressed above (see paragraphs 17-19 and 54-68) the respective culpability of each Club. That analysis also addresses the complaint that the Chelsea players were provoked and the fine should have reflected such.

73. Three further points were made. The Commission

- a. Gave undue weight to Chelsea's disciplinary record;
- b. Failed to give Chelsea sufficient credit for its admission; and
- c. Imposed a sanction out of all proportion to its culpability.

74. With respect, the Board found little assistance in the decision in *FA v Aston Villa*. That case concerned serious crowd violence. The decision is fact specific. The Board found within it no statement of principle which assists, save in one respect. In that case the Commission reduced the sanction to reflect the club's admission *and* other mitigation. It did so by £50,000, namely 20% of the starting point. In cases where the Standard Penalties apply, Schedule B(b)(ii) states that the principle of credit for an

admission is reflected by the incorporation of *“reduction, usually of approximately one third”*.

75. In non-standard cases, the Standard Directions do not provide for a reduction of the otherwise applicable penalty to reflect an admission. However, they do provide for the submission of mitigation, which a Regulatory Commission is enjoined to consider in fixing the appropriate penalty. Mitigation will include any admission. The Board can see no good reason why the principle of a reduction to reflect an admission should not apply in non-standard cases. The relevant Directions being silent, the Board is not inclined to state it must be *“approximately one third”*, but rather to infer that it has been left to the discretion of a Regulatory Commission to assess in the circumstances of any given case. However, the starting point may well be *“approximately one third”*.

76. The Commission did not expressly state that it gave Chelsea credit for its admission. In paragraph 4.11(iv) (see paragraph 21 above) it referred to mitigating factors. In the next paragraph it referred to the *“admitted breaches”*. It plainly had in mind the fact the breaches were admitted and the Board is not persuaded that it can properly be inferred that it gave no credit. The extent of that credit is not clear.

77. As to the remaining two complaints, the Commission was entitled to conclude Chelsea’s disciplinary record was *“abysmal”*, relevant and a significant aggravating factor. Its disciplinary record is follows

- (i) October 2011 £20,000 fine (standard)*
- (ii) February 2015 £30,000 (non-standard)*
- (iii) September 2015 £40,000 (non-standard)*
- (iv) October 2015 £50,000 (non-standard)*
- (v) January 2016 £65,000 (non-standard)*

78. This was its fourth appearance for a breach of Rule E20 in the 2015-2016 season. It was its fifth non-standard breach. It is not simply the number of breaches of Rule E20, but the frequency within the season which makes it a significant aggravating factor. It is true that the written reasons do not set out precisely the weight given to this factor. However, the Board would not expect its aggravating effect necessarily to be expressed arithmetically.

79. It was also argued that the Commission imposed a sanction out of all proportion to Chelsea's culpability. A difficulty for the Board is that the fine was expressed as a single figure. The Commission explained why it did so at paragraph 4.18 of its written reasons. It did identify the factors it considered relevant in assessing the sum but not how it arrived at that figure. Therefore the Board does not know how the Commission arrived at £375,000. That is a particular issue where (i) the range, starting at £20,000 (the standard penalty) is so vast, (ii) there is no tariff and (iii) there are no guidelines. This is further compounded by the fact the Commission – in the Board's judgment – erred as to the maximum financial sanction. Therefore, in order properly to consider the central complaint – that the financial penalty was excessive – the Board decided the only option was to revisit the sanctioning exercise.

80. The Board approached the task in this way. The task in hand is to punish Chelsea for its overall 'offending'. That is not a science. Whether it is an art is not for the Board to say. The 'offending' is reflected by three specific non-standard breaches of Rule E20. In order to arrive at the total or overall figure the Board found it helpful to look at each mass confrontation individually.

a. First incident

- i. It is non-standard. The starting point is £20,000.
- ii. It has the features that make it non-standard, which the Commission identified at paragraph 3.8 of its reasons. It is therefore serious.

- iii. Chelsea's 'offending' is aggravated by its disciplinary record, particularly the fact that this was its fourth appearance for a non-standard breach this season.
 - iv. However, it is mitigated by the fact Chelsea's role (in that incident) was less culpable than Tottenham's.
 - v. Further, there should be credit by way of a deduction for the admission. Given the overwhelming evidence, that should be approximately 20%. The figure of 20% is by reference the facts of this case, not by virtue of following the decision in *FA v Aston Villa*.
 - vi. Therefore, had this incident stood alone, but against Chelsea's background of 'offending' a fine in the range £100,000 would have been appropriate (if the Commission decided not to deduct points).
- b. Second incident
- i. It is non-standard. The starting point is £20,000.
 - ii. It has the features that make it non-standard the Commission identified at paragraph 3.11 of its reasons. It is therefore serious, but less so than the first (or indeed third) incident.
 - iii. Chelsea was the more culpable Club in this instance.
 - iv. Chelsea's 'offending' is aggravated by
 - 1. Its disciplinary record; and
 - 2. The fact this was the second mass confrontation in the match.
 - v. Further, there should be an approximate 20% deduction for the admission.
 - vi. Therefore, reflecting those features, including the repetition but also having regard to the nature of the actual incident, the incident would merit an *additional* fine of £65,000.
- c. Third incident
- i. It is non-standard. The starting point is £20,000.

- ii. It has the features that make it non-standard which the Commission identified at paragraph 3.19 of its reasons. It is the most serious incident of the three.
- iii. The culpability is shared.
- iv. Chelsea's 'offending' is aggravated by
 - 1. Its disciplinary record; and
 - 2. The fact this was the third mass confrontation in the match, a significant aggravating factor.
- v. Further, there should be the approximate 20% deduction for the admission.
- vi. Therefore, reflecting those features, including the repetition but also having regard to the nature of the actual incident, the incident would merit an *additional* fine of £125,000.
- d. The indicated sums of £65,000 and £125,000 reflect and take account the cumulative nature of the breaches; they are not sums which would be imposed if Chelsea fell to be sanctioned for each one individually.

81. That represents a working total figure of £290,000. The Board than 'stood back' and considered whether the total sanction reflected its assessment of the Club's overall culpability, having regard *inter alia* to the maximum sanction available. The Board was satisfied that it did.

82. The difference between £375,000 and £290,000 is not insignificant. Accordingly to this extent only the Board allows the appeal and substitutes a fine of £290,000.

83. The Board understands the Commission's point that the "*the individual fines for each offence would be of little use in future cases*". However, that is not the intention or purpose of this exercise or of looking at the incidents as the board did. The purpose, obviously, is to sanction Chelsea and to do so by reference to its 'offending'. No two cases are alike and none of the fines are intended to be precedents.

(4) Tottenham Hotspur FC

84. The Board has addressed above (see paragraphs 17-19 and 54-68) the respective culpability of each Club and the Commission's findings in respect thereof. For the reasons set out in paragraph 74 above, the Board found little assistance in the decision in *FA v Aston Villa*.

85. The Commission was entitled to have regard to the number of yellow cards issued to Tottenham's players in the match. In paragraph 2.6 of its written reasons it observed:

Under Regulation 9(a) of The FA's Regulations for Disciplinary Action, any club which has six or more individual players cautioned or dismissed from the Field of Play in the same match will be offered the standard punishment of £25,000. Such a fine was automatically imposed on Tottenham. It followed, and the Commission concluded (rightly) that that particular sanction was not part of its considerations, the overall background circumstances of the case clearly are.

86. The Board finds nothing objectionable in that.

87. Further in paragraph 4.10(i) of its reasons the Commission observed that it was reasonable to infer from the nine cautions that Tottenham was *"guilty of a substantially greater level of ill-discipline- foul-play and otherwise – during the match"*. In that respect the Commission stated expressly that factor was relevant and should be taken into account *"in order to place the confrontations in context"*.

88. In paragraph 4.14 it observed that the *"imbalance in the number of respective cautions is strongly suggestive of a serious loss of self discipline by Tottenham players during the match as a whole"*. The Board finds nothing wrong in that analysis. Tottenham did not suggest the cautions were irrelevant. There is nothing in the written reasons to suggest, still

less to satisfy the Board, that improper weight was given to this factor. Indeed, the Commission stated in terms that it was relevant only to context.

89. In arriving at the figure of £225,000 the Board said this:

In arriving at the overall level of the financial penalty to be imposed on Tottenham, we undertook the process referred to at paragraph 4.10 above. As before, taking into account all of the relevant circumstances of the case against it, the cumulative fine that we impose on Tottenham for its three admitted breaches of FA Rule E20 is £225,000.

90. The Board suspects that should be a reference to paragraph 4.11; paragraph 4.10 explained why the Commission did not impose a points deduction on Chelsea.

91. However, as with Chelsea, the Board did not expressly state that it was giving credit for the admission. It is clear it had that fact in mind and the Board is not persuaded that it can properly be inferred that it gave no credit. The extent of that credit is not clear.

92. Further the Commission referred to Tottenham's disciplinary record (at paragraph 3.2) which is as follows

- a. November 2014 - £20,000 (standard)
- b. December 2015 - £20,000 (standard)

93. At paragraph 4.11 it referred to the "*antecedents of each Club*" as being a relevant factor that it took into account in assessing the relevant financial penalty. The extent to which it had regard is not expressed. However, as with 'bad character' the Board would not expect its mitigating effect necessarily to be expressed arithmetically.

94. However, the central difficulty for the Board is that the fine was expressed as a single figure. As with the Chelsea fine, the Board does not know how the Commission concluded £225,000 was the appropriate sum. It is further compounded by the Commission's error – as the Board concluded – as to the maximum financial sanction. Therefore, in order properly to consider the complaint that the financial penalty was excessive, the Board was driven – as with Chelsea – to consider it afresh.

95. The Board adopted precisely the same approach as it did with Chelsea.

a. First incident

- i. It is non-standard. The starting point is £20,000.
- ii. It has the features that make it non-standard the Commission identified at paragraph 3.8 of its reasons. It is therefore serious.
- iii. Tottenham's culpability was greater than Chelsea's.
- iv. There is some mitigation in Tottenham's disciplinary record but not a great deal as it is the Club's second appearance this season for a breach of E20 (though the first non-standard case).
- v. Further, there should be credit for the admission. Given the overwhelming evidence, that should be approximately 20%. Once more that is an assessment based on this case and not by following *FA v Aston Villa*.
- vi. Therefore, had this stood alone a figure of approximately £60,000 would have been appropriate (if the Commission decided not to deduct points).

b. Second incident

- i. It is non-standard. The starting point is £20,000.
- ii. It has the features that make it non-standard the Commission identified at paragraph 3.11 of its reasons. It is therefore serious, but less so than the first (or indeed third) incident.

- iii. Tottenham's 'offending' is aggravated by the fact this was the second mass confrontation in the match.
 - iv. However, it is mitigated by the fact its players were less culpable in this instance.
 - v. Further, there should be the approximate 20% deduction for the admission.
 - vi. Therefore, reflecting those features, including the repetition but also having regard to the nature of the actual incident, the incident would merit an *additional* fine of £40,000.
- c. Third incident
- i. It is non-standard. The starting point is £20,000.
 - ii. It has the features that make it non-standard which the Commission identified at paragraph 3.19 of its reasons. It is the most serious incident.
 - iii. The culpability is shared.
 - iv. Tottenham's 'offending' is aggravated by the fact this was the third mass confrontation in the match. That is a significant aggravating factor.
 - v. Further, there should be deduction by approximately 20% for the admission.
 - vi. Therefore, reflecting those features, including the repetition but also having regard to the nature of the actual incident, the incident would merit an *additional* fine of £75,000.
- d. The indicated sums of £40,000 and £75,000 take account of the cumulative nature of the breaches; they are not sums which would be imposed if the second or third incidents were the only ones Chelsea fell to be sanctioned for.

96. That represents a working total figure of £175,000. The Board then 'stood back' and considered whether the total sanction reflected its assessment of the Club's overall culpability, having regard *inter alia* to the maximum sanction available. The Board was satisfied that it did.

97. The difference between £175,000 and £225,000 is not insignificant. Accordingly to this extent only the Board allows the appeal and substitutes a fine of £175,000 for the original of £225,000.

98. As with Chelsea, the purpose of this exercise was to sanction Tottenham, by reference to its 'offending'. None of the fines are intended to be precedents.

(5) Parity

99. Finally, the Board considered the respective fines as between the two Clubs. It did so to ensure there was parity as between them. The Board looked to see that as between each Club the fines reflected properly the respective roles played by each in the disgraceful events. The Tottenham fine is approximately 60% of that imposed on Chelsea. The Board is satisfied the greater fine on Chelsea fairly reflects its role in the incident and its lamentable recent record for failing properly to control its players. The time cannot be too far distant when a Commission concludes the only proper sanction is a points deduction.

G. CONCLUSION

100. The fact the Board has allowed these appeals should not be thought to indicate it in any way disagrees with the Commission's views that conduct of this kind merits anything other than "*severe penalties*". The Board cannot improve upon the Commission's observation that "*the image, reputation and standing of the Premier league and English football generally is seriously damaged by the shameful conduct of both Clubs which punctuated the match*"².

² Paragraph 4.1 of its written reasons

101. For the reasons set out above, Chelsea's appeal succeeds to this extent only: the financial penalty of £375,000 is reduced to one of £290,000. The remaining orders stand.
102. For the reasons set out above, Tottenham's appeal succeeds to this extent only: the financial penalty of £225,000 is reduced to one of £175,000. The remaining orders stand.
103. In light of the fact each appeal succeeded, the Board proposes to make no order as to costs in relation to convening the appeal.
104. We record our gratitude to Mr Hunter QC, Ms Caplehorn and Mr Elagab for their focused and helpful submissions, and to those who prepared the written documents upon which they were founded.



Christopher Quinlan QC

Chairman

4 July 2016

Signed by the Chairman on behalf of the Appeal Board