

IN THE MATTER OF A REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

WEDNESDAY 11 OCTOBER 2023

BETWEEN:

THE FOOTBALL ASSOCIATION

And

LEEDS UNITED FC

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WRITTEN REASONS

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**Background**

1. These are the written reasons for the decisions made by a Regulatory Commission which sat on Wednesday 11 October 2023 to determine the Charge referred to below for a breach of FA Regulation E21.1, which Charge had been admitted thereby restricting the Commission's deliberations to those of considering the appropriate sanction.
2. By a Charge Letter ("**the Charge**") dated 6 June 2023, Leeds United FC ("**Leeds**") were charged with a breach of Rule E21.1 in respect of matters arising during a match between Leeds and Newcastle United F.C. ("**Newcastle**") on 13 May 2023 ("**the Match**"). The Charge is as follows:

*"You are hereby charged with misconduct for a breach of Rule E21.1 in respect of the Match."*

*It is alleged that Leeds United AFC failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match and do not use words or otherwise behave in a way which is improper, offensive, threatening, abusive, insulting or provocative.”*

3. The evidence relied upon by The FA in support of the Charge comprised:
  - (a) A report by of the Fourth Official Mr G Scott dated 14 May 2023;
  - (b) Correspondence between Mr G Patterson of Newcastle and Mr J Mennie of Northumbria Police dated 20 May 2023;
  - (c) A letter from Ms H Cox of Leeds to Mr J Gillett of The FA dated 16 May 2023; and
  - (d) Video clips.
4. The factual context of the Charge is simply stated. In or about the 92<sup>nd</sup> minute of the Match, with the score standing at 2-2, a spectator behaved improperly in that he managed to get onto the side of the pitch, enter the technical area and approach the Newcastle manager, Mr Eddie Howe (“**Mr Howe**”). Once there it is evident from the video clips, which the Commission have carefully viewed, that he makes physical contact with Mr Howe, including a push before being led away by a Leeds steward and a Newcastle close protection officer. The interaction between the spectator and Mr Howe lasts no more than approximately 2 seconds (not that the brevity in any way undermines the seriousness of the incident). We have evidence before the Commission in the form of an email to The FA from Mr Patterson of Newcastle United which records that he had been told by Mr Howe that the spectator called Mr Howe a “f\*\*\*ing cheating c\*\*t”. The Match was an important one, with Leeds seeking to stave off relegation and Newcastle seeking to secure qualification for the Champions League.
5. Leeds provided its Reply to the Charge on 5 July 2023. In that Reply Leeds admitted the Charge but requested a personal hearing.
6. Together with the Reply, Leeds filed a detailed and helpful document entitled ‘Submission on behalf of the Club’ settled by Onside Law LLP as well as a detailed witness statement, with exhibits, from Laura Strong (“**LS**”) the Head of Matchday Safety and Security at Leeds since October 2022, as well as statements from Fay

Greer, Leeds Financial Director, Chief Superintendent Richard Close of the West Yorkshire Police and Mrs Joanna Edwards, a Premier League Observer.

7. The FA also filed useful submissions on sanction, by a Note dated 2 August 2023, so the Commission was fully aware of what sanction it was contended was appropriate from both sides in advance of the hearing, Leeds having also taken this step in its submissions. The Commission thanks both parties, as to receive this information at the outset was of considerable assistance to the Commission.
8. The Regulatory Commission met via a Teams call on the morning of Wednesday 11 October 2023, commencing at 10am. Evidence and submissions concluded at 12:40. The Commission comprised Mr Christopher Stoner KC (Chair), Mr Peter Fletcher and Mr Matt Williams. Mr Paddy McCormack of FA Judicial Services acted as secretary to the Commission, and we record our thanks to him.
9. Present at the hearing were:
  - (a) For The FA, David Dainty of Counsel;
  - (b) For and on behalf of Leeds, Kendrah Potts of Counsel, Hannah Kent, Oli Hunt and Nathan Chambers from Onside Law LLP and Hannah Cox, Head of Football Administration.
10. LS and Chief Superintended Richard Close were called to be cross-examined by Mr Dainty on behalf of The FA. LS also answered questions from the Commission. The other witnesses were not called and their evidence was accordingly read as being unchallenged by the Commission.
11. Prior to the Commission hearing, all the members of the Commission had carefully read all the papers in the bundle. In addition Leeds, at the Commission's request, had helpfully provided plans of the Elland Road stadium as well as a bundle of authorities. All members of the Commission had also viewed the video clips forming part of the documentation.

## **Preliminary Matter**

12. By an email dated 29 September 2023 from Michael O'Connor of Judicial Services, the parties were informed of the composition of the Commission. As is standard, the email invited any observations on that composition by 11:00am on 3 October 2023. Having sought a short extension of time, to which the Commission has seen no objection, by an email dated 10:19 on 4 October 2023, Leeds, through its solicitors, objected to Mr Fletcher and Mr Williams being members of the Commission.
13. This was because as recently as 10 August 2023, Mr Fletcher and Mr Williams had sat on a different Commission to determine a case of a breach of Regulation E21 against Leeds. That, like the present case, was an admitted breach, so there is no question of Mr Fletcher and Mr Williams having made adverse findings of a breach against Leeds. Rather they had recently been members of a Commission sanctioning Leeds for an admitted breach.
14. However, Leeds said their presence on the earlier Commission raised 3 issues, namely:
- (1) The fact that an arbitrator has within the past 3 years served as an arbitrator on a related issue involving one of the parties is identified in IBA Guidelines as a circumstance giving rise to doubts about an arbitrator's impartiality.
  - (2) *"...there is the potential for Mr Williams and Mr Fletcher to have certain knowledge from the previous case that would not be known to the Chair (or even to counsel for the parties given that there is no reason for them to have all the documentation filed in the previous case). This gives rise to the related concern that Mr Williams and Mr Fletcher may already have a pre-conceived view of the Club's processes based on the previous proceedings (where the Club did not have legal representation) and the further concern that counsel would not necessarily be able to address those views (if they arise as a result of the previous proceedings that counsel was not involved in)"*
  - (3) A point was taken that Mr Williams' and Mr Fletcher's involvement had not been disclosed, notwithstanding the IBA Guidelines.
15. This application was treated as a Preliminary Application pursuant to Regulations B14-18 and/or B25 in The FA Disciplinary Regulations and was determined by the Chair, both Mr Williams and Mr Fletcher indicating to the Chair they would abide by his decision. Having regard to the time limit in Regulation B14, rightly, in all the

circumstances, no point was taken by The FA on the timing of the application (which, on any view, could only be made once the composition of the Commission was known) and in any event, in so far as is required, time is abridged pursuant to Regulation B25.

16. Submissions were invited from The FA in response to the application by 10am on 5 October 2023. These submissions were duly received pursuant to an email timed at 09:54 on 5 October 2023 in which The FA objected to the application. In summary it stated:

- (1) The IBA Guidelines bear no relevance to the Commission as pursuant to Regulation 4 of The FA's Disciplinary Regulations "*The bodies subject to these General Provisions are not courts of law and are disciplinary, rather than arbitral bodies.*"
- (2) The IBA Guidelines specifically acknowledge distinctions between different types of arbitral proceedings, including sport, the essence of that distinction being that sports draws arbitrators from a smaller or specialised pool of individuals where no disclosure is required because it is the custom and practice to frequently appoint the same arbitrator in different cases.
- (3) Leeds had failed to raise any identifiable concern relating to Mr Williams and Mr Fletcher's appointments, it not being accepted that the fact of their previous appointment itself gave rise to an appearance of bias; and
- (4) The FA did not accept that Mr Fletcher and Mr Williams would have pre-conceived views nor that Counsel could not address any concerns, as the reasons for the previous Commission decision were in the Written Reasons (which document is publicly available). The FA also stated that Counsel for Leeds could address any issues arising from the previous Commission's Written Reasons and provide any appropriate material in advance of the hearing.

17. Leeds were given the opportunity for a (brief) final say, which it did by Onside Law's email timed at 14:56 on 5 October 2023. In that email, in summary, it was submitted on behalf of Leeds:

- (1) That whilst the IBA Guidelines did not apply directly, the principles contained in them should be taken into account to ensure due process, as they identify well-

established and accepted principles that could result in a party not receiving a fair hearing.

- (2) That Leeds did not object to the same individuals regularly being appointed to FA Regulatory Commissions, but rather to Mr Williams and Mr Fletcher having sat very recently on a case involving Leeds.
- (3) This, it was suggested, was a point raised by the IBA Guidelines for good reason, including that the arbitrators may have knowledge and/or pre-conceived ideas from the previous case. Leeds rejected the suggestion on the part of The FA this could be dealt with by looking at the Written Reasons. The Written Reasons, Leeds asserted, do not reflect all the views of the panel and, further, they cannot address the concern that Mr Williams and Mr Fletcher have gained certain knowledge from the case in submissions and/or evidence which is not part of the current proceedings.
- (4) The suggestion no identifiable concern had been raised was rejected, with reference back to the points raised in the first email; and
- (5) It was again said that the fact Mr Williams and Mr Fletcher had sat on the earlier Commission should have been disclosed, with the fair approach being for Mr Williams and Mr Fletcher to be replaced given Leeds had no ability to nominate members of the Commission.

18. It is clear this application could not be described as frivolous, vexatious or indeed tactical, whether to delay the hearing of the Commission or otherwise. It is an application of substance and, as such, was treated with the utmost seriousness.

19. As general observations, it is right to make two initial points. The first is that a Regulatory Commission is appointed from the choice of a relatively small pool of individuals. As regards individuals who have experience of supporter behaviour issues, whilst accepting that is not a pre-requisite to appointment, the pool is even smaller. The second issue is that, notwithstanding some of the submissions made, a Regulatory Commission is not an arbitral tribunal. Rather it is a disciplinary one. No party has a right to choose who is on the Commission. Nor, without good reason, do they have the right to object to the chosen Panel. Thus, the issue in the present instance is whether there is a good reason.

20. Turning to the arguments advanced, it is plain the IBA Guidelines have no direct application. Regulation 4 of The FA Disciplinary Regulations makes it plain that a Regulatory Commission is a disciplinary, rather than an arbitral body. However, Regulation 4 proceeds to identify “...*the paramount object*’ is one ‘*of being just and fair to all parties.*” In such circumstances if, as in the present case, an allegation is made which is essentially one of a conflict of interest, there is no logical reason why the IBA Guidelines should be considered to be of no relevance to the appointment of a Regulatory Commission, as suggested by The FA. The Guidelines are a relevant document to have regard to, provided, at all times, it is borne in mind they are directed at arbitrations not disciplinary process and, as such, do not directly apply.
21. An example of where the IBA Guidelines application to arbitration leads down a different road to the current disciplinary process is that if and in so far as an example of an event has been identified which falls within the ‘Orange List’ contained within those Guidelines, the consequence is that the event is disclosable by the arbitrator. In its application Leeds’ third point was that Mr Williams and Mr Fletcher’s involvement in the earlier Commission hearing had not been disclosed.
22. This seems to rather confuse the processes. The current process is one of the appointment of a Regulatory Commission by the Judicial Panel Chairman, with the parties being given an opportunity to raise any observations on the constitution of the Commission, as occurred in the present instance. Indeed, it was that opportunity Leeds utilised in response to the email of Mr O’Connor dated 29 September 2023. The process, especially given the possibility of multi-appointments, is not one which requires disclosure by the members of the Commission, or, indeed, The FA.
23. Notwithstanding this it is also relevant to note what is said in the IBA Guidelines if, in an arbitration, a matter is disclosed, namely:
- “Disclosure does not imply the existence of a conflict of interest; nor should it by itself result either in a disqualification of the arbitrator, or in a presumption regarding disqualification. The purpose of the disclosure is to inform the parties of a situation that they may wish to explore further in order to determine whether objectively – that is, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances – there are justifiable doubts as to the arbitrator’s impartiality or independence ...”*

24. Put another way, pursuant to the IBA Guidelines if a disclosure is made that triggers a process to determine whether, objectively, a reasonable third person having knowledge of the relevant facts and circumstances, would have justifiable doubts as to the arbitrator's impartiality. The answer to that process will depend upon what those relevant facts and circumstances reveal.
25. Although no authority has been cited by either side, it is trite law that a disciplinary panel should not suffer from bias or from an appearance of bias. It is equally trite law that the relevant legal test is that identified in **Porter v Magill** [2001] UKHL 67, namely whether a fair minded and informed observer, having considered all the facts, would conclude there was a real possibility of bias.
26. Again, this test directs that the answer lies in a consideration of the detail of the facts of any particular matter.
27. Thus, the answer to Leeds application must lie in an examination of the facts and circumstances which would be considered by the hypothetical third party. Those facts are revealing and determinative.
28. Firstly, in the Regulatory Commission chaired by Mr Iqbal K.C (dated 10 August 2023), it is relevant to note that, like the current matter, Leeds admitted the Charge. Therefore, there is no issue with Mr Fletcher and Mr Williams having made any findings against Leeds as to a rule breach, as distinct from their having been involved in a sanctioning process. On its own this is a point of some relevance, but is far from being determinative.
29. Secondly the terms of that earlier Regulatory Commission are critical, especially given the matters relied upon by Leeds at the core of the current application, being highlighted above in paragraph 14 as the second point of their application. In the present matter the Regulatory Commission has a 164-page bundle which includes detailed provision, both in the form of witness evidence (including supporting documentary exhibits) and submission, as to the detailed planning undertaken by Leeds in advance of the Match.
30. It is self-evident from the Written Reasons dated 10 August 2023 that the Regulatory Commission in that instance was presented with a hearing bundle of just 20 pages, with the evidence from Leeds being limited to just a 2-page letter from Hannah Cox (the Club Secretary) to Jack Gillett of The FA dated 29 March 2023.



31. It is also evident from the Written Reasons dated 10 August 2023 that an issue for the Commission was that it simply did not have evidence before it to identify Leeds' processes in preparation for the match then in issue: see in particular the various points identified in the sub-paragraphs of paragraph 39 of the Written Reasons dated 10 August 2023. The terms of the Written Reasons dated 10 August 2023 do not need to be repeated or analysed further for present purposes. They are available publicly.
32. Returning to the application, prior to having read the Written Reasons dated 10 August 2023 it appeared an omission from the application and argument in support presented by Leeds that there were no particular concerns that were identified over and above the rather generic points raised. However, having read the Written Reasons dated 10 August 2023 and the lack of evidence as to process before the Commission in that case (save the 2-page letter), compared to the evidence in the present, it is impossible to conceive how Mr Williams and/or Mr Fletcher on the relevant facts and circumstances:
- (1) Would or might have '*certain knowledge from the previous case that would not be known to the Chair (or even to counsel for the parties given that there is no reason for them to have all the documentation filed in the previous case)*'; or
- (2) Would or might have "*...a pre-conceived view of the Club's processes based on the previous proceedings...*"
33. In so far as there was evidence of Leeds' processes in the 2-page letter, it also falls to be noted that the circumstances of the previous Commission hearing are wholly and substantively different from the present. In that case the focus of the Commission was the processes Leeds had in place in relation to homophobic chants by a large section of the crowd: see for example the extracts from the letter of Ms Cox in paragraphs 37 and 38 of the Written Reasons dated 10 August 2023 and the policies referred to in paragraph 34. In the present instance, and armed with much detailed information, the focus of the Commission is on the processes in place to prevent pitch incursion and how an individual managed to get onto the pitch and into the technical area of the away side.
34. Whilst both matters involve charges pursuant to Rule E21, the substantive nature of the charges is markedly different.

35. Once armed with all this knowledge, the reasonable objective observer would be bound to state that there is absolutely nothing in the points made in support of the application that Mr Fletcher and Mr Williams might have certain knowledge from the previous case which is unknown to the Chair or Counsel in the present Commission, or that they might have pre-conceived views of the Club's processes.
36. Therefore, consideration of the facts and circumstances defeats Leeds' application. In the parlance of the IBA Guidelines, no justifiable doubts have been raised as to Mr Williams and Mr Fletcher's independence and, in the language of the legal test, a fair minded and informed observer, *having considered all the facts*, would conclude there is nothing to raise an appearance of bias.
37. The fact, in isolation, that Mr Williams and Mr Fletcher were recently appointed to another Commission to consider a sanction against Leeds does not give rise to any concerns. Especially with a small pool from which to appoint, multiple appointments are not themselves of concern. Rather whether justifiable concerns arise depends on the facts. A recent appointment may well give rise to such concerns, but for the reasons stated above, it does not in this case.
38. Accordingly, the parties were informed by email on 6 October 2023 that the application was refused and the constitution of the Commission would remain as originally appointed.

### ***The Regulation***

39. Regulation E21 provides, as relevant:

*"A Club must ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending any Match and do not:*

*E.21.1. use words or otherwise behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative."*

## ***The approach***

40. Both parties approached the issue of sanctioning having regard to the steps suggested in *The FA v Birmingham City*<sup>1</sup>:

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

41. The Commission saw no reason not to apply this sensible rubric for the sanctioning process. Further, when considering the culpability of Leeds, both parties also referred to a passage in the Appeal Board's decision in *FA v Reading*<sup>2</sup> where it said:

*“The Appeal Board considered that a Club’s culpability for breaching Rule E20 in respect of a mass pitch incursion could range on a sliding scale from [1] the most serious [for example a deliberate decision not to provide the necessary resources for financial reasons], to [2] a reckless disregard in respect of the Club’s duties, to [3] gross negligence, to [4] negligence simpliciter, down to, finally [5] a situation where a club has marginally failed to avail itself of the ‘due diligence’ defence set out in Rule E21.”*

42. In the *FA v Reading* matter the Commission emphasised it was considering a sliding scale of culpability applicable to mass pitch incursions. Whilst the present matter related to the behaviour of a sole spectator and was a charge pursuant to Rule E21.1, the Commission could see no reason to depart from the sliding scale when considering culpability, in accordance with both parties submissions.

43. The ‘due diligence’ defence referred to in the above citation is found in Rule E.21.5, which states:

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<sup>1</sup> 13 September 2019 (Graeme McPherson QC Chair), at paragraph 6.

<sup>2</sup> 5 October 2015 (Mr Peter Griffiths QC, Chair) At paragraph 5

*“It shall be a defence to a Charge in relation to Rules E21.1 to E21.3 (only) if a Club can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or, for reasons of crowd safety and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged. However, when considering whether this defence is made out a Regulatory Commission will have regard to all relevant factors including:*

- The extent to which the Club has discharged its duty*
- The severity of the issues involved*
- The extent to which similar issues have occurred previously in which case whether the Club took sufficient action in preventing further such incidences.”*

44. The ‘due diligence’ defence is strictly not available to Leeds in the present instance, as it has admitted the Charge. It has therefore admitted it has breached Rule E21.1. However, the defence remains relevant as a reference point, for it cannot be that a Club which admits a Charge is placed in a worse position than one that contests the charge. The sliding scale of culpability also, at level 5, is inherently linked to the defence. Thus, it is quite permissible, as Leeds argued, that when sanctioning a Club can adopt the stance that it has conducted itself such that it has only marginally missed the defence (and, in essence, acknowledged that in admitting the Charge and choosing to argue points on sanction).

## **Evidence**

45. Before turning to the various elements of the sanctioning process identified above, the Commission wishes to record some of the evidence that its considered and heard. Not all the evidence heard and considered by the Commission is set out in these Written Reasons. Failure to not mention any element of the evidence in these Written Reasons should not be considered as a failure on the part of the Commission to consider that evidence. All evidence, written and oral has been fully considered by the Commission.

46. In addition to the witness statements, the hearing bundle contained:

- (1) An event policy log for the Match. This was a detailed and impressive document, based on a standard template, which covered all aspects of match planning.

(2) In particular, from page 10 onwards of the document it contained an 'Event risk assessment'. As relevant this included:

- (a) Identification of a potential 'hazard' being 'pitch incursion during the game'. The existing controls were identified as 'CCTV; Stewards around the ground monitoring crowd; and pitch protection stewards position all around the stadium with enhanced pitch protection stewarding numbers from 80 minutes into game (end of match positions). The Risk assessment was identified as "M" for medium. The document then records 'Further controls' as being "First row of away lower tier will be netted to deter any away fans getting on to the pitch" and "Stewards in vomitories facing the spectators to deter persons coming forward toward the pitch perimeter." After these further controls were identified the risk assessment was re-categorised as 'Low', with 'Actions' also being identified of 'Perimeter stewards in place and pitch runners. Additional training on pitch protection and escorting persons off pitch during pitch incursion' and 'Pitch protection exercise after stewards briefings'.
- (b) Identification of a potential hazard of 'Disorder from spectators towards players, playing staff and officials'. This column identified the 'existing controls' as being 'Closed Protection personnel for each club in technical areas'; 'Stewards monitoring the crowd for potential pitch incursions' and 'Pitch runners positioned to apprehend those involved in pitch incursions'. The assessment for the Match for such disorder was marked as "M/L" (namely Medium/Low). Further controls were nonetheless identified, being "Placement of stewards as close to technical areas as possible"; "4<sup>th</sup> official to liaise with tunnel steward and tunnel supervisor" and "Tunnel supervisor in contact with control via radio at all times". Unfortunately, as far as the document is concerned, no final risk assessment, having regard to these 'further controls' was completed. The actions identified were 'Pitch protection exercise prior to turnstiles opening'; 'Referees and officials briefed on actions to be taken should there be an incident on the pitch' and 'Player security lead from Leeds United brief on player security during match/end of match'.

Having recorded these assessments we should also record that in her statement, at paragraph 23, LS said:

*"I had initially identified in my match-specific risk assessment that the risk of "pitch incursion during the game" was "medium" because of the period of the season in which the Match was taking place, the risk of the Club being relegated and considering the potential mood of the Club's fans at the end of the Match. In respect of the latter point, the Club monitors social media (as do West Yorkshire Police) and it was decided that the risk of a pitch incursion was greater than usual for the Match."*

- (3) A Safety & Security Observer report from a Premier League Observer, as Leeds were part of a pilot scheme being run by the Premier League whereby independent expert observers attended matches to observe the clubs safety and security operations.
- (4) A document called 'Inside Matters' which was a comprehensive briefing document for all staff which included, as regards the possibility of pitch incursions, the following statements:
  - (a) *"After briefing stewards we will carry out a training session on pitch protection and escorting fans off the pitch to prepare for potential individual and mass pitch incursions. Neil C, Neil H and Michael Scanlon will lead on this. 50 digital ticket stewards will attend this training. Once they are finished their role at the turnstiles 10 per stand will be allocated to stand managers, with 5 additional for SW and NE corners. Stand managers to deploy those stewards and position pitch side as required and at 80th minute"; and*
  - (b) *Pitch incursions – they are an offence under the Football Offences Act and therefore we must monitor the crowd closely for anyone who could attempt to move towards the pitch perimeter and gain access to the pitch. All stewards positioned at the bottom of each gangway should be facing the crowd and prevent persons coming forward towards the pitch. Thank you for your prompt actions to go pitch side when goal is scored, please ensure you continue with those swift actions by standing in a line in front of the stand when a goal is scored or where spectators are moving towards the pitch perimeter. Please return stand side as soon as the threat of pitch incursion has been dealt with."*
- (5) A detailed 'Referees briefing' which had a sub-heading of 'Pitch Invasions' stating:

*“Pitch runners are located at all sides of the ground and will intercept anyone entering the field of play. As a result of the Stop the Oil protests we have added 6 security staff to the pitch perimeter, to protect the goals, they have clippers in their pockets for use on cable ties. The staff have been briefed to ensure that the demonstrators do not gain access to the pitch or goal mouth at either end. Police will be on hand to arrest for pitch incursion, if they are present.”*

(6) The ‘Inside Matters’ briefing to all staff for the Tottenham Hotspur game, namely Leeds’ next home match after the Match, in which it was recorded:

*(a) mass pitch invasion, and individual pitch incursions are likely but plans are in place to deal with that eventuality. There are posters around the stadium, messaging to fans via scoreboard and pre match emails will reiterate the pitch is for players and the stands for fans. The pitch protection element of the matchday will be briefed in person by Neil & Neil on Sunday. 40 additional stewards will be located next to the players’ tunnel and west away section to be mobilised to perform tunnel protection when needed. Also, these and additional stewards will be used to assist players egress from pitch during pitch incursion. Once players and officials off pitch the tunnel area will be protected by closing blue door. Those stewards involved with this will then be deployed to assist with the removal of fans off the pitch. The main focus of this matchday will be protecting the pitch; and*

*(b) “Additional stewards to be located next to the away dugout / technical area. Closed protection staff also in area to protect staff and players.”*

47. Notwithstanding the fact that Leeds has, rightly, had to admit the Charge and notwithstanding the comments made in the following paragraphs, the Commission wishes to record that it was very impressed with the work undertaken by LS and Leeds in its matchday preparation. The Commission considered the documentation to be detailed and impressive. Furthermore, the Commission was impressed that the documentation clearly showed that planning had been carefully considered and undertaking for the particular Match. There was no cutting and pasting, but rather an impressive use of a template as the foundation for detailed specific match planning.

48. An example of the particular match planning was the fact the Match was categorised as a medium risk because of entrancing problems in the equivalent fixture the season

before. Accordingly, Leeds introduced an away fans zone into the car park before the game to encourage fans to the ground early and to assist in entrancing. This was explained to Newcastle's supporters in a meeting in advance of the Match on 9 May 2023.

49. Much of the praise over the previous paragraphs is attributable to LS. The Commission noted that in her statement, LS said, at paragraph 5 *"I am extremely passionate about my role and take it very seriously."* That came across to the Commission, not simply in the written documentation presented, but also in LS's oral evidence. The Commission found her to be an impressive witness, notwithstanding that, as exposed by Mr Dainty in cross examination, there were certain matters which were not covered in LS's witness statement which ought to have been. This included:

(a) The fact that LS had spoken to the stewarding manager for the area of the ground where it is thought the spectator who gained access to the pitch had been sat, who had in turn spoken to the stewards in that location. It had been (and in fact remains) a surprise to the Commission that those individuals did not provide statements to the Commission;

(b) The fact that the CCTV camera for the West Stand was focused on the directors box because of an incident reported there to which a response team had been dispatched, this being a few minutes before the spectator gained access to the pitch.

50. The Commission also heard from Chief Superintendent Richard Close, from the West Yorkshire Police. He was in command for the Match and told the Commission there was no adverse intelligence or information to suggest that disorder, damage or harm would take place. As to the incident in question his statement said:

*"During the match I did observe the pitch incursion by one male which took place. To those within the ground control room it was treated very seriously. Although clearly an offence and not something I would wish to happen, I was more interested in the response and how it was dealt with, as this can create tension, encourage others to do the same and lead to further incidents. I was impressed by the response, it was swift, surgical, and proportionate, leading the male to be arrested and subsequently charged with offences."*



*In my personal opinion as a Police Commander it is not possible to prevent a pitch incursion from taking place, unless fenced or officers and staff interlocking arms."*

51. Chief Superintendent Close was cross examined by Mr Dainty on the last sentence of this extract, but his view was clear and steadfast.

52. Having considered the evidence, the following facts referable to the incident underlying the Charge were clear to the Commission and it finds accordingly:

- (1) A single spectator managed to get himself from the stands into the technical area of Newcastle United.
- (2) The spectator made physical contact with Mr Howe and was also abusive verbally, before he was apprehended initially by a Steward, whom the Commission understand to be Mr Guy Morris, a West Stand Home Supervisor, and then very quickly in addition by a close protection officer from Newcastle United, before being marched away.
- (3) There was no CCTV of the spectator leaving his seat and/or the stand and gaining access to the pitch/technical areas. This was because the CCTV for the West Stand was focused on the directors' box because of the report of an incident. There was no evidence of CCTV at any stage of the Match which identified the spectator.
- (4) Leeds were unable to state with any authority, whether by reference to CCTV or stewarding or other staff, where the spectator came from or his route onto the pitch.
- (5) There were 642 stewards for the Match. This was, accordingly to LS in paragraph 60 of her statement in excess of the 550 that would normally attend a medium risk match "... *partly to account for the pitch protection exercise that was being carried out and the identified high-than-normal risk of their being a pitch incursion*".
- (6) The incident occurred in or about the 92<sup>nd</sup> minute of the Match, by which time stewards had re-deployed to their end of game positions around the edge of the pitch.
- (7) At all times, however, the pitch end of the gangways within the West Stand home supporter areas was supposed to be manned with a steward.

- (8) Before the Match all stewards were required to attend an hour earlier than usual so that a pitch protection training exercise could be undertaken.

## **Sanction**

53. Turning to sanction, as stated, both parties accepted the approach sanctioned in *FA v Birmingham*. In addressing this on behalf of Leeds Ms Potts considered the issues of seriousness, culpability and harm holistically as opposed to separately. We therefore record a summary of her submissions on behalf of Leeds, before proceeding to consider the separate elements of the sanctioning approach.
54. Generally, in respect of due diligence, also by reference to *FA v Birmingham*<sup>3</sup>, Ms Potts emphasised that we should not judge Leeds with the benefit of hindsight. Instead, she said, Leeds should be judged by what was known, or should have been known by the club at the relevant time.
55. Ms Potts, supporting the detailed written submissions from Onside Law LLP within the hearing bundle, stressed that we should have regard to:
- (a) The Club's general approach to safety and crowd control, including the fact it had an experienced leader in LS (whom we have praised above), and was also seeking to recruit a full time Deputy (the initial recruit to this role having left for personal reasons). Reference was also made to Leeds voluntarily engaging with the Premier League's observer pilot.
  - (b) The Club's matchday planning (which we have also praised above), which was detailed and match specific.
  - (c) The Match itself, which Leeds managed closely with the police. Reference was also made to the documentation prepared by LS and Leeds, including the Match Day Log (which includes the Risk Assessment), the Inside Matters briefing, the Referees report and matters such as the Newcastle Fan Zone and the fact that all stewards, approaching 700 in number once the 50 ticketing stewards were redeployed after their turnstile roles ended, were all called in an hour early so that a pitch protection exercise could be undertaken.

56. Ms Potts also referred us to paragraph 31 of LS's witness statement, where LS said:

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<sup>3</sup> *FA v Birmingham* (main decision – 27 August 2019) at para 23 (Graeme McPherson QC, Chair)

*“... I put specific plans in place to have stewards situated as close as possible to the potentially vulnerable areas (being the tunnel area and the technical areas). I also spoke with the Club’s close protection officers to remind them that the season was coming to an end and to keep an eye out for any spectators trying to access the pitch. On the 9 May 2023 meeting organised by West Yorkshire Police, I also met with the Supporter Liaison Officer from Newcastle and explained the importance of being alert to these potential incidents.”*

57. Ms Potts also referred the Premier League Observer’s report. The Commission, however, considers this is of little weight, given the observers comments that as regards the incident at the time of her writing her report little was known about what had happened, it still being the subject of an investigation. The Commission notes the observer proceeded to say, as an area for development, that any issues or learning from that investigation should be addressed. The Commission does acknowledge, however, that the observer praised the pitch incursion training.
58. On behalf of Leeds, Ms Potts turned to the incident itself and placed emphasis on the speed with which the incursion into the technical area had been dealt with and placed further emphasis on Chief Superintendent Close’s evidence that it was difficult to stop an individual person determined to access the pitch. Reference was also made to ticketing, ground regulations, posters and statements in programmes and LS’s response to the incident, for example by reference to the next home game with Tottenham Hotspur.
59. Ms Potts also noted that The FA had not identified what more could be done by Leeds to stop this single intruder and accused it of adopting hindsight in making criticisms referable to the match risk classification and matters such as CCTV coverage.
60. It was difficult to unpick which of these submissions went to seriousness, which to culpability and which to harm and, in any event, all the points were adopted as mitigation. Notwithstanding this, the Commission understood Leeds’ position, commensurate with its decision to admit the Charge, to principally be directed at the culpability of the club.
61. Turning back to the criteria derived from *FA v Birmingham*, the first is to consider the seriousness of the breach.

62. On this point, The FA suggested the breach was serious, principally because of an under-deployment of adequate resources given its contention the Match should have been designated as high-risk, due to the fact Leeds were seeking to avoid relegation and Newcastle were seeking to qualify for the Champions League. However, being careful not to apply the benefit of hindsight we did not think there was anything in this point. Chief Superintendent Close's evidence was clear, the essence of which was that there was nothing to suggest the Match should be considered high risk.

63. However, on the issue of the seriousness of the breach, the Commission is satisfied it was a significant breach. All Participants are entitled to go about their business on gameday on the assumption that they are safe and protected. In this instance, an individual spectator behaved in a significantly improper manner, gaining access not only to the pitch but also to the technical area, including a physical and verbal altercation with the opposing manager, in the present instance Mr Howe. On any view, that is a most serious occurrence.

64. Turning to culpability, The FA suggested that this was a category 3 ('gross negligence') or category 4 ('negligence simpliciter') case, adopting the sliding scale sanctioned in *FA v Reading*. In its written submissions on sanction The FA stated:

*"The FA submit that although the club took some steps to prevent an incursion, they were clearly inadequate. In particular, it is of real concern that:*

- a. The club are unable to say where [the spectator] entered the field of play from and, as such, are unable to identify the area of vulnerability. The ease with which [the spectator] was able to access the field of play suggests that there remains a significant risk of future incursions from the West Stand.*
- b. The club have provided no explanation as to how [the spectator] was able to leave his seat, cross the hoarding and enter the technical area without being stopped or observed by one of the stewards appointed to monitor and safeguard in the West Stand.*
- c. It appears from the footage that no-one noticed [the spectator] until he had physically taken hold of Mr Howe. This suggests that the "close protection" system employed by the club either does not work or requires additional training for those deployed in that role.*

*d. The CCTV system is clearly inadequate for a club playing in the Premier League with a ground capacity of 37,000. It appears from the club's response that there only two cameras covering the West Stand and, as there were pointed at each end of the stand, failed to cover the most vulnerable section namely the technical area where coaching staff and match officials were based. The gaps in the CCTV coverage meant that the control room were unable to spot [the Spectator] entering the field of play rendering an important safety net in the event of a stewarding failure entirely ineffective."*

65. We have already summarised the submissions made on behalf of Leeds above.
66. The Commission does not agree with The FA's submissions. We have praised the pre-match planning of Leeds and when considering culpability, the view of the Commission is that pre-match planning is of the utmost importance. We accept the evidence advanced on behalf of Leeds, including by Chief Superintendent Close, that it is not always possible to stop a determined individual from gaining access to an area where that spectator should not be, absent the installation of fencing or other physical barriers or stewards linking arms to form a human shield throughout the game. Of course, that is tempered in the present instance by the inability of Leeds to identify where the spectator was sat and how he gained access onto the pitch.
67. LS and Leeds planning was excellent, leading to a clear conclusion on the part of the Commission that the appropriate level of culpability on the sliding scale was that of a '5', namely that Leeds marginally failed to avail itself of the 'due diligence' defence. That the due diligence defence would not have succeeded and why Leeds was right, in the Commission's view, to admit the Charge was because:
- (1) There appears to have been a clear stewarding failure, for which the Club are responsible;
  - (2) In terms of pre-match planning, it cannot be overlooked that the Risk-Assessment was not completed for the relevant section 'Disorder from spectators towards players, playing staff and officials'.
  - (3) Also, in terms of pre-match planning, although the risk assessment identified as a further control, the placement of stewards as close to technical areas as possible, the Commission considers there was very little evidence this was actually done

and certainly not in sufficient numbers. Indeed, we note that in the 'Inside Matters' document for the following game with Tottenham Hotspur it was said "*Additional stewards to be located next to the away dugout/technical area. Closed protection staff also in area to protect staff and players.*" Whilst commendable evidence of LS and Leeds having responded to the incident in the Match, at the same time the Commission consider this shows that resource deployment was not sufficient or correct during the Match. This reflects the brutal reality that an individual was able to access the pitch and the technical area and physically and verbally remonstrate with Mr Howe before he was apprehended.

68. In all the circumstances, however, the Commission is quite satisfied that the Club has low culpability. Its planning was detailed and excellent and it is unfortunate for Leeds that one small area of weakness was exploited by a lone individual intent, for unknown, inexplicable and inexcusable reasons, from getting into the technical area.

69. In response to the FA's criticisms, whilst we share the concern that Leeds are unable to say where the spectator was sat, rather like the point made about the CCTV we do not accept that these are matters which would have led to the spectator not doing what he did. He was apprehended and subsequently arrested and charged and we were pleased to be told that he has, rightly, been the subject of stiff sanction in the courts.

70. We also do not accept the criticism of the close protection system. We were told by LS, and accept, that Newcastle wished to use their own personnel and he was one of those who ultimately apprehended the spectator and led him away. As to the point that the spectator was able to gain access to the pitch and there is no evidence how, it seems to the Commission this can only have been due to a stewarding failure, for which Leeds is responsible, allied, as we have said, to insufficient resource in the vicinity of the technical areas.

71. We now turn to harm. We agree with The FA that the fact no injury was caused is of little relevance. The important fact is that the spectator was able to access the technical area and become physical with Mr Howe. We also agree with The FA that the harm caused was significant. This was a game that was shown live on TV and the incident has been seen, no doubt, across the world.

72. That a spectator can get into the technical area and physically and verbally remonstrate with a manager is self-evidently harmful to the image of the game and has a real threat of invoking copycat incidents.

73. We now turn to mitigation. Ms Potts, as previously indicated, referred to her submissions relating to the detailed pre-match planning as mitigation, as well as being relevant to the issues of seriousness, culpability and harm.
74. The Commission does accept the degree of pre-match planning as mitigation. As we have concluded, in essence, the pre-match planning was excellent. However there remained a vulnerability around the technical area. That Leeds is to be sanctioned for that vulnerability is right and proper. But so too is to have regard to the overall excellence of the planning and measures adopted.
75. In addition, the following points were advanced as mitigation and are accepted by the Commission as such:
- (1) The fact the Charge was admitted at the first opportunity;
  - (2) The fact that Leeds have co-operated with The FA throughout the process;
  - (3) The fact that Leeds have expressed their remorse for what happened and apologised.
76. The fact that Leeds wish to upgrade its CCTV system, but could not afford to do so, was noted by the Commission, but it was not considered that this, of itself, was a point in mitigation.
77. On a finance related point, Leeds was in the Premier League at the time of the incident, but were subsequently relegated to the Championship. We had some rather generic evidence from Fay Greer, Leeds Financial Director. The Commission concluded that the appropriate course was to treat the matter as a Premier League event, but to have regard to Leeds' current financial situation, which is plainly affected by its relegation.
78. We were referred to a number of authorities and the level of fines in those cases was highlighted to us. However, such cases are so fact specific that we conclude they are of no assistance to us.
79. Leeds contended that the appropriate sanction was a warning as to its future conduct, whilst The FA sought 'a significant financial penalty commensurate with the club's position in the football pyramid'.

80. Having considered all the evidence, including all the documentation provided and the oral evidence and submissions were heard, the Commission concluded that this was a significantly serious breach with significant harm, but with low culpability and significant mitigation on the part of Leeds.
81. The Commission felt that a warning as to future conduct would not reflect the seriousness of the breach and the significance of the harm, but that any financial penalty imposed should be at the lower end of the scale to reflect the low degree of culpability and significant mitigation.
82. Accordingly, in the circumstances and as communicated to the parties after the Commission had deliberated, the sanction imposed is:
- (1) A Warning as to future conduct; and
  - (2) A fine in the sum of £40,000.
83. Pursuant to Regulation 44 of The FA Disciplinary Regulations, having determined the appropriate level of the fine, the Commission proceeded to consider whether it was appropriate to suspend any element of the fine. To do so there must be a clear and compelling reason. The Commission concludes there is a clear and compelling reason in this instance. That is, on the particular facts of this matter, there remains clear and obvious doubts as to how the spectator was able to access the technical area. However, as happened in the subsequent Tottenham Hotspur game, we are confident Leeds will address this as they will continue to carefully consider all supporter behaviour issues.
84. Accordingly, the sum of £20,000 of the £40,000 fine shall be suspended so long as Leeds does not commit any breach of Rule E21 (or its equivalent) until the conclusion of the 2024/25 season. If our confidence is misplaced, the full fine will become payable.
85. Save that the £100 personal hearing fee is payable, there will be no further order in respect of the costs of the Regulatory Commission.



86. There is a right of appeal from this decision as provided for by the Disciplinary Regulations.

Christopher Stoner KC, Chair

Date: 15/10/2023

On behalf of the Regulatory Commission