

FOOTBALL ASSOCIATION REGULATORY COMMISSION

THE FOOTBALL ASSOCIATION

- v -

LUTON TOWN FC

DECISION AND WRITTEN REASONS OF THE REGULATORY COMMISSION

Introduction

1. This is the Decision and Written Reasons of the Regulatory Commission which considered two charges brought by the FA against Luton Town FC (**the Club**) at a Hearing conducted by Teams on 27 October 2023.
2. The Commission was comprised of:
 - a. Louis Weston, Chair
 - b. Alison Royston, Independent Panel Member
 - c. Andrew Adie, Independent Panel Member
3. Mr Paddy McCormack of FA Judicial Services acted as secretary to the Commission, and the Commission records its thanks to him.
4. The parties were represented:
 - a. The FA by Ms Madeleine Deasy.
 - b. The Club by Mr Chris Clark, the Club's Club Secretary and Mr Mark Dennis, a Sport & Media Executive with Mills & Reeves who was on secondment at the Club at the time of the Charges.

The Charges and the Facts

5. On 16 May 2023 the Club played Sunderland AFC at its home ground, Kenilworth Road, in the second leg of the Championship Play Off Semi-Finals (**the Match**).

6. By Charge Letter of 13 July 2023, the FA charged the Club with two breaches of Rule E21 arising from the Match:
 - a. Charge 1 that in breach of Rule E21.1 the Club *failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conducted themselves in an orderly fashion whilst attending the Match and did not behave in a way which is improper, threatening, violent and/or provocative.*
 - b. Charge 2 that in breach of Rule E21.3 the Club *failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) did not encroach on to the pitch or commit any form of pitch incursion.*
7. By a Reply Notice dated 21 July 2023 the Club admitted the Charges and requested a Personal Hearing.
8. The facts that we find established by admission or on the balance of probabilities are as follows.
9. The Match had an attendance of 9,801 spectators of whom 1,036 were away supporters. The Match was obviously likely to be hotly contested and a very tense affair given the result of the first leg and the consequences of victory.
10. During the Match in the 14th minute a Sunderland player ran to the touchline to collect the ball for a throw in, when the ball had run into the crowd. As the player sought to retrieve the ball a Club supporter lent over the advertising hoardings and pushed the player in his back, the player took two steps forward.
11. At the end of the Match there was a pitch incursion. The Commission was provided with a description of the pitch incursion which was agreed between the FA and the Club as follows:
 - a. *Prior to the final whistle, multiple home supporters made their way to the front of the stand and remained in the stairwell around the tunnel before entering the pitch. This continued throughout the pitch incursion.*

- b. Prior the final whistle, it appears stewards had to be directed not to watch the game but to focus on the supporters.*
- c. Home supporters approach[ed] and ma[de] contact with LTFC players.*
- d. Home supporters approach[ed] and ma[de] contact with the LTFC manager, Rob Edwards. It is clear that Mr Edwards quickly became uncomfortable with the proximity and number of home supporters surrounding him and [he] was eventually escorted off the pitch.*
- e. The general area around the entrance to the tunnel was blocked by home supporters on the pitch. The entrance itself was being manned by police and stewards however there [was] no clear route for players or staff to access the tunnel.*
- f. Home supporters approached the stand for away supporters and remained there for several minutes, appearing to goad SAFC supporters, before being moved on in the pitch sweep.*
- g. Multiple pyrotechnics [were] lit and thrown within the crowd on the pitch.*
- h. [There were] Children on the pitch.*
- i. Supporters continue[d] to enter the pitch throughout.*

12. The Commission was also provided with videos of the incursion from CCTV and broadcast cameras.

13. The Commission viewed all the video footage provided during its deliberations and concluded and found, it being certain not just likely, that:

- a. The number of supporters on the pitch was high. There were several hundred supporters on the pitch. That obviously represents a high percentage of the attendees.
- b. The supporters who did enter on the pitch did so from three of the four stands at Kenilworth Road.
- c. The duration of the incursion was prolonged and of about 20 minutes.
- d. During the incursion it was very early on that the tunnel was blocked to safe exit and it took about 15 minutes to clear the tunnel. Players, staff, and officials had to leave the pitch through a seething throng of the Club's supporters.

- e. Some of the Club's players and coaching staff did not leave the pitch quickly and paused to speak, hug and to have selfies taken with the Club's supporters who had entered the pitch.
- f. There was no attempt by Sunderland supporters to enter onto the pitch or to confront the Club supporters who were goading them and goading them in some cases from very close quarters.

14. In response to the Charges the Club provided a bundle of papers which documented and addressed the Club's preparations for the Match and its reaction to and action taken as a result of the events that led to the Charges. The Commission read with care that material. The Club by Mr Clark elaborated on the steps taken during the Hearing.

15. In summary of that material and Mr Clark's evidence the Commission finds:

- a. The Club rightly anticipated that the Match would be a substantially well attended fixture and would be hotly contested.
- b. To that end the Club engaged in a number of planning meetings with the Police, other relevant authorities and internally to prepare for the Match.
- c. The Club did not have a history or reputation for pitch incursions, or contact between supporters and players despite the close proximity of the crowd to the pitch.
- d. The Club, in its Match Specific Risk Assessment, assessed:
 - i. the *Rivalry between support groups* as *low*.
 - ii. The risk of *Pitch invasion* as *Medium* which it sought to address by *Additional resource pitch side; robust briefing of stewards*.
- e. The Club secured the attendance of 159 police officers to the Match of whom about 70 were inside the stadium. The assessment of that number of officers was based on what the Club would put on for its most high risk matches such as a local derby.
- f. The Club engaged stewards who were equipped with a rope, the plan being that any number of people planning to enter on the pitch could be held back by stewards holding a rope.

- g. The Club engaged 21 SIA approved security personnel who were tasked with escorting the away team players, coaches, and match officials from the pitch on a 1:1 basis.
- h. The supporter who was responsible for the incident in relation to Charge 1 had been banned from the club. That same supporter had apologised and had not been the subject of criminal charge.

16. In answer to questions from the Commission Mr Clark candidly accepted and the Commission finds that:

- a. The risk assessment of rivalry was too low given the context of the Match and its importance to promotion.
- b. The risk assessment of a pitch invasion was too low given the same factors.
- c. The Club had not taken full account of then recent events of the pitch incursion at a Premier League fixture that led to an assault of the Newcastle FC manager.

17. It was common ground that there was no evidence of any injury to any person as a result of the events leading to Charge 1 or to Charge 2.

The parties' submissions

18. We are very grateful for the care and detail of the parties' submissions. We found them to be extremely helpful.

19. For the FA it was contended that the Commission should consider the case within the framework that was identified and followed in the cases of *FA v Bristol Rovers FC* (28 July 2022) and *FA v Birmingham City* (16 September 2019). That is that in considering sanction the Commission should:

- a. Consider the seriousness of the breaches.
- b. Consider the culpability of the Club.
- c. Consider the harm caused by the breaches.
- d. Consider the mitigation.

20. The Club did not dispute that that is the appropriate framework, and we adopt it save that we consider mitigation in our section 'Discussion'.

21. The competing submissions were these:

- a. On seriousness the parties agreed both were serious Charges and involved serious breach of the Rules.
- b. On culpability the FA put the case as closer to gross negligence on the sliding scale of intentional, reckless, gross negligence, simple negligence, and marginal failure of due diligence. The Club puts its case on the basis that it was simple negligence.
- c. On harm the FA highlighted the serious risk of harm; the Club highlighted and contended that the harm was in fact low as there were no substantial consequences of each of the events that led to the Charges.

Discussion

22. In relation both Charges the Commission recognises and finds as follows.

23. The general background is that Kenilworth Road is a small stadium by current standards and was constructed and laid out very many years ago. That has the consequences:

- a. That the distance between the touch line and the advertising hoardings is short perhaps no more than 2 metres and that the front row of supporters are only a short distance beyond the advertising hoarding, separating from that hoarding by a walkway and a low wall. The physical conditions at the stadium dictate that there is little or no time to prevent a supporter making contact with a player, and in this case, it was achieved by little more than the supporter raising himself out of his seat and reaching forward. The stadium bears no comparison to those stadia where there is a track or substantial space separating supporters from the pitch.
- b. The stadium is difficult to steward. The tunnel is near to a corner of the pitch and on the opposite side of the pitch to the dug outs, the tunnel itself is no more than a passageway which is formed by a retractable awning. Further, each of the stands are not separated by any substantial distance or barrier from the pitch.

24. We assess the liability and sanction for the Club on the basis of the circumstances of the Club at the time of the Match and the date of the offending. The Club was in the Championship and its resources were those of a Championship club. The fact that the Club is now promoted does not affect our judgment on seriousness, harm and culpability and does not affect our judgment on sanction.
25. Addressing the framework the Commission finds, as the parties' agree, both of these were serious matters and we explain why in the discussion below.
26. Prior to the Match the Club did make genuine and what it perceived to be adequate appraisals of the risks likely to obtain. It engaged with supporters (albeit in a limited manner from the evidence provided), and it engaged with the Police. In addition to its standard messaging around the ground, it put out messages by public address system before the Match to deter pitch invasion, and also requesting that supporters clear the pitch during the incursion at the final whistle. Whilst we saw no evidence of any of this in the Club's written submissions, in response to questioning from the Panel Mr Clark provided such details and these were accepted.
27. We find that those efforts to assess risk, genuine though they were, were grossly inadequate. In particular:
- a. As we set out above the Club underestimated the rivalry and the likelihood of pitch incursion. It was obvious that this was going to be a passionate match and, whatever the result, there was a high risk of passions spilling over as they did.
 - b. The facts, as we were told, that there were limited stewards pitch side during the Match and that the control room was not able to view broadcast footage led both to the incident that led to Charge 1 not being seen by any steward and not being reacted to by any steward. The offending supporter was not identified, the offending supporter was not removed from the ground at half time or at all, and was only identified the next day.
 - c. The numbers of stewards present for the Match was inadequate. It was inadequate in these ways:

- i. First, the shortage of stewards prevented there being any or any real deterrent to misfeasance by supporters. It was and should have been obvious that where there is no physical separation or distance between supporters and players a substantial presence of stewards is needed to react immediately to and to deter misfeasance. That is of particular concern in relation to Charge 1 and the lack of any response to that incident, but also in relation to the preparatory steps supporters took to enter onto the pitch. There were no proactive responses to the supporters moving forward and climbing onto a small wall to prepare their entry in the final minutes of the Match.
- ii. Second, the shortage of stewards meant that at the final whistle the stewards were overwhelmed. There were insufficient stewards to effectively form any barrier to the supporters who wished to enter onto the pitch. We find that in the only stand from which supporters (home and away) did not enter onto the pitch, there were an adequate number of stewards to stand shoulder to shoulder to prevent incursion. In all the other stands there were very substantial gaps between the stewards and the use of a limply held rope was not even a token barrier to incursion onto the pitch, it presented really no more than a tripping hazard and was no barrier to even a moderately motivated supporter.
- iii. Third, once the pitch incursion had started there were insufficient stewards to both take back control of the pitch and most importantly to provide a safe route of exit from the pitch for players, coaches, and officials. The tunnel remained blocked because there were not sufficient stewards to provide a safe passage to it; supporters roamed the pitch for a sustained and prolonged period because there were not the numbers to clear the pitch.
- iv. Fourth, there was a substantial delay in providing numbers of stewards to separate the Club's supporters and the Sunderland supporters in the away stand. We record that the stewarding/police presence was apparently adequate to prevent away supporters entering onto the pitch as they were able to stand shoulder to shoulder, however, there were not sufficient

stewards to hold back the Club's supporters going to and taunting/goaded the away fans. It is to the credit of the Sunderland supporters that none of them were seen to make any effort to enter onto the pitch.

- v. Fifth, once the pitch was occupied by supporters, there were no sufficient stewards to prevent further incursions. The consequence was that further supporters streamed onto the pitch throughout the incursion.
- d. The focus of the Club's preventative measures was upon the away supporters, as is clear from planning and the videos, the stewarding operation was designed to hold them back had they chosen to enter onto the pitch. That focus missed and ought not to have missed the high risk of the Club's supporters entering onto the pitch.
- e. The Club's players and staff, we were told, had not been given any instruction as to what to do in the event of the pitch being invaded. In the result instead of leaving the pitch area quickly some players and staff dwelt with the supporters. That failure of training encouraged some supporters to make contact with the players and staff and take photos and added to the numbers and risks of the incursion.

28. In considering the harm we note and record that there were no injuries recorded as a result of either incident. That however as a fact does not reflect what in our view was the very serious and high risks of harm that were caused by the incursion onto the pitch.

29. In our view the length of time of the incursion, the very large numbers of supporters on the pitch and the failure of their being any safe exit route for the players, staff and officials presented a very high risk to those players, staff, and officials. It is not acceptable at all to have hundreds of supporters roaming across a pitch which represents the workplace for those players, staff, and officials. Watching the videos, the Commission was of the view that it was mere luck that there was not serious consequence to the failures of the Club.

30. The risk of harm was heightened by two matters. First, the Club's efforts to prevent pyrotechnics entering the ground had failed. Pyrotechnics were released and thrown

about amongst the supporters that created a fire and a high personal injury risk. The FA did not, and could have, brought charges under Rule E21.2 and so we do not impose a separate sanction, but the pyrotechnics feed into the assessment of harm in this case. Second, children were on the pitch alongside adults and the stewards and the police. It is a chilling sight to see children at risk on a football pitch, either of being carried up in events or being knocked over by supporters.

31. In relation to Charge 1 the Commission concluded that the incident was relatively minor, but that again there is a standing risk of some harm to players given the proximity of supporters and players.

32. The Commission therefore concluded that these were serious incidents, there was a high culpability that was short of reckless and there was a high risk of serious harm.

33. We turn then to consider mitigation.

34. In respect of mitigation the Commission was presented with these matters.

- a. First, the charges were admitted. We accept that and give credit for it.
- b. Second, that the Club cooperated fully with the FA. We accept that and give credit for it.
- c. Third, we find from the evidence of Mr Clark that the Club has reflected on the failings that these incidents establish and that the Club has a real insight into and appreciation of the failings. We commend Mr Clark's and the Club's frank and genuine expressions of remorse and apology expressed as they were to the Sunderland player, Sunderland supporters and the FA. We were particularly impressed by the frank modesty of Mr Clark that for the Club this was their misjudgement and lack of experience. We accept that evidence of remorse, apology and reflection and we give credit for it.
- d. Fourth, we find that the Club did make genuine efforts to plan for the Match. Whilst, as is clear from the assessment above, those efforts were grossly inadequate, there was an effort to plan which is a distinction of significance to

those cases where the club charged by the FA has not made any assessment of risk. We accept that and give credit for it.

- e. Fifth, we find that the Club will learn and act upon its own failings in this case. We commend the positive reaction that the Club has made to the Charges, and we accept and give credit for the expectation we have that the Club will take action to prevent repetition of either incident.

Outcome

35. The Commission approached sanction for both Charges on the basis that it should impose a proportionate sanction, that is one which is the least severe against the gravity of the offending that could properly be imposed taking account of the Club's mitigation.

36. The Commission also had regard to whether the sanction imposed for both Charges would be disproportionate. Whilst these were separate incidents and deserve distinct punishment the Commission had regard to totality.

37. Finally, the Commission had regard to the principles considered in other cases of breach of Rule E21, but does not consider there is any clear or compelling precedent - the facts of these Charges being as individual as the Match itself.

38. Taking all matters into account the Commission concluded that the appropriate sanction to mark the culpability, seriousness, and harm:

- a. On Charge 1 was a sanction of a fine of £5,000 and
- b. On Charge 2 a sanction of a fine of £50,000, and
- c. On both Charge 1 and on Charge 2 a warning as to future conduct.

39. The Commission considered that there was however a substantial amount of mitigation put forward and therefore reduced the sanction on each Charge to take account of the mitigation to:

- a. A sanction of a fine on Charge 1 of £3,000 and
- b. A fine on Charge 2 of £32,000.
- c. The total fine therefore is a fine of £35,000.

40. The Commission records that it has not applied a purely mathematical approach to mitigation to reach that final figure, but has made a judgment on the evidence before it as to the appropriate discount.

41. The Commission considered whether to suspend any part of any sanction under Regulation A44 but found that there were no compelling reasons to do so.

42. The Commission finds that the costs of the Commission should be paid by the Club.

Decision

43. The Decision of the Commission is that:

- a. On Charge 1 – Luton Town FC should be fined £3,000.
- b. On Charge 2 – Luton Town FC should be fined £32,000.
- c. The total fine therefore is a fine of £35,000.
- d. Luton Town FC must pay the costs of the Commission.

44. We warn the Club that it is expected to take effective measures to deter and to prevent any future contact between players and supporters in the circumstances of the close proximity of supporters to players at Kenilworth Road and any future incursions onto the pitch at Kenilworth Road.

45. Either party has a right of appeal as provided by the Disciplinary Regulations.

Louis Weston
Chair

Alison Royston
Independent Football Panel Member

Andrew Adie
Independent Football Panel Member

30 October 2023