

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

Case Ref CC/23/16820233623

**THE FA**

**-v-**

**LUTON TOWN FC**

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**DECISION AND REASONS**

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**Warning to the reader of this document. This document contains reference to offensive and/or discriminatory language or behaviour.**

**Regulatory Commission constitution.**

Abdul S. Iqbal KC (Chair – Independent Legal Panel Member)

Peter Fletcher (Independent Football Panel Member)

Andrew Adie (Independent Football Panel Member)

Paddy McCormack (Secretary)

Date of hearing: 3<sup>rd</sup> November 2023

1. This document sets out the written reasons for the decision in this independent Regulatory Commission (“the Commission”).
2. This document does not set out the entirety of the evidence considered by the Commission. It sets out the relevant evidence on the central relevant issues as considered by the Commission and assessed by the Commission in reaching findings of fact.

3. The Commission met by Microsoft Teams meeting on 3<sup>rd</sup> November 2023 to consider the issues the case raises.
4. The Commission appointed to determine the charge has the requisite experience in crowd management matters and previous crowd management disciplinary hearings.

### **(1) The charge.**

5. By charge letter dated 20<sup>th</sup> September 2023<sup>1</sup> The Football Association (“The FA”) alleged that Luton Town FC (“LTFC”) during the Premier League match against Brighton & Hove Albion FC (“BHAFC”) on 12<sup>th</sup> August 2023 (“the match”) failed to ensure that spectators and/or supporters (and anyone purporting to be its supporters or followers) conducted themselves in an orderly fashion whilst attending the match.
6. Accordingly, The FA charged LTFC with:
  - i. Failing on 12/8/23 to ensure in or around the 80<sup>th</sup> minute of the match that its spectators and/or 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, abusive, indecent, or insulting with either express or implied reference to sexual orientation contrary to rule E21.1 and E21.4 of the Rules of the Football Association.
7. LTFC admitted the charge by reply dated 11<sup>th</sup> October 2023<sup>2</sup> and requested a paper hearing.

### **(2) The facts.**

8. The relevant facts<sup>3</sup> as to this charge are:
  - i. The relevant match was a fixture between BHAFC and LTFC played at the American Express Stadium (BHAFC’s home stadium) on 12<sup>th</sup> August 2023;
  - ii. On 15<sup>th</sup> August 2023, the “*Kick It Out*” campaign informed The FA of a report received by them about many Luton supporters chanting “*Chelsea rent boy*” just before LTFC

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<sup>1</sup> Page 1 of the case bundle.

<sup>2</sup> Page 21 of the case bundle.

<sup>3</sup> This summary is extracted from the various factual witness statements or other documentary material within the case bundle.

took a penalty kick;

- iii. Accordingly, The FA wrote to LTFC on 21<sup>st</sup> August 2023 seeking their observations on the allegation of discriminatory chanting by their supporters;
- iv. In relation to the allegation, LTFC stated “*we do not dispute the report and note that the strict liability nature of this offence means that the Club will receive a charge in relation to this matter*”<sup>4</sup>;
- v. It appears that such chanting was aimed at a BHAFC player who has been the subject of such offensive discriminatory chanting in the past.

9. In addition to the above written evidence, the Commission viewed video footage (with audio) that depicted the relevant events<sup>5</sup>.

10. In that video footage, the offensive chanting “*Chelsea rent boy*” is clearly audible and involves a very substantial number of LTFC supporters chanting the phrase complained of.

11. The volume of the chanting leads to the inevitable conclusion that:

- i. a large number of LTFC supporters engaged in the discriminatory chanting;
- ii. the chanting was not a brief event but was sustained albeit during one incident of such chanting.

### **(3) The sanction framework.**

12. FA Rule E21<sup>6</sup> provides as follows:

#### ***“Supporter behaviour***

**E21** *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:*

**E21.1** *use words or otherwise behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative;*

**E21.2** *throw missiles or other potentially harmful or dangerous objects at or on to the*

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<sup>4</sup> See letter from James Mooney (Operations Manager, LTFC) at page 12 of the case bundle.

<sup>5</sup> See 54 second video clip with audio.

<sup>6</sup> Page 148 of the FA Handbook 2023/24.

*pitch;*

**E21.3** *encroach on to the pitch or commit any form of pitch incursion;*

**E21.4** *conduct themselves in a manner prohibited by paragraph E21.1 in circumstances where that conduct is discriminatory in that it includes a reference, whether express or implied, to one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.*

**E21.5** *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.*

**E21.6** *For the avoidance of doubt Rule E21 shall apply to the conduct of both a Club's home and/or away supporters."*

13. LTFC has admitted the breach of FA rule E21.4 by sexual orientation discriminatory chanting by its supporters.

14. The "*all due diligence*" defence within FA rule E21.5<sup>7</sup> is not available to LTFC because of the admitted breach of FA rule E21.4.

15. However, factors relevant to due diligence are relevant to determining sanction because they are relevant to the mitigation available to a charged participant.

(i) The FA "Policy and Guidance on the Regulation of Discriminatory Conduct by Spectators".

(a) Relevant sanctioning factors.

16. Pursuant to The FA's "*Policy and Guidance on the Regulation of Discriminatory*

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<sup>7</sup> Page 146 of the FA Handbook 2022/23.

*Conduct by Spectators*<sup>8</sup> dated 6<sup>th</sup> August 2020 (the “*Policy and Guidance*”)<sup>9</sup> under the heading “*Factors to be considered when determining sanction*”<sup>10</sup> it is stated:

“A Regulatory Commission will have due regard to the circumstances and seriousness of the incident when determining the appropriate sanction (to include the level of any financial penalty that may be imposed). In so doing, the Regulatory Commission will consider a range of factors, to include<sup>11</sup> the following:

1. The number of supporters involved;
2. The nature of the behaviour of those involved;
3. The duration of the incident(s);
4. Whether the Club (and/or its officers):
  - a. took all reasonable steps in its preparation and planning for the fixture in which the Relevant Breach occurred;
  - b. took all reasonable steps in dealing effectively with the incident, when it arose;
  - c. took all reasonable steps in identifying the supporter(s) involved;
  - d. took sufficient action against those supporters responsible where those individuals were identified;
5. Whether the Club cooperated in full with The FA;
6. The previous disciplinary record of the Club or its Participants in relation to Aggravated Breaches or Relevant Breaches;
7. In cases where an Action Plan has previously been imposed on a Club, whether the Club has complied in full with that Action Plan.”

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<sup>8</sup> At the time of the publication of this guidance, such discriminatory breaches were regulated by FA Rule E20.1.

<sup>9</sup> See pages 14 to 19 of the case bundle. The Policy and Guidance document can be found in electronic format here: <https://www.thefa.com/news/2020/aug/06/new-charging-policies-and-sanctioning-guidelines-for-discrimination-published-070720>

<sup>10</sup> Page 19 of the case bundle.

<sup>11</sup> The Policy and Guidance makes it plain that these factors are not exhaustive. See page 15 of the case bundle under the title “DETERMINATION OF THE CHARGE AND SANCTIONS”.

(b) Action Plan.

17. The Policy and Guidance states in relation to a *first offence* as follows<sup>12</sup>:

“Where a finding of a Relevant Breach is made against a Club, a Regulatory Commission shall impose on the Club an action plan in terms that it sees fit with the aim of precluding a repeat of the conduct, which formed the basis of the relevant breach (“Action Plan”).

Such an Action Plan shall, as a minimum, set out:

- the operational advice and/or practical measures to be carried out by the Club;
- the period during which the Action Plan shall remain in force;
- the external support to the Club that may be required; and
- The process through which the Club’s compliance with the Action Plan shall be audited by The FA and the frequency, with which the audit shall take place.”

(c) Financial penalty.

18. The Policy and Guidance states in relation to a *first offence* as follows:

“A Regulatory Commission may also consider imposing a financial penalty in accordance with Table 1 below where it considers it appropriate, having regard to the particular circumstances of the case and the factors set out below,

A Regulatory Commission may order that part of any financial penalty imposed is suspended in accordance with paragraphs 42 and 43 of Part A to the Disciplinary Regulations.”

19. By Table 1<sup>13</sup>, the applicable fine range for such a breach of FA rule E21.4 for a Premier League Club is £20,000 to £300,000.

**(4) The submissions on sanction.**

20. The Commission read and considered all of the following written documents when

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<sup>12</sup> Page 17 of the case bundle.

<sup>13</sup> Page 18 of the case bundle.

considering the appropriate sanction in this case.

21. The contents of each of those documents and appendices are not repeated in this document save for where reference is necessary to explain whether a submission or factor was regarded as relevant or irrelevant to sanction.

(i) LTFC.

22. The Commission read and considered:

- i. Letter from James Mooney (Operations Manager, LTFC) dated 13<sup>th</sup> September 2023 (pages 12 to 13 of the case bundle);
- ii. Written submissions on behalf of LTFC (pages 22 to 24 of the case bundle).

23. In summary, the submissions and contentions made by LTFC to the Commission are:

- i. LTFC admits the breach of FA Rule E21.4;
- ii. LTFC condemns the discriminatory abuse the subject of the charge;
- iii. LTFC apologise on behalf of their supporters to BHAFC, to the BHAFC player who was the subject of the discriminatory chanting, and to The FA for the incident;
- iv. In terms of LTFC's preparations for this fixture, LTFC were aware that previous attempts by some clubs to raise this issue ahead of fixtures against BHAFC actually had the opposite effect and prompted supporters to engage in such discriminatory chanting;
- v. LTFC's media department contacted their counterparts at BHAFC to discuss their preference. They advised that it would help to publish something around supporter behaviour, without detailing specific types of chants;
- vi. LTFC therefore decided to publish the "*Love Football, Protect the Game*"<sup>14</sup> information the day before the fixture;
- vii. In addition, LTFC included a reference to the said information and supporter behaviour

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<sup>14</sup> The link to this page can be found here: <https://www.lutontown.co.uk/news/2023/august/love-football-protect-the-game/>

in the LTFC match preview<sup>15</sup> that was shared on LTFC's social media platforms;

- viii. Post-incident, LTFC requested further information from the Head of Safety and Security at BHAFC and the Dedicated Football Officer ("DFO") of Sussex Police;
- ix. On 10<sup>th</sup> October 2023, Sussex Police shared details of three LTFC supporters who were alleged to be involved in the incident with the DFO of Bedfordshire Police;
- x. Under LTFC's information sharing agreement, Bedfordshire Police passed details of these supporters to LTFC;
- xi. LTFC were informed by Bedfordshire Police that, although criminal charges are not to be pursued against one LTFC supporter, that supporter admitted involvement in the incident. LTFC will issue that supporter with a club ban;
- xii. LTFC were informed that no further action will be taken against one of the other LTFC supporters and LTFC had no basis as of 11<sup>th</sup> October 2023 to conclude that the supporter had admitted involvement in this misconduct;
- xiii. In relation to the third LTFC supporter under investigation, as of 11<sup>th</sup> October 2023 the supporter was still subject to an ongoing investigation and LTFC had issued the supporter with an interim suspension pending the outcome of the police investigation;
- xiv. LTFC confirms that should the supporter be found guilty of any criminal offence or admit any involvement in the incident then LTFC will issue a club ban to the supporter;
- xv. The evidence from the video footage and indeed from BHAFC<sup>16</sup> suggests that the chanting forming the basis of the admitted misconduct occurred on one occasion and was not repeated after that incident or generally during the match;
- xvi. This is LTFC's first offence of a discriminatory nature and LTFC is keen to learn from these events;
- xvii. The Commission is enabled to impose a dedicated action plan at LTFC's own cost. The Club would welcome such a sanction;
- xviii. LTFC wants to strive and continue to improve in this area and wants to work

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<sup>15</sup> The link to this page can be found here: <https://www.lutontown.co.uk/news/2023/august/match-preview--and-so-it-begins/>

<sup>16</sup> See email from BHAFC to The FA at page 10 of the case bundle that states "*No further chanting reported*".



collaboratively with all LTFC stakeholders in attempting to minimise the chance of any repeat of an incident such as this;

- xix. LTFC aims to alter the tone of pre-match messaging to increase the deterrent effect of such messaging and make it more impactful. LTFC intends to focus more on the action that can be taken against an individual supporter including criminal prosecution and/or a club ban or football banning order to decrease risk of misconduct;
- xx. In relation to a financial penalty, LTFC contends that it would serve no real purposes when taking into consideration:
  - a. the steps taken pre-match to work with BHAFC on pre-match messaging strategy;
  - b. the action taken post-match in seeking out the details of the supporters involved;
  - c. the imposition of club bans on those where appropriate;
  - d. the reflective approach taken by LTFC and its desire to improve in this area.
- xxi. If a financial penalty is to be imposed, then LTFC requests that the mitigation provided is taken into consideration as well as the financial standing of LTFC when compared to other Premier League clubs;
- xxii. LTFC submits that a financial penalty towards the bottom of the scale provided within table 1 of *"The FA's Policy and Guidance on The Regulation of Discriminatory Conduct by Spectators"* and towards the middle of the range indicated for an EFL Championship club will be severely felt by a club the size of LTFC.

(i) The FA.

- 24. The Commission read and considered:
  - i. The FA's *"Submissions on Sanction"* (Pages 26 to 30 of the case bundle);
  - ii. The written reasons in *The Football Association -v- Wolverhampton Wanderers FC* dated 26<sup>th</sup> June 2023 (Pages 31 to 49 of the case bundle).
- 25. In summary, the submissions made by and contentions of The FA to the Commission

are:

- i. As this is LTFC's first offence of this nature, the primary focus for the Commission should be the imposition of a dedicated action plan;
- ii. The Regulatory Commission is also invited to impose a financial penalty in line with the published range at Table 1 (page 18 of the case bundle);
- iii. Aggravating factors include:
  - a. The chanting is clearly audible from the video footage and could reportedly be heard from the other end of the ground;
- iv. Mitigating factors include:
  - a. LTFC correctly identified the potential risk at the fixture;
  - b. Prior to the fixture, both BHAFC's and LTFC's media departments had been in contact in relation to the prospect of offensive chanting;
  - c. Upon consultation, it was decided that the best approach was for LTFC to publish the '*Love Football, Protect the Game*' information the day before the fixture;
  - d. LTFC included a reference to this and supporter behaviour in their match preview, which was also shared on their social media platforms;
  - e. The steps taken after the fixture as outlined in LTFC's letter dated 11<sup>th</sup> October 2023. Three supporters have been identified and are subject to club bans or the possibility thereof depending upon the outcome of further police investigations;
  - f. The chanting took place only on or around the 80<sup>th</sup> minute and not repeatedly throughout the match.
- v. Accordingly, the Commission should only proceed to sanction LTFC in relation to the discriminatory chanting forming the subject matter of the charge on or around the 80<sup>th</sup> minute.
- vi. An action plan ought to be imposed in order to assist LTFC and ensure incidents of this nature are not repeated and The FA suggested to the Commission the terms of a proposed Action Plan.

**(5) The Commission's factual findings and legal conclusions as to sanction.**

26. Where it is necessary for the Commission to come to any conclusion(s) as to the relevant facts, the burden of proof is borne by The FA to prove the fact(s) upon the balance of probability.

27. The test to be applied is that the Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.

28. Firstly, the Commission considered the relevant sanctioning factors within the Policy and Guidance.

**1. The number of supporters involved.**

29. The evidence suggests there was a large number of LTFC supporters involved in the discriminatory chanting.

30. This conclusion is supported by the fact that the video footage (with audio) of the match depicts the chanting clearly and loudly by a large number of LTFC supporters.

**2. The nature of the behaviour of those involved.**

31. [REDACTED]

32. The use of the phrase outlined is obviously and plainly discriminatory and highly derogatory. The chanting is highly abusive and offensive to those right-thinking people who heard it or came to know of its use in these circumstances.

**3. The duration of the incident(s).**

33. The discriminatory chanting depicted on the video footage was being repeated albeit at only one part of the match in about the 80<sup>th</sup> minute.

34. Accordingly, the Commission was satisfied that the discriminatory chanting was of significant duration but occurred during one identifiable period of the match only.

4a. Whether the Club (and/or its officers) took all reasonable steps in its preparation and planning for the fixture in which the relevant breach occurred.

35. The material set out in the letter from James Mooney on behalf of LTFC shows that LTFC appreciated before this fixture that there was a risk of discriminatory chanting from its supporters directed at a BHAFC player who had been the focus of such discriminatory chanting before.

36. The Commission accordingly concluded that *some* proactive steps had been taken by LTFC generically prior to this match in relation to issues of the risk of discriminatory conduct by its supporters.

37. However, in respect of this match against BHAFC in particular and the security risks attached to it there was a lack of supportive documentation before the Commission to properly evidence proper due diligence carried out by LTFC prior to this match:

- i. LTFC were aware of the risk of such discriminatory conduct by its supporters at this match. It is this awareness that meant LTFC contacted BHAFC's media department prior to the match seeking assistance as to the best approach to minimise that risk. There was an obvious risk of such offending behaviour from LTFC supporters;
- ii. Although LTFC say it was mindful of the risk of homophobic chanting at this match, the Commission was not supplied with any documentation as to any or any proper formal specific pre-match risk assessment in relation to discriminatory chanting by its supporters;
- iii. There was no evidence before the Commission of any pre-match meetings where such risk issues were discussed. There were no minutes of any such meetings. There was no evidence of any pre-match co-operation between LTFC and others (including BHAFC beyond the media department contact) relating to the identified risks and how they could be properly managed;
- iv. There was no evidence before the Commission of any pre-match discussions between LTFC and the Police Dedicated Football officers at LTFC or BHAFC relating to the identified risks and how they could be properly managed;
- v. There was no evidence of any or any proper risk assessment by any LTFC Safety Officer relating to the identified risks and how they could be properly managed. Plainly any such risk assessment must necessarily be match-specific. Any such assessment would identify the risks of such homophobic abuse and how the risk could be properly

managed and addressed;

- vi. There was no evidence of any or any proper pre-match messaging either via LTFC social media accounts, match programme messaging or other pre-match announcements relating to the fact that such discriminatory conduct would not be tolerated by LTFC and any person found to have engaged in such conduct would face stern sanction including a permanent ban from attending matches;
- vii. The media content that was issued by LTFC prior to this match was in reality simply the issuance of previously issued generic material relating to the values expected of fans attending matches;
- viii. What was required and what was expected of LTFC was a proper and comprehensive specific pre-match risk assessment that addressed the risks that the match raised and the advantages or disadvantages of all available approaches to address that risk;
- ix. LTFC has stated in correspondence dated 13<sup>th</sup> September 2023 to The FA that:

*“..the Club has been operating recently without a full-time safety officer and one was not in place full-time for this fixture. Also, our club secretary had to take a sudden leave of absence around the time of this fixture due to personal reasons and remains on leave.*

*The combination of these roles being largely absent across this period, coupled with the extensive stadium works that have been taking place to ensure the Club could host its first Premier League match at Kenilworth, alongside a transfer window has meant, if we are corresponding with you in a fully transparent way, we simply have not had the time nor staff to follow this up as at the date of this correspondence.”*

- x. Although the absence of staff for personal reasons is of course regrettable, the absence of such staff for such reason cannot impact upon the standards to be expected of a professional football club in relation to safety and security. Nor can such absences of relevant staff entitle a professional football club to operate to any differing expected standard to other professional football clubs.
38. The fact that LTFC was at the material time operating without a full-time Safety Officer is both surprising and disappointing to the Commission.
39. The Commission noted that there was a stark lack of evidence supplied by LTFC about

pre-match preparation for the away match against BHAFC in relation to the risk of such discriminatory chanting by LTFC supporters.

40. A shortage of relevant resources and/or personnel on the part of LTFC was surprising. The duties that are engaged relate to safety, security, equality, diversity and inclusivity. These duties are non-delegable and require appropriate resources to be devoted to them to minimise risk.

41. The documentary and other material relied upon by LTFC evidences in the view of the Commission that LTFC had appreciated the risk associated with this fixture and the risk of discriminatory chanting aimed towards a particular BHAFC player.

42. However, the Commission concluded that the material before it did not evidence that LTFC had taken all reasonable steps in its preparation and planning for this fixture in assessing pre-match the risk of such discriminatory chanting (and how to minimise that risk) before the away fixture against BHAFC.

43. In all of these circumstances, the Commission was not satisfied on the evidence placed before it that LTFC had exercised an appropriate level of due diligence and taken all reasonable steps in its planning and preparation for the away fixture with BHAFC.

4b. Whether the Club (and/or its officers) took all reasonable steps in dealing effectively with the incident, when it arose.

44. It seems that offensive chanting by LTFC supporters directed at a BHAFC player was detected relatively quickly by BHAFC officials at the match.

45. BHAFC state that once the offensive chanting had been detected, the “*Stand supervisor reported homophobic chanting to the control room and identified two individuals*”<sup>17</sup>.

46. Further, BHAFC note that “*CCTV (was) utilised following (the) positive report from (the) stand supervisor*”<sup>18</sup> and that “*two individuals (were) ejected by stewards and handed to Sussex Police for arrest*”<sup>19</sup>.

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<sup>17</sup> Page 10 of the case bundle.

<sup>18</sup> Page 10 of the case bundle.

<sup>19</sup> Page 10 of the case bundle.

47. Thereafter, BHAFC noted that “*no further chanting (was) reported*”<sup>20</sup>.

48. The Commission is acutely mindful that LTFC was the away club for this fixture and therefore the *immediate* response to this incident was in the hands of BHAFC safety and security staff.

49. BHAFC plainly responded to the discriminatory chanting and took action. There is no evidence before the commission that BHAFC (as the home club) took other steps during the match, by way of public announcements or otherwise, to discourage further such offensive chanting.

50. The Commission is satisfied that LTFC (as the away club) could have done little more than was done *during the match*.

51. However, dealing effectively with such an incident requires actions beyond those that are appropriate during the match itself. What is expected by the Commission is evidence of an appropriate response to the incident itself post-match also.

52. There was no evidence before the Commission that LTFC had issued any post-match statement on its social media channels or in its matchday programme condemning the behaviour of those fans that engaged in this discriminatory chanting and stating expressly the action it would take against any supporters found to have engaged in that behaviour.

53. Indeed, in the letter from LTFC dated 11<sup>th</sup> October 2023<sup>21</sup>, LTFC state that “*We are also in the process of apologising directly to Brighton ██████████ for the behaviour of those supporters*” and that an LTFC supporter who had already admitted the misconduct to the police “*will be issued with a club ban*”.

54. It is noteworthy that this letter is dated about two months after the relevant incident. It should not be necessary for the existence of formal misconduct proceedings before such action is taken by LTFC.

55. What was required from LTFC is a clear, swift and firm response from LTFC to underline its “no tolerance” approach to discriminatory behaviour and to deter others from such behaviour in the future.

56. In all of these circumstances, the Commission was not satisfied that LTFC took all

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<sup>20</sup> Page 10 of the case bundle.

<sup>21</sup> Page 22 of the case bundle.

reasonable steps that it could (bearing in mind the state of knowledge of the Club and its officials at relevant times) in dealing effectively with the incident of discriminatory chanting especially post-match.

4c. Whether the Club (and/or its officers) took all reasonable steps in identifying the supporter(s) involved.

57. The fixture between BHAFC and LTFC took place at BHAFC's stadium. Necessarily, therefore, LTFC had limited ability *during the match* to collate evidence.

58. Even when the discriminatory chanting was detected by any relevant BHAFC safety or security officials at the time, LTFC officials would not be responsible for crowd control at this match.

59. Once the discriminatory chanting was brought to the attention of LTFC officials, the evidence placed before the Commission by LTFC was that LTFC requested (post-match) further information from the Head of Safety and Security at BHAFC and the DFO of Sussex Police.

60. Those agencies ultimately shared details of three LTFC supporters who were alleged to be involved in the incident with the DFO of Bedfordshire Police who in turn passed those details on to LTFC.

61. The evidence placed before the Commission by LTFC evidences that LTFC has relied heavily upon the relevant police investigations in to whether any criminal offences were committed by LTFC fans.

62. The result of the police investigations, as of 11<sup>th</sup> October 2023, was that one LTC fan had admitted misconduct and the club had yet to issue a club ban to that supporter.

63. The Commission was of the view that LTFC could have done considerably more in seeking to identify the supporters involved in this discriminatory chanting.

64. It was plain to the Commission that BHAFC safety and security officials had available camera footage of LTFC supporters at the match when this discriminatory chanting occurred. It was assessment of that footage that led BHAFC to take action at the time of the incident.

65. There was no evidence before the Commission that LTFC had, for example, obtained that camera footage from BHAFC and scrutinised that material *themselves* in order to seek to identify supporters that were engaged in this misconduct.



66. Such work was an obvious area of investigation and may well have yielded evidence that would identify other LTFC supporters who had engaged in this misconduct. There is no evidence that this work has been done by LTFC who have relied upon communications from the police in order to take any action at all against identified supporters.

67. The Commission is disappointed that this work appears not to have been done by LTFC. It was work that on any view should have been done.

68. In addition, it was surprising and disappointing to the Commission that, about two months after the incident, a club ban had not been issued even to the one supporter who had admitted misconduct to the police.

69. Nor had LTFC issued a post-match statement both condemning the behaviour of those supporters who engaged in this discriminatory chanting and seeking assistance as to whether any LTFC supporters could identify those involved.

70. In these circumstances, the Commission concluded that LTFC had not taken all *reasonable* steps in identifying the supporters involved when these matters were brought to LTFC's attention.

4d. Whether the Club (and/or its officers) took sufficient action against those supporters responsible where those individuals were identified.

71. For the reasons set out above, no action had actually been taken as of 11<sup>th</sup> October 2023 against any LTFC supporter involved in this discriminatory chanting.

72. One LTFC supporter was to be issued with a club ban as a result of admission of misconduct to the police.

73. As already stated, the lack of a proactive approach by LTFC has limited its ability to identify (and thereafter to take action against) LTFC supporters who engaged in this discriminatory chanting.

74. Assuming that LTFC has issued a club ban to the one supporter who has been identified as involved in this misconduct by the police, then LTFC has acted appropriately in relation to that individual.

75. The Commission is disappointed that more of those involved in the misconduct have not been identified for the reasons already stated.

5. Whether the Club co-operated in full with The FA.

76. It was noted by the Commission that LTFC had responded promptly to the charges and admitted the misconduct.

6. The previous disciplinary record of the Club or its participants in relation to aggravated breaches or relevant breaches.

77. LTFC has the following relevant misconduct record during the last 5 years period:

- i. 16<sup>th</sup> May 2023 → Breach of FA Rule E21.1 in that 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.
- ii. 16<sup>th</sup> May 2023 → Breach of FA Rule E21.3 in that 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.

78. Both of these charges relate to the match between LTFC and Sunderland AFC in the EFL Championship play-off semi-final at Kenilworth Road.

79. Save for the above misconduct, LTFC has no other misconduct record.

80. It follows that LTFC has no relevant misconduct record relating to breaches of FA rule E21.4 (or earlier iterations of that rule) relating to discriminatory behaviour.

81. In these circumstances, the Commission concluded that LTFC did not have the mitigation of a previous unblemished character. However, there are no aggravating features in the previous misconduct record of LTFC relating to discriminatory conduct.

82. Accordingly, the Commission deals with this admitted misconduct as a first breach of FA rule E21.4 by LTFC.

7. In cases where an Action Plan has previously been imposed on a Club, whether the Club has complied in full with that Action Plan.

83. LTFC had no Action Plan previously imposed post the Policy and Guidance issued in August 2020.

## **(6) Sanction.**

### **(i) A financial penalty.**

84. LTFC rightly conclude that any such discriminatory chanting amounts to serious discriminatory misconduct about which they are rightly disappointed.

85. The Policy and Guidance states as follows<sup>22</sup>:

*“A Regulatory Commission may also consider imposing a financial penalty in accordance with Table 1 below where it considers it appropriate, having regard to the particular circumstances of the case and the factors set out below.*

*A Regulatory Commission may order that part of any financial penalty imposed is suspended in accordance with paragraphs 42 and 43 of Part A to the Disciplinary Regulations.”*

86. The Commission noted the various factors within the Policy and Guidance that are considered and set out above.

87. The Commission considered the written reasons in *The Football Association -v- Wolverhampton Wanderers FC* dated 26<sup>th</sup> June 2023.

88. The Commission is not bound by previous decisions of other Regulatory Commissions but is acutely mindful of the need for consistency of approach generally in cases that have similar features.

89. In general terms, the case of *The Football Association -v- Wolverhampton Wanderers FC* (26<sup>th</sup> June 2023) (where the club was fined £100,000) had distinguishing features from this case because the Commission concluded:

- i. The sanction related to the home club;
- ii. The pre-match due diligence conducted by Wolverhampton Wanderers FC was to a much higher standard than that of LTFC in this case;
- iii. There were two periods of discriminatory chanting by Wolverhampton Wanderers FC fans;
- iv. There was justifiable criticism of the reaction by Wolverhampton Wanderers FC to the

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<sup>22</sup> See Annex 1 at page 218 of the case bundle.

instances of chanting during the match;

- v. There was justifiable criticism of the reaction by Wolverhampton Wanderers FC to efforts to identify supporters involved in the misconduct.

90. The Commission noted that the misconduct of the LTFC supporters was a sustained incident of offensive and highly insulting discriminatory chanting.

91. The Commission had to balance the deficient pre-match due diligence by LTFC and the deficient post-match response from LTFC with the other mitigating factors set out already in this document, most particularly that LTFC was the away club at this fixture.

92. In these circumstances, the Commission concluded unanimously that a financial penalty was appropriate and warranted in this case due to the seriousness of this type of discriminatory misconduct and the need to mark such behaviour with a punitive element.

93. The Commission concluded that the substantial lack of pre-match due diligence and lack of post-match response by LTFC were significant aggravating factors that made the culpability of LTFC significantly higher than that of Wolverhampton Wanderers FC in the cited case.

94. The Commission concluded that the culpability of LTFC established this case as one of medium culpability.

95. Balancing all of the aggravating and mitigating factors stated above, and applying the sanction guidelines within Table 1 of the Policy and Guidance<sup>23</sup>, the Commission concluded that the appropriate financial penalty commensurate with this misconduct is £120,000.

96. The Commission considered whether any part of the financial sanction should be suspended.

97. Regulation 44 of the FA disciplinary regulations<sup>24</sup> provides (our emphasis):

“44. When considering imposing a suspended penalty, a Regulatory Commission must:

- a) Determine the appropriate penalty for the breach, irrespective of any

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<sup>23</sup> Page 18 of the case bundle.

<sup>24</sup> Page 177 of the FA Handbook 2023 / 24 under “A – General Provisions – Section One: All Panels”.

consideration of it being suspended; and

**b) Consider whether there is a clear and compelling reason(s) for suspending that penalty; if so**

**i. Set out what the clear and compelling reason(s) are; and**

ii. Decide the period of the suspension, or event, until which the penalty will be suspended; and

iii. Upon what other terms or conditions, if any, the penalty will be suspended.

98. Having considered the regulations, the Commission concluded there was no clear and compelling reason for suspending the financial penalty. Therefore, the financial sanction is not suspended.

99. Accordingly, LTFC is fined the sum of £120,000.

**(ii) An Action Plan.**

100. The Commission concluded unanimously that an action plan in accordance with Annex 1 to the Policy and Guidance was necessary in this case.

101. The Commission noted that LTFC are already engaged in positive work to reduce the risk of discriminatory misconduct.

102. Nonetheless, the Commission concluded that a comprehensive Action Plan is necessary and appropriate to ensure that there is compliance with a wide-ranging approach to risk reduction.

103. In order to reduce the risk of further such breaches of FA rule E21, there shall be an Action Plan in the case of LTFC in the following terms:

“1. Upon publication of the Regulatory Commission’s Written Reasons and this Action Plan, Luton Town Football Club (***the Club***) shall communicate via the Club website and via its social media accounts, and in the next available home league match day programme:

- a. The fact and background to the charge, including the fact that it involved abusive, offensive, homophobic, discriminatory chanting by Club supporters at a match against Brighton and Hove Albion FC;

- b. The Club's condemnation of the chanting that underpinned the charge and the fact that it has a zero-tolerance policy towards discriminatory abuse of all kinds;
  - c. Further it should state that those responsible were committing a criminal offence and anyone subsequently identified will be banned by the Club;
  - d. The fact that this resulted in the Club being charged and found guilty of misconduct under the FA Rules, being warned as to its future conduct and having an Action Plan imposed upon it together with a fine of £120,000 to prevent any recurrence of the misconduct;
  - e. The Club's intention to develop supporter initiatives for usage and communication ahead of both home and away fixtures to address discriminatory or other inappropriate supporter behaviour to make it more inclusive and more proactive in the prevention and detection of such behaviour;
  - f. To develop and/or continue ongoing positive dialogue with '*Kick it Out*' and other local organisations to further enhance their relationships by seeking advice and ratification of new and developing associated policies and procedures;
  - g. To develop additional supporter and steward educational programmes in conjunction with '*Kick it Out*' and other local organisations to include issues associated with the potential inappropriate usage of words, chanting, gestures or conduct associated with ethnic origin, colour, race, nationality, religion or belief, gender, gender assignment, sexual orientation or disability, including supporter education programmes in order to raise awareness of acceptable and unacceptable fan behaviour;
  - h. In order to develop f) and g) above the Club shall appoint, within the next two months, an Equality, Diversity and Inclusion Manager to foster an inclusive culture both at the Club and within the Club supporters and to embrace the Premier League's No Room for Racism strategy (NRFR), Premier League Equality, Diversity and Inclusion Standard (PLEDIS) and LGBTQ+ inclusion strategy.
2. The Club's Safety Officer and Club Secretary or Deputy shall liaise with the opposition club prior to all fixtures both home and away to exchange intelligence:

- i. on club supporters who are or may be attending the home fixture;
  - ii. on any factors which may negatively or illegally affect or influence their behaviour. This should include any members of the visiting club whether they are current or former players, backroom staff, directors and club guests who may be potential targets of discriminatory behaviour from supporters. Similarly, the same information should be obtained relevant to the host Club so that any associated risk can be properly assessed and acted upon prior to the Club and its supporter's arrival;
  - iii. For away fixtures, provide the host Club with full contact details of the Club's Supporter Liaison Officer(s) (SLO) and any travelling Club stewards attending the fixture;
  - iv. For fixtures assessed by the pre-match risk assessment as high risk away games, send a minimum of two experienced and qualified stewards, in addition to the Club's SLO. This should be at the Club's own expense and not that of the host club. The SLO and the travelling stewards shall liaise throughout the fixture with the host club and its safety and stewarding staff, provide close liaison and communications with the Club's travelling fans at the stadium, act as a communicational conduit between the host club and the Club's travelling fans, seek to formulate evidential reports concerning any poor behaviour associated with the Club's travelling fans and develop and collate appropriate intelligence on the Club's travelling fan base;
  - v. Provide any travelling stewards with a Body Camera facility to deter, detect and evidence any incidents of discriminatory or poor supporter behaviour.
3. The Club shall re-publish its contact email for supporter complaints, [myvoice@lutontown.co.uk](mailto:myvoice@lutontown.co.uk) and consider (if not already in place) a Club Text reporting system for supporters to use on match days at both home and away fixtures and develop an "Acceptable Behaviour Policy" for supporters, in particular supporters committing acts of discriminatory behaviour both at home and at away fixtures to include offences and associated sanctions, in particular relating to discriminatory behaviour.

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

5. Prior to each match the Club shall publish warnings to its supporters against the use of discriminatory and other inappropriate supporter behaviour and language. Such warnings:

- a. shall be published on the Club's website and social media outlets, as a stand-alone warning for home matches, and for away fixtures as part of a 'Travelling Fans Guide';
- b. shall be communicated directly, whether by text message or other suitable means, to those supporters that the Club knows have purchased tickets for the relevant away game and/or are travelling to the relevant away game

6. The Club shall review all its safety management plans and policies at least once a season.

7. This Action Plan shall be in place for the remainder of the 2023/24 season and the duration of the 2024/25 season.

8. The Club shall invite The FA to ensure that an FA Compliance Officer is present at any home fixture where The Club, following its pre-match risk assessment, determines that the fixture carries a high risk of discriminatory language or behaviour being used by supporters."

104. The FA will monitor the Action Plan. It is implicit that the FA Compliance Officer will use a level of appropriate discretion in ensuring that the Action Plan is workable and implemented in an effective manner.



105. LTFC is formally warned as to future conduct.

106. Considering these proceedings as a whole and, in particular LTFC's conduct in response to the charges, we make no order as to the costs of the Regulatory Commission.

107. The above sanctions are formally imposed.

108. There is the right to appeal these decisions in accordance with FA Regulations.

ABDUL S. IQBAL KC

PETER FLETCHER

ANDREW ADIE

5<sup>th</sup> November 2023