

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

Case Ref CC/22/27420232328

**THE FA**

**-v-**

**MILLWALL 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)

Daniel Mole (Independent Football Panel Member)

Michael O'Connor (Secretary)

Date of hearing : 13/9/23

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 13<sup>th</sup> September 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 25<sup>th</sup> May 2023<sup>1</sup> The Football Association (“The FA”) alleged that Millwall FC (“Millwall”) during the EFL Championship match against Wigan Athletic FC (“Wigan”) on 22/4/23 (“the match”) failed to ensure 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 Millwall with :
  - i. Failing on 22/4/23 to ensure in or around the 8<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 reference to religion contrary to rule E21.1 and E21.4 of the Rules of the Football Association ;
  - ii. Failing on 22/4/23 to ensure in or around the 12<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 reference to religion contrary to rule E21.1 and E21.4 of the Rules of the Football Association ;
  - iii. Failing on 22/4/23 to ensure in or around the 45<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 reference to religion contrary to rule E21.1 and E21.4 of the Rules of the Football Association.

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

7. Millwall admitted the charge by reply dated 27<sup>th</sup> July 2023<sup>2</sup> and requested a paper hearing.

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

8. The relevant facts<sup>3</sup> as to these charges are :

- i. The relevant match was a fixture between Wigan and Millwall played at The DW Stadium (Wigan's home stadium) on 22<sup>nd</sup> April 2023 ;
- ii. On 24<sup>th</sup> April 2023, Wigan Club Secretary (Sarah Guilfoyle) contacted The FA On-Field Department reporting mass discriminatory chanting from Millwall supporters during the match aimed at the Wigan Player James McClean (who was playing in the match)<sup>4</sup> ;
- iii. On 24<sup>th</sup> April 2023, Jack Gillett (On-Field Football Regulation Officer, The FA) reviewed match footage in order to investigate whether discriminatory chanting had occurred ;
- iv. Discriminatory chanting from Millwall supporters was detected on three separate occasions, namely the 8<sup>th</sup>, 12<sup>th</sup> and 45<sup>th</sup> minutes of the match ;
- v. In the 8<sup>th</sup> minute of the match, whilst the camera zooms in on Wigan manager Shaun Maloney, Millwall supporters chant en masse "*fuck the pope and the IRA*". This is followed by en masse chants of "*I bought a flute for 50 pence, the only thing that I could play was fuck the pope and the IRA*". This chant repeats once more in the clip ;
- vi. In about the 12<sup>th</sup> minute of the match, Wigan were preparing to take an attacking free kick. As James McClean (Wigan's number 11) walks back to prepare to take the free kick, Millwall supporters chant en masse "*the only thing that I could play was fuck the pope and the IRA*". This continues for the duration of the clip ;
- vii. In the 45<sup>th</sup> minute of the match, whilst the camera zooms in on Wigan supporters and the Wigan Manager (Shaun Maloney), Millwall supporters en masse chant "*the only tune that I could play was fuck the pope and the IRA*"

9. In addition to the above written evidence, the Commission viewed three pieces of video

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<sup>2</sup> Page 8 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.

<sup>4</sup> Pages 5 and 6 of the case bundle.

footage (with audio) that depicted the relevant events :

- i. 1 minute 7 seconds of footage from the 8<sup>th</sup> minute of the match ;
  - ii. 35 seconds of footage from the 12<sup>th</sup> minute of the match ;
  - iii. 16 seconds of footage from the 45<sup>h</sup> minute of the match.
10. In that video footage, the offensive chanting is clearly audible and involves a very substantial number of Millwall supporters chanting the phrases complained of.
11. The volume of the chanting leads to the inevitable conclusion that :
- i. a very considerable number of Millwall supporters engaged in the religious discriminatory chanting ;
  - ii. the chanting was not a brief event but was sustained on each occasion ;
  - iii. the chanting was repeated during these three periods of the match ;
  - iv. the chanting was directed at James McClean (an Irish footballer).

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

12. FA Rule E21<sup>5</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 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,*

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<sup>5</sup> Page 146 of the FA Handbook 2022/23.

*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. Millwall has admitted three breaches of FA rule E21.4 by religious discriminatory chanting by its supporters.

14. The "*all due diligence*" defence within FA rule E21.5<sup>6</sup> is not available to Millwall because of the admitted breaches 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 Conduct by Spectators*"<sup>7</sup> dated 6<sup>th</sup> August 2020 (the "*Policy and Guidance*")<sup>8</sup> under the heading "*Factors to be considered when determining sanction*"<sup>9</sup> it is stated :

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<sup>6</sup> Page 146 of the FA Handbook 2022/23.

<sup>7</sup> At the time of the publication of this guidance, such discriminatory breaches were regulated by FA Rule E20.1.

<sup>8</sup> See pages 215 to 220 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>9</sup> Page 15 of the case bundle.

“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>10</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.”

(b) Action Plan.

17. The Policy and Guidance states in relation to a *first offence* as follows<sup>11</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”).

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<sup>10</sup> The Policy and Guidance makes it plain that these factors are not exhaustive. See page 11 of the case bundle under the title “DETERMINATION OF THE CHARGE AND SANCTIONS”.

<sup>11</sup> Page 13 of the case bundle.

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>12</sup>, the applicable fine range for such a breach of FA rule E21.4 for a EFL Championship Club (as Millwall was at the material time) is £5,000 to £75,000.

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

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

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<sup>12</sup> Page 14 of the case bundle.

(i) Millwall.

22. The Commission read and considered :

- i. Submissions on behalf of Millwall FC (Pages 13 to 24 of the case bundle) ;
- ii. Signed Witness Statement of Millwall FC's CEO, Steve Kavanagh (Pages 25 to 36 of the case bundle) ;
- iii. Signed Witness Statement of Millwall FC's Chair of Equality Steering Committee, Jason Vincent (Pages 37 to 41 of the case bundle) ;
- iv. Signed Witness Statement of Millwall FC's Director of Strategic Operations and Communications, Billy Taylor (Pages 42 to 50 of the case bundle) ;
- v. Signed Witness Statement of Millwall FC's Health, Safety, Security & Operations Manager, Neil Robinson (Pages 51 to 55 of the case bundle) ;
- vi. Signed Witness Statement of Wigan Athletic FC's CEO, Tom Markham, dated 22 April 2023 (Page 56 of the case bundle) ;
- vii. Signed Witness Statement of The EFL's Head of Equality, Diversity and Inclusion, David McArdle, dated 27 July 2023 (Page 57 of the case bundle) ;
- viii. Index of Supporting Documents (Page 58 of the case bundle) ;
- ix. Letter to EFL Secretaries and Safety Officers from Wigan Athletic FC, dated 28 July 2022 (Pages 59 to 60 of the case bundle) ;
- x. Millwall FC's Matchday Risk Assessment for Millwall FC v Wigan Athletic FC on 10 December 2022 (Pages 61 to 73 of the case bundle) ;
- xi. Millwall FC's Match Category Analysis for Millwall FC v Wigan Athletic FC on 10 December 2022 (Pages 74 to 82 of the case bundle) ;
- xii. Millwall FC's Specific Risk Assessment on James McClean ahead of Millwall FC v Wigan Athletic FC (Pages 83 to 87 of the case bundle) ;
- xiii. Anti-Discrimination Pack sent to appointed Match Officials ahead of Millwall FC v Wigan Athletic FC (Pages 88 to 97 of the case bundle) ;
- xiv. Millwall FC's Matchday Discrimination Policy 2022-23 (Pages 98 to 105 of the case bundle) ;



- xv. Millwall FC's Anti-Discrimination Work & Strategy Document (Pages 106 to 118 of the case bundle) ;
  - xvi. Copy of 'Millwall FC's Away Ticket Protocol' sent to Wigan Athletic FC, dated 28 February 2023 (Pages 119 to 120 of the case bundle) ;
  - xvii. Millwall FC's newly created Sectarian Abuse Matchday Action Plan (Pages 121 to 125 of the case bundle) ;
  - xviii. Examples of Millwall FC's Anti-Discrimination Messaging (Pages 126 to 143 of the case bundle) ;
  - xix. Text messages between Steve Kavanagh & Bob Eastwood (EFL) as referred to in Steve Kavanagh's statement (Page 144 of the case bundle) ;
  - xx. Millwall FC - Supplementary Submissions (Pages 230 to 234 of the case bundle).
23. In summary, the submissions and contentions made by Millwall to the Commission<sup>13</sup> are :
- i. Millwall has accepted the three breaches of FA Rule E21.4 ;
  - ii. Millwall takes this matter very seriously and recognises that such chanting is always unacceptable ;
  - iii. Millwall contends that it had no control over the chanting and, in any event, had used all due diligence to ensure that discriminatory chanting did not occur ;
  - iv. There has never been an issue with sectarian chanting at Millwall before or since the incidents on 22 April 2023 ;
  - v. For a significant period of time, Millwall has been an industry-leading club in terms of its dedication to challenging discriminatory behaviour ;
  - vi. Millwall is actively engaged through Millwall's Equality Steering Committee with organisations such as Kick it Out and Show Racism the Red Card to ensure that its environment is diverse and inclusive ;
  - vii. Millwall has also pursued initiatives such as "*United for Change*" and '*Hear Hate, Don't*

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<sup>13</sup> Pages 13 to 24, and pages 230 to 234 of the case bundle.

*Hesitate'* that started in 2019 and enables fans and staff to report any incidents of hate or abuse by way of a shortened telephone number that leads to an investigation. An immediate and permanent ban results from proven discriminatory misconduct ;

- viii. Millwall's Community Trust provides a Fan Diversity Scheme, which is designed to educate, encourage inclusion, and reduce discrimination ;
- ix. Millwall Community Trust deliver anti-discrimination workshops in schools throughout Lewisham, Southwark and other surrounding Boroughs ;
- x. Millwall has achieved the Equality Code of Practice award every season since 2015/16;
- xi. The relevant fixture against Wigan was an away fixture on 22/4/23 so Millwall had limited influence over the security in place and the messages shown on in-stadium screens and posters ;
- xii. Millwall only sells away tickets to season ticket holders or to registered members ;
- xiii. On 17/4/23, Millwall's Chief Executive Officer ("CEO"), Steve Kavanagh, attended a pre-match briefing for the fixture against Wigan on 22 April 2023. Millwall were aware of issues that had arisen during a fixture between Blackpool FC and Wigan the previous week ;
- xiv. Millwall were conscious of the upcoming fixture and the potential risks associated with it. Millwall's CEO led discussions on 17 April 2023 specifically addressing the possibility of fans abusing James McClean and what could be done to prevent it ;
- xv. The pre-match discussions included whether it would be sensible to highlight what had happened at Blackpool but, having regard to experience, Millwall decided that highlighting the issues risked inflaming matters and possibly exacerbating the problem itself ;
- xvi. Millwall decided to increase its social media messaging about equality and discrimination generally in an attempt to highlight Millwall's expectations without reference to a particular individual ;
- xvii. Millwall became aware by or before 21/4/23 that Blackpool FC had been charged by the FA as a result of the chanting towards James McClean that had taken place during the Blackpool FC -v- Wigan Athletic FC match ;

- xviii. A specific decision was made not to specifically raise this issue with supporters as it was likely only to cause supporters to behave in exactly the manner the club was seeking to avoid. It was decided that Millwall's CEO (Steve Kavanagh) would discuss matters with his opposite number at Wigan, and would also seek to engage with particular influential fans on the way to the game ;
- xix. On the morning of the fixture, Millwall's CEO discussed the issue with an influential supporter. The supporter said that he would try to have a word with supporters in the away section ;
- xx. The Millwall CEO and the Wigan CEO went in person to the Millwall (away) end at approximately 1.30pm before the match started. The Millwall CEO spoke to as many fans as possible, explaining his concerns about anti-Pope chanting. Those spoken to agreed that there should be no "anti-Pope" chanting ;
- xxi. During the match, "*anti-Irish republican Army ("IRA")*" chanting was heard from Millwall supporters. This was particularly so when James McClean appeared to provoke the Millwall fans by exposing a political tattoo to them. However, no "*anti-Pope*" chanting was detected by any Millwall staff or officials and none was brought to their attention during the match ;
- xxii. Nonetheless, the Millwall CEO communicated at 16.11 (during the match) with Bob Eastwood of the EFL to clarify the situation as to "*anti-IRA*" chanting that had been detected emanating from Millwall supporters. The response was that it was "*anti-Catholic / Pope comments*" (and not "*anti-IRA*" chanting) that would be regarded as a breach of FA Rule E21.4 ;
- xxiii. After the match, no Wigan staff or officials mentioned any "*anti-Pope*" chanting to Millwall officials or staff ;
- xxiv. It was only when the FA charge and evidence was sent to Millwall on 25 May 2023 that Millwall became aware of these specific allegations ;
- xxv. The video evidence provided by Wigan contains chanting as background audio but does not depict those doing the chanting. It is therefore impossible for Millwall to know which groups of supporters or individuals were involved in this misconduct ;
- xxvi. Millwall FC's Health, Safety, Security & Operations Manager (Neil Robinson) wrote to Wigan's Head of Operations on 26 May 2023 and on 5 June 2023 to Wigan's Club Secretary requesting immediate access to the footage and any evidence in order to try

to identify the supporters involved. No response was received to those requests ;

- xxvii. Only upon the intervention (at Millwall's request) of David McArdle (EFL Head of Equality, Diversity and Inclusion) did Wigan supply video evidence (without audio). This makes it impossible to identify the individuals involved in this misconduct ;
- xxviii. Millwall could not have done any more than was done in the lead up to, during, and after the events set out in the charge ;
- xxix. Whilst it has not been possible to identify the individuals responsible, that is not the fault of Millwall ;
- xxx. The issue appears to be isolated to a particular player who has a history and well-known reputation for goading opposition fans through the expression of controversial political views during fixtures ;
- xxxi. Millwall takes its responsibilities to root out discrimination very seriously and cannot express strongly enough how disappointed the club is in the events that have given rise to the charges ;
- xxxii. It is not known how many supporters were involved in the chanting because of the lack of any video evidence showing the chanting ;
- xxxiii. There is an element of goading behaviour by James McClean that triggered the offending chanting ;
- xxxiv. The chanting took place over three relatively short periods during the fixture ;
- xxxv. If and when the individuals can be identified, they will be banned from the club permanently in line with Millwall's zero tolerance policy ;
- xxxvi. Millwall took all reasonable steps in their preparation and planning for the fixture. The particular risk was identified, discussions took place about how best to deal with it, and proactive steps were taken ;
- xxxvii. Due to the fact that nobody was aware of the "*anti-Pope*" chanting until days after the fixture, no action could be taken at the time by Millwall. However, as soon as the incident was brought to the attention of Millwall, it took all steps that could reasonably be expected of it, including trying on several occasions to recover video evidence from Wigan ;

- xxxviii. In relation to the first limb of Rule E21.5 (the “*all due diligence*” defence to Rules E21.1 to E21.3), it cannot reasonably be said that Millwall had control over the supporters who took part in the chanting. Beyond the monitoring of supporters at away games that is already carried out by Millwall, clubs have limited means by which to control supporters at away matches. On a balance of probabilities, the chanting was the result of circumstances over which Millwall had no control ;
- xxxix. In relation to the second limb of Rule E21.5, Millwall used all due diligence to ensure that its relevant responsibilities were discharged. The question of whether ‘*all due diligence*’ was used by a club prior to and at the time of an incident is to be judged by reference to what was known, or should have been known, by the club at the relevant time. The club is not to be judged with the benefit of hindsight. The relevant test is whether all reasonable precautionary steps were taken by Millwall ;
- xl. it is submitted that Millwall did take all reasonable precautionary steps. Indeed, the club went beyond what would reasonably be expected of it, including the CEO personally speaking to the supporters in the stands ;
- xli. Whilst it is accepted that Millwall has an adverse finding in 2019 in relation to an incident in a match against Everton FC<sup>14</sup>, the events giving rise to this charge are wholly different in nature. There was no racial element to the “*anti-Pope*” chanting and, for the reasons set out above, the chanting is not indicative of a broader sectarianism issue at Millwall but, rather is the result of a clash with a particular individual player. The work that Millwall has done since 2019 must be taken into account in that regard ;
- xlii. Given the lack of any sectarian incidents at Millwall previously, any sanction that is imposed should be limited to an action plan. Any such action plan should be workable and tightly defined.

#### (i) The FA.

24. The Commission read and considered :

- i. The FA's “Submissions on Sanction - Millwall FC” (Pages 153 to 220 of the case bundle) ;

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<sup>14</sup> The judgment in The FA -v- Millwall FC in relation to racist chanting by some Millwall supporters in the match against Everton FC on 26<sup>th</sup> January 2019 is at pages 180 to 214 of the case bundle.

- ii. Observations from Wigan Athletic FC (Pages 221 to 229 of the case bundle).

25. In summary, the submissions and contentions made by The FA to the Commission<sup>15</sup> are :

- i. The FA accepts that significant steps had been taken by Millwall prior to this away match against Wigan to avoid such an incident from occurring ;
- ii. The FA's position is that such steps will plainly serve as mitigation for the Club ;
- iii. The FA's position is that, on this occasion, the sanction should be focused upon a workable Action Plan for Millwall ;
- iv. As to a financial penalty, the Policy and Guidance guidelines make clear that the Commission *may* impose such a penalty, but The FA does not specifically seek to persuade the Commission to do so ;
- v. The conduct of Millwall's spectators is plainly serious and offensive. The chanting was repeated throughout the first half of the fixture and specifically targeted the Wigan Athletic Player James McClean ;
- vi. The chanting is clearly audible from the video footage and could plainly be heard by those in attendance ;
- vii. There was an anticipated risk of chanting of this nature ahead of the fixture. Millwall were therefore plainly on notice and alive to the possibility of such a scenario developing ;
- viii. The FA accepts the following facts individually and collectively mitigate the breaches of FA Rule E21.4 significantly :
  - a. Millwall already sells its own away tickets and can therefore identify and/or control those who may attend away fixtures ;
  - b. Millwall correctly identified the potential risk at the fixture in light of events which had taken place the week prior between Blackpool FC and Wigan Athletic<sup>16</sup> ;

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<sup>15</sup> Pages 153 to 220 of the case bundle.

<sup>16</sup> The judgment in "The FA v Blackpool FC" are at pages 158 to 175 of the case bundle.

- c. As a result of the identified risks, Millwall increased its social media messaging about equality and discrimination ;
- d. On the morning of the fixture, Millwall's CEO discussed the potential issues with an influential supporter ;
- e. Millwall's CEO met with the Wigan Athletic CEO and requested access to the away stands to speak with fans regarding anti-Pope chanting ;
- ix. The FA also acknowledges the more general measures that Millwall has put in place to combat discriminatory behaviour by its spectators :
  - a. The imposition of Millwall's Equality Steering Committee in 2021 ;
  - b. The '*Hear Hate. Don't Hesitate*' campaign started in 2019 ;
  - c. Banning orders for those found guilty of discriminatory behaviour ;
  - d. Millwall's Community Trust Fan Diversity scheme ;
  - e. Millwall has been awarded the EFL's Equality Code of Practice award every season since 2015 / 2016.
  - f. The "*United for Change*" initiative launched in 2020.
- x. The FA also accepts that the footage from the fixture does not evidence which spectators were in fact chanting as the camera very much focuses upon the pitch rather than the stands. That made identification of the spectators involved difficult ;
- xi. In addition, the CCTV footage supplied by Wigan FC to Millwall has no audio which means identifying the perpetrators of this offensive chanting is difficult ;
- xii. The FA submits that an Action Plan ought to be imposed in order to assist Millwall and ensure incidents of this nature are not repeated ;
- xiii. Millwall have already been subject to an Action Plan arising from a breach of FA Rule E21<sup>17</sup> in 2019 arising out of a match between Millwall and Everton FC ;
- xiv. However, that Action Plan was put in place prior to the introduction of The FA's Sanction

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<sup>17</sup> The relevant FA Rules in force in season 2018/19 meant that discriminatory chanting by supporters was a breach of FA rule E20.

Guidelines for Discrimination by Crowds dated 6<sup>th</sup> August 2020. In these circumstances, The FA does not submit that the guidance in respect of second offences is engaged by these breaches of FA rule E21.4 ;

- xv. The FA submits that an updated Action Plan should be imposed 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 very significant number of Millwall supporters involved in the discriminatory religious 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 very significant number of Millwall supporters on the three separate occasions identified.

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

31. The words used by the offending spectators references a negative attitude towards the Catholic religious community and the leader of that religious community, namely the Pope.

32. The use of the phrases 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 repeatedly chanted.

34. Accordingly, this was not an isolated single incident of such offensive behaviour by Millwall supporters.

35. Accordingly, the Commission was satisfied that the religious discriminatory chanting was of significant duration, was repeated chanting, and occurred during three separate identifiable periods of the match.

### 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.

36. The documentary and other material relied upon by Millwall evidences in the view of the Commission that Millwall had appreciated the risk associated with this fixture and the risk of discriminatory chanting aimed towards James McClean.

37. The Commission was satisfied that Millwall had done all that could reasonably have been done in assessing pre-match the risk of such discriminatory chanting before the away fixture against Wigan ;

38. The material shows that Millwall had carried out appropriate risk assessments prior to the away fixture with Wigan and had taken appropriate measures to minimise the risk of such discriminatory chanting at the match by Millwall supporters.

39. In particular, Millwall had taken into account the factual circumstances surrounding the home fixture with Wigan, the scenario that had unfolded at Blackpool FC the previous week involving crowd disorder, and the risks of crowd disorder associated with James McClean's widely reported political views.

40. Millwall took the decision not to publicise pre-match on its social media accounts the circumstances of the crowd disorder at Blackpool FC and the reasons for it. Rather, Millwall decided to emphasise its general anti-discrimination message to its supporters pre-match. This decision is understandable and the Commission recognises that it was a finely balanced decision in all of the circumstances.

41. The steps taken by Millwall in its pre-match planning are not challenged factually by The FA. Nor does The FA assert that the pre-match planning by Millwall had any significant

deficiencies.

42. In all of these circumstances, the Commission was satisfied that Millwall had exercised an appropriate level of due diligence and taken all reasonable steps in its planning and preparation for the away fixture with Wigan.

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

43. It seems that offensive chanting by Millwall supporters directed at the Irish Republican Army (“the IRA”) was detected by Millwall officials at the match.

44. If it is correct that James McClean during the match sought to provoke or trigger such behaviour by displaying a tattoo that references his political views, this is disappointing and should be the subject of strong advice to the player from his club and/or the EFL.

45. Such chanting, although no doubt offensive and regrettable, does not appear to be a breach of FA rule E21.4 because it does not reference a protected characteristic within that rule.

46. However, it appears that no Millwall officials identified at the time any reference to the Pope in the offensive chanting by Millwall supporters at the match.

47. The evidence suggests that no complaint of anti-Pope chanting was made by Wigan officials during the match either.

48. There is no evidence before the commission that Wigan (as the home club) took any steps during the match, by way of public announcements or otherwise, to discourage such offensive chanting.

49. Accordingly, no action was taken by either Millwall or Wigan officials during the match, for the reason that they were unaware of any “*anti-Pope*” chanting at the time.

50. The fact that the Millwall CEO sought advice from the EFL during the match as to whether “*anti-IRA*” chanting would be a breach of FA Rule E21.4 supports the contention that Millwall officials did not at that stage appreciate the full extent of the offensive chanting by its supporters.

51. The Commission is satisfied that Millwall (as the away club) could have done little more

than was done at that stage, namely seeking advice from the EFL when they appreciated that, there was some offensive chanting by its supporters.

52. When the fact of the discriminatory religious chanting was brought to the attention of Millwall by Wigan, the Commission accepts that Millwall could have done little more than seeking access from Wigan to evidence of the discriminatory chanting.

53. In all of these circumstances, the Commission accepts that Millwall took all 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 incidents of discriminatory chanting at this fixture.

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

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

55. *Even if* the "anti-Pope" chanting had been detected by any relevant safety or security officials at the time, Millwall officials would not be responsible for crowd control at this match.

56. Once the discriminatory "anti-Pope" chanting was brought to the attention of Millwall officials about a month after the match on 25/5/23, the commission accepts that Millwall took reasonable steps to seek access to video footage. That might identify those Millwall supporters involved in the discriminatory religious chanting.

57. The Commission has been informed that the video footage that was ultimately supplied by Wigan to Millwall had no audio content, and that this meant it has not been possible for Millwall to identify any of those supporters involved in the discriminatory religious chanting.

58. The Commission has not been supplied with a copy of that footage that was ultimately supplied by Wigan to Millwall. Within the case papers, there was provided a link<sup>18</sup> to video footage, albeit that link is not capable of now being accessed because it is said to have expired.

59. In all of these circumstances, it is difficult for the commission to fully assess the nature of the material that Millwall assessed and evaluated. It is noted that it is not contested by The FA that Millwall could or should have been able to identify any of its supporters involved in the discriminatory religious chanting from the footage supplied by Wigan to Millwall.

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<sup>18</sup> See page 145 of the case bundle.

60. The Commission is disappointed that no supporters involved in this offensive religious discriminatory chanting have been identified and sanctioned.

61. However, the Commission accepts that Millwall took all reasonable steps in identifying the supporters involved when these matters were brought to Millwall's attention about a month later. It has simply not been possible in all of the circumstances for any of them to be identified.

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

62. For the reasons set out above, no action has been taken against any Millwall supporter involved in this discriminatory religious chanting.

63. The Commission is satisfied that had any of those supporters been identified, that stern action would have been taken against them by Millwall as part of its zero tolerance policy to discrimination relating to all protected characteristics within the FA rules.

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

64. It was noted by the Commission that Millwall 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.

65. Although the Commission noted the finding of misconduct on the part of Millwall in 2019 relating to racist chanting by Millwall supporters at a match between Millwall and Everton FC, that finding pre-dates the Policy and Guidance issued in August 2020.

66. In these circumstances, The FA invites the commission to deal with this admitted misconduct as a first breach of FA rule E21.4. The Commission accepts these submissions.

67. Accordingly, the Commission concludes that Millwall has no relevant misconduct record.

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.

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

69. The Commission was encouraged by the actions taken by Millwall since 2019 in its proactive approach to deal with unlawful discrimination of all kinds.

**(6) Sanction.**

**(i) A fine.**

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

71. The Policy and Guidance states as follows<sup>19</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.”*

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

73. The Commission noted that the misconduct of the Millwall supporters was not limited to an isolated incident but involved three sustained incidents of offensive and highly insulting discriminatory religious chanting.

74. The Commission had to balance the generally diligent way in which Millwall officials behaved with the appalling chanting on three separate occasions by a substantial section of its supporters.

75. In these circumstances, two members of the Commission concluded that on this occasion (a first offence of this type) the focus of sanction should be an Action Plan designed

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<sup>19</sup> See Annex 1 at page 218 of the case bundle.

to minimise the risk of a repeat of such misconduct by Millwall supporters in the future.

76. However, one member of the Commission was of the view 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.

77. On this occasion the majority view must prevail and the Commission accordingly imposes no financial penalty in all of the circumstances of this case.

78. The Commission was of the unanimous view, however, that any repeat in the future of such discriminatory misconduct by Millwall supporters would have to be marked with a very significant financial penalty.

#### (ii) An Action Plan.

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

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

81. 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.

82. In order to reduce the risk of further such breaches of FA rule E21, there shall be an action plan in the case of Millwall FC in the following terms :

“1. Upon publication of the Regulatory Commission’s Written Reasons and this Action Plan, Millwall Football Club (*‘the Club’*) shall communicate via the Club website and via its social media accounts :

- a. The fact and background to the charge, including the fact that it involved abusive, offensive, discriminatory chanting by Club supporters at a match against Wigan Athletic 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.

- 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.
- e. The Club's intention to continue to develop existing initiatives to make it more inclusive and more proactive in the prevention and detection of any potentially discriminatory or inappropriate words or behaviour in the future, at both home and away fixtures.

2. The Club shall :

- a. Forthwith conduct a full review of its stewarding management, provision, deployments, and quality of stewarding training. In addition existing processes should be closely examined to ensure good quality steward incident reporting (verbal & written) is in place to support proportionate reactions to matchday incidents and potential post-match investigations.
- b. Continue to ensure all its matchday operational planning, match specific risk assessments and stewarding briefing documents are fully documented to support and evidence due procedure, and to ensure that the prevention and detection of any discriminatory or inappropriate behaviour is sufficiently addressed, and is readily available for inspection by the Football Authorities and the appropriate Safety Advisory Group.
- c. Continue to maintain a detailed operational matchday protocol in support of their safety management and stewarding teams to include stewarding reporting methods, prepared Public Address messages to assist in the prevention of abusive and discriminatory behaviour, and to include any match-specific action plans for dealing with such behaviour.
- d. Evaluate their existing CCTV capabilities and operator training in relation to crowd monitoring and evidence gathering including the use of body worn cameras.
- e. If not already in place, establish a pre-match and post-match management group, consisting of relevant heads of department, to share information and plan for and review each fixture accordingly. Such meetings should have any action plans specifically allocated and be properly minuted. It shall be the responsibility of each head of department to properly convey relevant information arising from the pre-match and post-match meetings to their respective team members.

- f. The Club's Safety Officer and Club Secretary should continue to liaise with the opposition club prior to all fixtures both home and away to exchange relevant intelligence whether directly or via the EFL WhatsApp group :
    - i) on any factors which may negatively affect or influence the behaviour of identified club supporters who are or may be attending the fixture (this should include any members of the opposing club whether they be current or former players, backroom staff, directors or club guests who may be potential targets of discriminatory behaviour from the supporters) ;
    - ii) Similarly, the same information should be obtained associated with the opposing club so any appropriate risk assessment can be made and acted upon prior to the fixture ;
    - iii) Such information should then be addressed at the pre-match meeting of both the management group and stewards.
  - g. The Club Safety Officer should appraise the match officials before every home game to discuss and evaluate any potential issues relating to crowd behaviour, particularly any discriminatory behaviour, and have in place methods of communicating with match officials should it be necessary as per the matchday protocol referred to earlier in this Action Plan.
3. The Club shall :
- a. Continue to develop proactive supporter initiatives for usage and communication ahead of both home and away fixtures, in addressing the potential for discriminatory or other inappropriate supporter behaviour.
  - b. Continue to develop an ongoing positive dialogue with *Kick It Out*, the EFL and other local organisations to further enhance their relationship by seeking advice on the development of and ratification of new policies and procedures relating to discriminatory behaviour.
  - c. Develop additional supporter and steward educational programmes in conjunction with "Kick It Out", the EFL and other local organisations for the purpose of increasing awareness of unacceptable behaviour, deterring and minimising discriminatory and other



inappropriate supporter behaviour, including the inappropriate usage of words, chanting, gestures, behaviour and conduct associated with ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation and disability.

4. The Club shall continue to develop and publicise the Club's policies in relation to Equality, Diversity and Inclusion which must :

- a. include a prominent "*Discrimination*" section containing relevant and specific information on all aspects of discriminatory and offensive words and behaviour in an effort to educate supporters on what language and actions are acceptable or unacceptable, whether at home or away fixtures.
- b. Continue to publicise the Club's "*Hear Hate? Don't Hesitate*" text reporting system and The Millwall Foundation Equality Policy on the Club's website in particular in relation to the procedures and facilities available to attendees at matches for reporting abuse, particularly that of a discriminatory nature.

5. The Club shall continue to develop and implement an appropriate media campaign across the Club website and the Club's social media accounts emphasising the Club's policies and its zero tolerance toward discriminatory, abusive and insulting language, behaviour and conduct.

6. 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.

7. The Club shall continue to develop and deploy:

- a. match day public announcements ; and
- b. printed messages in its match day programme, on any available big screen, on advertising boards and on stadium advisory posters ; and

- c. content on the Club's website and social media platforms

to proactively target the prevention and detection of any potential discriminatory words or behaviour.

Such announcements, messages and content :

- i. shall make clear in plain effective language that discriminatory and abusive behaviour is offensive, may be criminal, and will not be tolerated by the Club, and
- ii. must be supported by clear reporting methods and facilities.

8. 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, whether as a stand-alone warning, and for away fixtures as part of a '*Travelling Fans Guide*', and
- 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.

9. The Club shall (at the Club's own cost and not that of the host Club) make all reasonable efforts to :

- a. Together with the Club's Supporter Liaison Officer (SLO) send a minimum of two travelling away stewards to any Club away fixture deemed to be 'high risk'.
- b. Provide the host Club with full contact details of the Club's SLO and travelling stewards.
- c. Ensure that the Club's SLO and travelling stewards liaise throughout the fixture with the host club, its Safety Officer and its stewarding operation to provide close liaison and communication with the travelling fans at the stadium and act as a communicational conduit between the host club and the Club's travelling fans and in doing so seek to formulate evidential reports concerning any poor behaviour associated with the travelling fans in order to develop and collate appropriate intelligence on the Club's travelling fan

base.

- d. Provide any travelling stewards with an appropriate body worn camera in order that they may deter, detect and evidence any incidents of discriminatory or anti-social behaviour.
10. The Club shall review all its safety management plans and policies at least once a season.
11. This Action Plan shall be in place for the remainder of the 2023/24 season and the duration of the 2024/25 season and will be monitored by The Football Association.
12. The Club shall invite The FA to ensure that an FA / EFL Compliance Officer is present at any home fixture where, as a result of the match-specific risk assessment, the Club assesses there is a high risk of discriminatory language or behaviour from supporters.”
83. 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.
84. Millwall FC is formally warned as to future conduct.
85. The above sanctions are formally imposed.
86. There is the right to appeal these decisions in accordance with FA Regulations.

ABDUL S. IQBAL KC

PETER FLETCHER

DANIEL MOLE

6<sup>th</sup> October 2023