

IN THE MATTER OF A REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

WEDNESDAY 11 OCTOBER 2023

BETWEEN:

THE FOOTBALL ASSOCIATION

And

SHEFFIELD WEDNESDAY F.C.

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WRITTEN REASONS

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**Background**

1. These are the written reasons for the decisions made by a Regulatory Commission which sat on Wednesday 11 October 2023 to determine the Charge referred to below for a breach of FA Regulation E21.3, which Charge had been admitted thereby restricting the Commission's deliberations to those of considering the appropriate sanction.
2. By a Charge Letter ("**the Charge**") dated 10 August 2023, Sheffield Wednesday F.C. ("**SWFC**") were charged with a breach of Rule E21.3 in respect of matters arising during the match between SWFC and Peterborough United ("**Peterborough**") on 18 May 2023 ("**the Match**"). The Charge is as follows:

*"The Club is hereby charged with misconduct for a breach of Rule E21.3 in respect of the Match."*

*It is alleged that Sheffield Wednesday FC failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match and do not encroach on to the pitch or commit any form of pitch incursion.”*

3. The evidence relied upon by The FA in support of the Charge comprised:
  - (a) A report from the Match Referee, Mr D Webb dated 19 May 2023;
  - (b) Email correspondence between Ms N Gibson of the FA and Assistant Referee Mr N Lugg dated 19 and 21 May 2023;
  - (c) A letter from Mr S Roberts of Peterborough, Head of Security to Ms N Gibson of The FA (this was dated 17 May 2023 on the Charge, but that is self-evidently wrong: the letter is not dated and the 17 May is a day before the Match);
  - (d) A letter from M S Gibson of The FA to Ms L Hinton of SWFC, Club Secretary dated 19 May 2023
  - (e) A letter from Mr R Stanford, SWFC Operations Manager, to Ms N Gibson of the FA dated 22 May 2023;
  - (f) A letter from Mr R Stanford, SWFC Operations Manager to Ms N Gibson of The FA dated 1 June 2023; and
  - (g) Video clips of the incident.
4. SWFC provided its Reply to the Charge, after an agreed extension, on 25 August 2023. In that Reply SWFC admitted the Charge and requested a paper hearing.
5. The Reply was served under cover of a letter dated 25 August 2023 from SWFC's solicitors, Foot Anstey LLP. That letter set out submissions on behalf of SWFC as well as enclosing the following evidence:
  - (1) A witness statement of Liam Dooley, SWFC's Chief Operating Officer;
  - (2) A witness statement of Richard Stanford, SWFC's Safety Officer together with a total of 17 exhibits, one of which was divided into 3 separate sections.
6. Ultimately the Commission had a bundle comprising some 357 pages to consider.

7. Within that bundle were useful submissions filed by The FA on sanction, by a Note dated 20 September 2023. The FA contended that the Commission should impose a 'significant financial penalty' on SWFC 'commensurate with the Club's position in the football pyramid'. SWFC's position, through their solicitor's letter dated 25 August 2023, was that the Commission should "*consider imposing a Reprimand or Warning rather than imposing a financial penalty.*"
8. The Regulatory Commission meet via a Teams call on Wednesday 11 October 2023, commencing at 2pm. The Commission comprised Mr Christopher Stoner KC (Chair), Mr Peter Fletcher and Mr Matt Williams. Mr Paddy McCormack of FA Judicial Services acted as secretary to the Commission, and we record our thanks to him.
9. Prior to the Commission hearing, all the members of the Commission had carefully read all the papers in the bundle and viewed the video clips supplied.

### **Preliminary Point**

10. The FA's submissions on sanction, as relevant for present purposes, state as follows:
  1. *On 10th August 2023, Sheffield Wednesday FC ("the Club") were charged with misconduct for a breach of FA Rule E21:*

*"It is alleged that Sheffield Wednesday FC failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match and do not encroach on to the pitch or commit any form of pitch incursion".*
  2. *The charge relates to the use of pyrotechnic devices and an encroachment by home supporters during the second leg of the Club's League One Play Off Semi-Final fixture against Peterborough United FC on 18th May 2023 at Hillsborough.*
  3. *On 25th August 2023, the Club admitted the charge and requested that the matter be dealt with at a paper hearing. This*

*note has been drafted to assist the Commission by outlining The FA's Submissions on sanction.*

#### *The Facts*

- 4. On 18th May 2023, Sheffield Wednesday FC (SWFC) hosted Peterborough United FC (PUFC) in League One. The match was of great importance to both teams being the second leg of the League One Play Off Semi-Finals. The winner would progress to the League One Play Off Final at Wembley Stadium to compete for promotion to the Championship. PUFC had beaten SWFC 4-0 in the first leg of the Semi-Final on 12<sup>th</sup> May 2023 at the Weston Homes Stadium. Tensions and emotions within the ground would inevitably have been high given the significance of the [fixture].*
- 5. During the fixture and following the final whistle, there were several incidents in which the Club failed to ensure that spectators and/or supporters did not behave in an orderly fashion: a. Use and throwing of pyrotechnic devices into the field of play. b. Throwing of a projectile into the field of play. c. Encroachment by an individual into the field of play, and attempted encroachment by multiple others during the fixture. d. Mass pitch invasion following the final whistle.*
- 6. Each incident is set out in chronological order below.*
- 7. During the match on 18th May 2023, SWFC took an early lead through a Michael Smith penalty in the 9th minute. A pyrotechnic device was then thrown from the North Stand towards the field of play. It is understood that the perpetrator was identified, arrested, and made subject to a Club sanction. The nature of this sanction has not been disclosed.*
- 8. Following a second goal from Lee Gregory for SWFC in the 25th minute, three further pyrotechnic devices were thrown towards the field of play from the North and West Stands. It appears that a single individual was identified, arrested, and made subject to*

*an undisclosed club sanction. The Club are continuing to try and identify the additional perpetrators.*

- 9. In the second half, SWFC continued their dominance scoring in the 71st minute and a pyrotechnic device was lit in the North Stand.*
- 10. SWFC took the score to 4-0 in the 90 + 7th minute. A supporter successfully entered the field of play and a small number of other supporters attempted to do so but were stopped in the perimeter track. It is understood these individuals were arrested and have been made subject to an unspecified club sanction.*
- 11. At full time SWFC led 4-0, bringing the aggregate score to 4-4 and taking the tie to extra time. In the 104th minute following a PUFC goal, a vape was thrown in the Lower West Stand. SWFC scored again in the 112th minute, to bring the aggregate score to 5- 5. A further pyrotechnic device was lit in the North Stand.*
- 12. SWFC went on to win the game 5-3 on penalties. Within seconds of the final penalty, a large number of supporters had entered the field of play. From the footage supplied, this appeared to be only home supporters. The footage shows several incidents of particular concern to The FA:*
  - a. Prior to the final whistle, multiple home supporters made their way to the front of the stands behind the goal in which the penalty kicks were being taken and were readying themselves to enter the pitch.*
  - b. Stewards watching the penalty shootout, with their backs turned to the stands and celebrating the final penalty as supporters began to enter the pitch.*
  - c. Seemingly no attempts by stewards to prevent fans entering the pitch before or during the pitch incursion.*

*d. On the final whistle, Assistant Referee, Nigel Lugg was positioned on the goal line and was surrounded within seconds by hundreds of home supporters. Mr Lugg was provided no initial assistance, protection or escort to leave the field of play. When he attempted to do so unassisted, he was knocked to the ground by an oncoming spectator. What appears to be a technical area occupant from SWFC then helped him up from the floor and he made his way to the tunnel.*

*e. Home supporters approaching and making contact with SWFC players.*

*f. Home supporters approaching and seemingly surrounding PUFC players in the middle of the pitch*

*g. Having entered the field of play, another spectator appears to trip over the leg of a member of the press standing on the touchline and then proceeds to push them with sufficient force they were caused to stumble.*

*h. No stadium announcement made to encourage supporters to leave until 4 minutes into the incursion. Instead, three songs were played over the PA system before intermittent announcements advised supporters to leave the pitch.*

*i. Children on the pitch.*

*j. Supporters continue to enter the pitch throughout.*

*k. The general area around the entrance to the tunnel was blocked by home supporters on the pitch. The entrance itself was being manned by police and stewards however there was no clear route for players, staff or match officials to access the tunnel.*

*l. A pyrotechnic device was lit within the crowd on the pitch.”*

11. A point arising which must be dealt with at the outset, is The FA's suggestion that the charge relates to the use of pyrotechnic devices and an encroachment by home supporters. The Commission is very conscious of the fact The FA's submissions document was produced nearly one month after SWFC admitted the Charge.
12. The Charge is clear and is set out in the first paragraph of the above recitation. It is alleged that SWFC breached Rule E21.3 which provides: "*A Club must ensure that spectators (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending any Match and do not encroach on to the pitch or commit any form of pitch incursion.*" That is a serious Charge. However, no other charge is advanced.
13. Separately, within Rule E21, namely Rule E21.2, there is a provision which relates to ensuring supporters do not "*throw missiles or other potentially harmful or dangerous objects at or on to the pitch.*" Equally, Rule 21.1. relates to ensuring that supporters do not "*use words or otherwise behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative*". These are not charges that have been laid against SWFC.
14. The proper construction of Rule E21.3 must be considered in the context of Rule E21 as a whole and given the express provisions of E21.1 and E21.2, the Commission concludes that the throwing of pyrotechnic or other devices does not fall within Rule E21.3, specially that part of the rule which provides for "any form of pitch incursion." Furthermore, the Commission does not accept, given in particular the wording in Rule E21.2, that the throwing of pyrotechnics or other objects falls within the use general words contained in Rule E21 that the Club must ensure that supporters conduct themselves in an orderly fashion. On this last point, to include all behaviours within these general words would make a nonsense of Rules E21.1 – E21.3 (inclusive).
15. If The FA had wished to Charge SWFC with Misconduct for the throwing of pyrotechnics or other devices, it could have done so, whether in the initial Charge Letter or by amendment. That it did not disqualifies it, before this Commission, from arguing that the Commission should have regard to those incidents referred to in paragraphs 5(a) (as regards throwing) and (b), paragraph 7, paragraph 8, paragraph 9 and paragraph 11 of the above recited extract from The FA's submissions on sanction. As to paragraph 11, although The FA's submissions on sanction refer to the throwing of a vape into the Lower West Stand, The FA's evidence on this appears to be SWFC's letter dated 22 May 2023, which clearly states "*In the 104<sup>th</sup> minute, a vape*

*was thrown towards the field of play from the North Stand...*" (our underlining). This also appears to accord with paragraph 5 of The FA's note on sanctions.

16. The Commission has accordingly dismissed all these matters from its consideration. It would be entirely wrong for the Commission to proceed otherwise than on the basis SWFC have admitted the Charge as drafted and no more.
17. Furthermore, an allegation is made that in the 71<sup>st</sup> minute of the Match a pyrotechnic device was lit in the North Stand. However, no particular reference is given to the evidence in support of this allegation and the Commission has been unable to identify the evidence relied upon by The FA on this point. Accordingly, this incident has also been dismissed from our considerations.

### **The Underlying Facts**

18. As indicated in the above extract from The FA's submissions on sanction, the Match was the second leg of a League One play-off tie. Peterborough had won the 1<sup>st</sup> leg 4-0. Ultimately SWFC won the second leg, after extra time, 5-1 and the Match went to a penalty shootout in which SWFC were successful, ensuring their passage to the Play Off Final at Wembley, where they proceeded to defeat Barnsley to gain promotion to the Championship.
19. At the end of the game, namely after the penalty shootout had finished, there was a mass pitch incursion by SWFC fans. It was a pitch invasion borne out of joy at the result, as opposed to one with any ugly intent, but one which saw, for example, one of the Assistant Referee's, who had been on the touchline (presumably watching for movement by the goalkeeper during the shootout) having to make his own way back to the tunnel, completely unaided, whereupon he was collected, completely accidentally, by a SWFC fan who sent him flying like a skittle. The other Assistant Referee, who was in the centre circle during the penalty shootout, also had no assistance in exiting the pitch. The players were also surrounded.
20. In addition to the mass pitch incursion, as highlighted in The FA's sanction document, SWFC stated in its letter to The FA dated 22 May 2023 *"In the 97<sup>th</sup> minute when Sheffield Wednesday scored a goal, the resulting celebrations saw a small number of individuals enter the perimeter track, with one entering the field of play."*



## Evidence

21. SWFC provided a witness statement from Mr Richard Stanford, its Operations Manager and Safety Officer. To this was exhibited SWFC's 'Safety Management Policy'. This is the foundation document in the sense that it is a standing document, as the Commission understood it, applicable to all games, not simply the Match. That with which we were supplied also states it is that applicable for the 2023-2024 season, so it cannot have been the document that was in force at the time of the Match.

22. Mr Stanford's witness statement states:

*"The Club has a Safety Management Policy in place that addresses risks and responsibilities in relation to the safe operation of the Stadium. The document is the product of discussions and collaboration between the safety team and the Club's Board of Directors and is designed to ensure that the level of risk associated with the operation of the Stadium is as low as reasonably practicable, having regard to the Club's duties under health and safety and football safety legislation. This document is shared with the SAG at the beginning of a season. I would respectfully suggest that the level of detail in this document demonstrates the robust approach the Club takes to ensure safety throughout the Stadium and the level of attention that is given to planning for the safe operation of fixtures throughout the season. I would suggest this demonstrates that the Club has robust procedures in place to ensure safety."*

23. Given that the Commission has been provided with a document for the current season, not the season of the Match, the Commission proceeded by giving SWFC the benefit of the doubt that the document would be broadly similar between the 2 seasons even if any differences were not known to the Commission.

24. Mr Stanford's statement continued, at paragraph 11:

*This Policy includes a section specially on the subject of [the risks associated with pitch incursions. I would draw attention page 53 onwards, specifically on page 54 when the procedure to be followed to prevent a 'Mass Incursion' is explained in detail. I do not propose to re-iterate verbatim in this Witness Statement what is written in the Policy, however I would draw attention to the fact that we plan for stewards to be deployed in the following ways: pitch side; to form a cordon in front of the West Stand accommodating visiting supporters; on the halfway line facing opposite directions and*

*to ensure that "the Club [will] protect match officials, players and management staff in the technical areas, but particularly the visiting team, players and staff, and to prevent spectator entry into the players' tunnel."*

25. SWFC's Safety Management Policy, in so far as it relates to mass pitch incursions, identifies:

*"Contingency plans include a provision for dealing with:*

*Individual pitch intruders, including streakers.*

*Incursion by a group of home or away supporters, to celebrate a goal.*

*A mass celebratory pitch incursion by home or away supporters during the game.*

*A mass celebratory pitch incursion by home or away supporters after the final whistle of a key game or at the final home match of the season or at the end of a penalty-shoot out.*

*A mass incursion by home or away supporter's intent on causing disorder.*

*Stewards are trained and briefed to act in accordance with the club's contingency plans in any of the above scenarios; the Club has dedicated and specially trained response personnel ready to enter the pitch to deal with any incursion.*

*Notices are prominently displayed around the pitch warning fans that entering the pitch is a criminal offence and CCTV would identify anyone doing so."*

The underlining is ours, for emphasis. It was not automatically clear what contingency plans were being referred to.

26. The document then proceeds to identify for mass incursions:

*"If there is intelligence or information regarding, or if during a match there are signs among the crowd that could signal, a potential pitch incursion, stewards will be deployed along the pitch perimeter to reduce the risk. The Safety Officer and Police Commander will jointly consider the additional deployment of police officers to assist the stewards.*

- Stewards on pitch perimeter duty must do what they can to prevent any incursion.*

*After a goal, sending off or other controversial incident on the pitch, the pitch perimeter stewards will stand and face the crowd, in order to reduce the risk of an incursion.*

- *At matches where a pitch incursion is likely (i.e. high-profile cup ties or an end-of-season match): (a) a player or the team manager may be asked to make a personal appeal prior to the game via local radio, in the programme and over the PA; and (b) the stadium PA system should be used to remind fans throughout the game to keep off the pitch. Should a mass incursion occur, the PA system should also be used to encourage spectators to leave the pitch.*

- *A team of stewards and/or police officers will be deployed as a cordon in front of the away supporters. The purpose of this is to prevent the away fans from entering the pitch (they will usually be a smaller group than the home fans and possibly all in one section of the ground, therefore easier to control); and to prevent any confrontation between any home supporters who do manage to access the pitch and the visiting fans.*

- *The Club will also ensure that Police and /or stewards are able to protect match officials, players and management staff in the technical areas, but particularly the visiting team players and staff, and to prevent spectator entry into the players' tunnel.*

- *In the event of home fans accessing the pitch and standing in front of the away fans, the cordon should sweep the home fans away from the visiting fans at the earliest opportunity. In order to prevent the visiting supporters gaining access to the pitch as the cordon sweeps away from the away fans, a second line of stewards and/or police officers may be needed."*

27. The document then also notes:

*Any staging of high-profile matches (cup ties / play-off games / end-of-season matches etc) could see consideration of the following measures:*

*Reminders to fans in advance of the game that entering the pitch will not be tolerated.*

*Increase the steward resources and to discuss with the police commander the level of police resources required.*

*Deployment of stewards / police officers planned for the game should include the provision of a cordon in front of the visiting fans.*

*In the event of an incursion by home fans, the contingency plan should include the availability of a second cordon which could be used to sweep the home fans away from the visiting fans.*

*The safety officer and police commander may consider the deployment of a cordon of stewards and/or police officers across the half-way line to prevent home fans approaching the visiting fans.*

*Limitation of any special admission promotions (such as 50/50) for the last home match of the season as such initiatives will encourage a lot of young supporters to attend, who are not familiar with the ground and its regulations, and who may be tempted to try and enter the pitch.*

#### *Penalty shoot-outs*

*At any cup tie or play-off game where the result could be determined by a penalty shoot-out, it should be recognised that the last penalty kick (successful or otherwise) could prompt an incursion onto the pitch by supporters.*

*In such circumstances, the Club will pay particular attention to the protection of players and match officials, some of whom (goalkeepers, the last penalty-taker, the referee and one assistant) could be located very close to the crowd at the end of the shoot-out.*

*To assist the Club's deployment of stewards for any penalty shoot-out, the Safety Officer should ask the referee in the pre-match Safety and Security Briefing with the Match Officials to make an early decision regarding the choice of ends for the penalty shoot-out and for such decision, once made, to be communicated to the appointed steward responsible for liaising with the match officials.*

*For matches under the jurisdiction of The Football League, special instructions have been introduced for clubs and match officials on the protocol for penalty shoot-outs, including a requirement for any request for penalties to take place at a particular end of the ground to be notified to The Football League in advance of the game."*

28. It may be that the foregoing paragraphs contain the contingency plans referred to in the extract recited at paragraph 25 above, but once again this was not clear to the Commission.

29. We now turn to the specific match planning and risk assessment for the Match. We note that Mr Stanford in his statement told us:

*“By mid-April, it was clear from the league table that the Club would qualify for at least a place in the English Football League (“the EFL”) Playoffs at the end of the season. We therefore knew that we had to plan for the last game of the season, which would be a high-risk fixture, and for a Play Off semifinal.”*

He then proceeds to say:

*“The risk assessment for the fixture against Peterborough United was robust as always, with police meetings, senior staff meetings and supervisory meetings to formulate the action plan, which was filtered down to all staff as covered below”.*

30. We have been provided with a Match Risk Assessment. The first point to note is that although Mr Stanford states that it was clear from mid-April that the Club would qualify for the play-offs, it is equally plain that the fact Peterborough would be the opponents would not be known until much later in the day. We were disappointed to note that the date of the Match Risk Assessment is in fact dated 14 April 2023, namely a date well before Peterborough’s involvement was known and the Match was played. Whilst, of course, planning can and should start early, the Commission considered the fact that what should have been an organic document, with ongoing updates, did not have its last date of final assessment recorded, reflecting a lack of attention that was evident to the Commission in all the documentation.

31. On ‘Pitch Incursions’ the document identified the likelihood of this at the Match as ‘possible’ and the severity was marked as ‘slight’. The risk rating was noted as ‘Low’. Existing controls were listed, which in the view of the Commission was rather divorced from the Safety Management Policy extracts recited above. The existing controls were said to be *“Documented procedure for handling such an incident. Most likely in higher risk game when additional stewarding and alertness would be in place. Monitor crowd for risk. If seems possible, would identify high risk locations and site Stewards accordingly. Would eject culprit(s) and may involve Police. No recent history of issue”*.

32. Far from being a match specific review this just seemed to be a collection of generic statements on a plan which seems to bear little relation to the Match. Indeed, when the document then identifies 'additional control measures', which the Commission expected would relate to matters such as what was to occur in the event of a penalty shootout, as detailed in the Safety Management Policy, the document simply says 'n/a'.
33. We were also disappointed to note that in what purported to be a document relating to the Match, the document (at page 120 of the bundle) refers to "*West Stand sold as Upper section to 2400 Derby fans ...*" and (at page 122 of the bundle) to "*... and will also net off five of the front rows to keep the Derby fans further back ...*". Furthermore, at page 121 of the bundle the Match Risk Assessment the kick-off time is identified as 12.00 noon, when in fact it was 20:00. The Commission considered these were all examples of the use of cutting and pasting and a lack of attention to planning for the Match.
34. There is also, later in the document, a separate entry of "Pitch incursion yellow team" which Mr Stanford specifically refers to in his statement. This identifies a likelihood, a severity rating and a risk rating of 'low'. Existing controls are that 'PA announcements will be used throughout', with additional control measures being identified as "*Ten stewards will form up on the halfway line facing West stand 10 stewards will face North stand. These will be there in case of any fans coming together, ready to respond. CCTV in operation, Police fixture. Additional resources can be called upon when players and officials are escorted from the field of play. Radio communication throughout.*" It appears this entry was made on 18 May 2023, namely the day of the Match. If this was the specific planning for the Match the Commission notes that it appears to do no more than mirror the passage from Mr Stanford's statement recited in paragraph 24 above, which the Commission understood to be advanced as a standard procedure.
35. Finally, on this document, Mr Stanford refers the Commission to page 5 of the document and the point relating to 'Conflict between spectators, and any players, match officials, club officials, stewards.' The Risk Assessment is that the likelihood is unlikely and the severity slight, with an overall risk rating of low. No additional control measures are identified, but the existing controls are identified as being:

*“Stewards, club officials match officials and team management to monitor the situation in their different capacities and intervene as necessary. Ground Regulations. Deployment of steward resources, as necessary. Stewards aware of role to diffuse situation. CCTV. Radios available. Match officials briefing. Match officials escorted from pitch as regular procedure [emphasis added]. Protected players' tunnel and Club Officials only area Steward positioned to observe most sensitive areas.”*

36. Having regard to all this documentation, unfortunately the Commission is not able to agree with Mr Stanford's suggestion of this documentation showing robust risk assessment *for the Match*. Nor does the Commission think that the documentation shows adequate planning.

37. There is a lot of paperwork, in terms of the numbers of pages, but it appears to the Commission to be generic and formulaic, with little attention being focused on the Match. Indeed, we were very disappointed to observe that given the proclamations in the SWFC Safety Management Policy, as recited above, which included, by way of example, references to the eventualities of a penalty shoot-out, as happened at this Match, there appeared a real lack of any evidence that this standard documentation had been considered in the context of the Match and a plan put in place accordingly.

38. In the view of the Commission, one document in particular provided evidence of this disconnected approach. Mr Stanford referred us to some e-mails he sent to the Safety Action Group. One, at page 190 of the bundle, shows an email from Peter Spratt of the South Yorkshire Police on the morning of Monday 15 May 2023. In that email, Mr Spratt said to Mr Stanford:

*“Pitch incursion mitigation – do you have a contingency plan for a SWFC incursion? I agree that PUFC is designed out by being in the upper tier, however, need to understand your contingency plans for this to determine/capacity/capability of our resource if called upon.*

*Doubt now with being 4-0 down this will happen, if it does it will be managed by opening gates for safety reasons, controlled manner rather than stampede. If Wednesday go down by a goal, I except (sic) fans to leave.”*

39. The Commission have been unable to identify any response to this request, save, perhaps the addition to the Match Day Risk Assessment referred to above on 18 May 2023. The Commission observes that there is certainly an air in planning, as observed by the South Yorkshire Police, of a pitch incursion being unlikely because SWFC considered it unlikely they would recover from a 4-0 deficit from half time, notwithstanding we are told that planning commenced in mid-April, well before the details of the fixture were known.

40. The Commission also considered:

- (a) A Pitch Side Risk Assessment, which added little save for noting that Match officials “may be escorted of (sic) pitch separately if game has been played with emotions running high.” (our underlining). This, however, seems at complete odds with the Match Risk Assessment document, specifically highlighted by Mr Stanford’s evidence, which (as recited above) states that ‘*Match Officials escorted from pitch as regular procedure.*’
- (b) A stewarding plan, which aside from having the Peterborough crest added to that of SWFC at the top of the document did not appear to the Commission to be match specific.
- (c) The Ground Regulations;
- (d) Details of the number of matchday stewards. It is clear to the Commission that SWFC did increase the number of matchday stewards for the Match, in light of the risk it presented, and this is clearly a matter in SWFC’s favour.
- (e) A document entitled ‘Operational Plan High’, which Mr Stanford tells us in his witness statement is a ‘*detailed and comprehensive plan that covers each phase of play and provides further details about the response to specific threats.*’ However, this document did not appear to the Commission to deal with the possibility of a mass pitch invasion at the end of the Match in circumstances where SWFC had won, or how to deal with matters such as protecting the Match Officials, although we noted that reference is again made to the fact officials “may” be escorted from the field of play, this being on “*on a threat and risk assessed basis*”. We can see no planning for a penalty shoot-out, even though that was a possibility which became an eventuality on the evening.



- (f) Emails to the Safety Advisory Group, one of which has already been referred to above.
- (g) A Stewards Briefing document dated 4 May 2023 covering the earlier game against Derby County: see Mr Stanford's statement at paragraph 28 (referred to below). This includes a phase 4 which relates to events at the end of the Match, including "MH to take officials off". However, the document does not appear to have had regard to the positioning of Match Officials in the eventuality of a penalty shoot-out. The deployment of Stewards to the half – way line can only be understood by the Commission to be a plan to protect the away fans, even though they were in the upper tier of their stand. The Commission notes this match was treated as a trial run for the play-off semi-final and this is a point which is in SWFC's favour in respect of their planning.
- (h) Confirmation that 17 of the Stewards, including Mr Stanford, attending the pre-Match Brief and Planning Meeting on 4 May 2023 for the Derby County Game.
- (i) The planning materials for the previous game against Derby County;
- (j) A Stewards Briefing for the Match. This does note that the '*Result could change the dynamics of the crowd vastly*' but no particular points about pitch incursions/penalty shoot-outs appear to have been included within the briefing.
- (k) A turn style managers briefing;
- (l) The signage shown to supporters;
- (m) The matchday file (which records that at 22:55 "*message about leaving pitch continually repeated*"), although it is apparent from the evidence including the video clips the Commission has seen that no public address system announcements were made until a few minutes after the pitch incursion took place. Furthermore, the Commission has seen no evidence of announcements between made, for example, before or after extra time to remind spectators not to enter the pitch after the conclusion of the Match. This is, in the view of the Commission, an inexplicable omission.
- (n) Emails relating to the Officials leaving the pitch at the end of the Match;
- (o) A Persistent Standing Management Plan;

- (p) The Club's pyrotechnics policy;
- (q) The Club's sanctions tariff;
- (r) An email from the police regarding a fan who was arrested for a 'pyro offence' asking for CCTV footage; and
- (s) Photos and video clips.

41. The Commission also had the benefit of a statement from Liam Dooley, SWFC's COO, who emphasises how importantly SWFC take safety and how much planning goes into a match. Mr Dooley also offered an apology *"to anybody who was upset or affected by what happened on the night"*.

42. We were also conscious of the briefing that Mr Stanford refers to in his statement, which was given before the Derby County game, which was being used as a trial run for the Match and which was applicable to both the Derby game and the play off semi-final. This is perhaps the most match specific evidence before the Commission. Mr Stanford details this in paragraphs 28 – 30 of his statement as follows:

*"I have introduced a 'Phase 4' for dealing with high-risk fixtures. This extends to matches where there might be a pitch invasion at the end of the game. On 4th May 2023 I organised a meeting with the safety team who would be working for the games against Derby County and Peterborough United. My Deputy Safety Officers, Stand Managers, Stand Supervisors were present at the briefing and had an opportunity to ask questions about the plan that would be followed. The document entitled Stewarding Brief, which specifically addresses on the penultimate page details of what stewards were required to do in the event of a pitch invasion, is Exhibited as RS/6. My colleagues were required to sign a sheet to confirm they had attended the briefing. This is produced as Exhibit RS/7.*

*We applied the relevant guidance from the EFL when dealing with pitch invasions. As the end of the game approached, all stewards were deployed pitch side. We planned for stewards to be lined up on the halfway line facing each direction (so towards the East and West stands). We also planned for an arc of 20 stewards to re-enter the stadium to position themselves in the tunnel, so that as soon as the referee blew the final whistle they would emerge from the tunnel and quickly form an arc around the tunnel area so that players, managers and match officials could head for that area, which would form a 'safe zone for them.*

*We allocated a group of stewards to specifically provide an escort to the match officials. We allocated a further group of stewards to escort the players. These were initially located within the tunnel but moved out, closer to the match officials in readiness for the penalty shootout.”*

43. The ‘phase 4’ items on the briefing were:

*“MH to take officials off*

*DR on the pitch to escort players with 16 stewards*

*DS ½ way line with 40 Stewards in a line watching both ends*

*LM Arc Tunnel with 20 stewards*

*SB oversee Leppings Lane Operation*

*GB oversee Leppings Lane Operations*

*MM under South Stand monitoring egress (remember Sunderland last year).”*

44. The Commission carefully considered all the information in the bundle. Simply because it is not referred to in these Written Reasons does not mean that it has not been taken into account by the Commission.

### **Approach to Sanction**

45. In their letter dated 22 August 2023, SWFC’s lawyers identify the correct approach to sanction to be that which was sanctioned in the case of *FA v Birmingham City* (supplemental decision on sanction, 13 September 2019, Graeme McPherson QC Chair). This is also the approach adopted by The FA in its written submissions on sanction, at paragraph 35. It is the approach this Commission adopted.

46. Accordingly, we must consider:

(a) The seriousness of the breach;

(b) The Club's culpability;

(c) The level of harm caused; and

(d) The mitigation available to SWFC.

47. As to seriousness, The FA rightly remind us that at this stage *"what is being assessed ... is the gravity of the Club's breach of the FA rules, not the consequence."*

48. SWFC, through their solicitors, submit that SWFC carried out extensive and detailed planning for the match and place emphasis on the briefing referred to in Mr Stanford's witness statement (as recited at paragraph 42 above with the briefing referred to being recited at paragraph 43 above). Emphasis is placed, on SWFC's behalf on a 'thorough match specific assessment' having been undertaken. An apology is offered to the Assistance Referee who was bowled over by a fan coming onto the pitch, which the Commission accepts was purely accidental, whilst also reciting from the case of *FA v Port Vale* to the effect that it may not be possible to prevent mass incursions.

49. The totality of the points made, including the above, on behalf of SWFC, lead to the submission *"the level of seriousness of the breach is at the lower end of the scale in this case."*

50. The FA, in its note on sanctions, submits that whilst there were an increased number of stewards there were insufficient and/or ineffective resources for such an important fixture. The FA notes that SWFC have accepted in its submissions that *"the mere fact of an increase [in stewards] is unlikely to assist the Club materially"* (a submission made in respect of culpability). The FA also notes that the Match Risk Assessment does not appear to be bespoke and that the seriousness of the breach is that several thousand spectators were able to enter the pitch.

51. In the Commission's view the breach was 'serious'. The Commission is mindful that in all the circumstances of an extraordinary game and result, it may well have been very difficult to prevent spectators from gaining entry onto the pitch. However, that cannot excuse what the Commission considers was a lack of proper and effective planning. Thousands of spectators were able to get onto the pitch without, the Commission notes, any real attempt to stop them. Furthermore, the Participants on the field of play, including the players and Match Officials, were largely unprotected.

52. The Commission notes, by way of example, that in the SWFC Safety Management Policy in the event of a penalty shootout *“The Club will pay particular attention to the protection of players and match officials, some of whom (goalkeepers, the last penalty-taker, the referee and one assistant) could be located very close to the crowd at the end of the shoot-out”*. This is absolutely correct, but for the Match the Commission has seen very little, if any, evidence of a plan to deal with this eventuality. Certainly, the Assistant Referee Mr Lugg appears to have been left entirely on his own. This is but one example of poor planning, resulting in a serious breach of the Rule.
53. Turning to culpability, both parties refer to the sliding scale of culpability sanctioned in the case of *FA v Bristol Rovers* (5<sup>th</sup> October 2015, Chair Peter Griffiths QC at paragraph 5). That scale is: *“[1] the most serious [for example a deliberate decision not to provide the necessary resources for financial reasons], to [2] a reckless disregard in respect of the Club’s duties, to [3] gross negligence, to [4] negligence simpliciter, down to, finally, [5] a situation where a club has marginally failed to avail itself of the “due diligence” defence set out in Rule E21.”*
54. SWFC says the Commission should assess culpability in category 5. It relies on the fact that the number of stewards was notably in excess of the number required for the Club’s safety certificate and that with the exception of Mr Lugg the other Match Officials were protected. In addition, it is said that the tunnel area was properly protected and the fact SWFC had a dry run against Derby County is also relevant.
55. It is also said, on behalf of SWFC, that its responsible attitude has been shown by seeking to engage with South Yorkshire Police to learn lessons and that, in future, steward allocation for the safety of Match Officials when penalty kicks are taken will be changed. These points, in the view of the Commission, may be points of mitigation. They are not relevant, however, on culpability for the events at the Match.
56. The FA says that the level of culpability is a 3 or 4, or, as they put it ‘towards the medium point’. They submit:
- “The Club did take a reasonably proactive approach to managing safety during the fixture however, the documents provided demonstrate a lack of clarity as to the designation of risk for this fixture generally and placed a greater focus on contingency in the event of a pitch incursion, rather than prevention. The preparation was therefore insufficient to successfully mitigate the risks.”*

57. The Commission's view is that this is clearly a mid-range case. It is certainly a long way from a case where SWFC could reasonably state that it had only marginally failed to avail itself of the 'due diligence' defence set out in Rule E21.
58. The Commission felt that a lot of documentation was placed before it, but very little of that showed planning for the Match as opposed to being generic. Furthermore, as highlighted in the paragraphs above, there were occasions when the documentation appeared to the Commission to be inconsistent, for example in relation to whether the Match Officials 'would' or 'may' be escorted from the pitch. Furthermore, the generic documentation, for example the Club's Safety Policy, which specifically refers to events such as penalty shoot-outs, did not demonstrably appear to have formed any part of the specific Match planning.
59. There is also the failure, on the documents, to address the pertinent question asked by the South Yorkshire Police (at page 190 of the bundle). Planning has to cover all eventualities and unfortunately the Commission were left with the impression, having regard to the specific planning for the Match, that no detailed thought was given to the possibility of extra-time, penalties and a pitch invasion.
60. It was also evident from the Video Clips that the ring of stewards around the pitch was never going to prevent a mass incursion, especially given the inexplicable lack of any evidence of announcements to stay off the pitch, with, instead, music being played for several minutes after the incursion occurred.
61. In so far as there was limited reference to a pitch incursion in the documents, the Commission was not persuaded that it evidenced much thought. Thus, for example, the Commission could not understand how the severity of a pitch invasion could be described as 'slight'. The Commission also accepts The FA's suggestion that such planning as there was in respect of a pitch incursion was reactive as opposed to preventative.
62. Overall, the Commission considers, on the sliding scale, that SWFC fall into category 3.
63. The next matter to consider is 'harm'. In the submissions made through its solicitors' letter dated 22 August 2023, SWFC noted that although a large number of supporters came on to the pitch, there were no reported acts of violence and the atmosphere was one of unbridled joy.

64. The FA says that *“Harm’ encompasses the immediate adverse consequences of an incident and has a wider meaning [than] physical injury or ‘crowd trouble’, including:*

- a. The creation of a dangerous or hostile situation, even if that situation did not in fact escalate,*
- b. The creation of a risk of ‘copycat incidents’,*
- c. The creation of any longer-term consequences, such as elevation of tensions at future matches between rival supporters, and*
- d. Any wider damage to the reputation of football.”*

This extract is taken from the *FA v Birmingham* case.

65. The FA submits that a dangerous situation had arisen, including the presence of pyrotechnics on the pitch and that *“It is somewhat a result of good fortune that an escalation and hostility did not arise.”* The Commission rejects this. We accept what is said on behalf of SWFC that the invasion was one driven by ‘unbridled joy’. We do not, therefore, accept that the harm is properly categorised as ‘significant’.

66. However, the Commission does consider the harm was serious. The risk of copycat events is evident and the lack of protection to two of the Match Officials is a real concern, notwithstanding that one was actually bowled over by a celebrating fan entirely innocently. The reality is that he should have been safely escorted away, as should the Assistant Referee in the centre circle. That they were not and that one was bowled over, as was seen on social media and TV, is harmful to the reputation of the sport.

67. That leaves the Commission to consider mitigation. The points advanced are contained in the letter of SWFC’s solicitors dated 22 August 2023 and are:

- (a) The considerable material exhibited to Mr Stanford’s witness statement. The Commission does not accept this is mitigation. The documentation was weighty, but some of it was of no assistance to the Commission at all. In so far as the intention is to refer to SWFC’s planning, we have already commented on this in the previous paragraphs. Weight of documentation should not be confused with good planning. We find little by way of mitigation in that planning.
- (b) SWFC has accepted responsibility at the first opportunity. That is undoubtedly correct and is a point of mitigation in SWFC’s favour.

- (c) SWFC has sought to respond in a timely manner to The FA's questions. Again, that is undoubtedly correct as it is to say that SWFC has co-operated throughout. This is another point of mitigation in its favour.
- (d) Mr Stanford and his team are experienced and capable safety professionals who sought to plan properly for a mass pitch invasion. In the Commission's view this, in reality, is repetition of point (a).
- (e) SWFC apologies that supporters entered the field of play and also re-iterates an apology to the Assistant Referee who was bowled over. This is accepted and is a point of mitigation in SWFC's favour.
- (f) SWFC has accepted responsibility and has engaged in a process of continuing review to ensure that all lessons are learned. The first element of this is a repeat of point (b). The second point is commended by the Commission but offers only limited mitigation to what occurred in May 2023 (in the absence, for example, of the Commission being shown amended documentation based on the events at the Match, to be actioned in future games).
- (g) It is not necessarily possible to prevent mass incursions. That is accepted, but the focus of this matter is the planning of how to deal with such an occurrence.
- (h) The Club is 'not awash with cash'. This is noted, as is the fact the Commission has no real evidence on the Club's financial status.

68. Overall, there is clearly some mitigation and that has been taken into account by the Commission when reaching its conclusion. We consider that the mitigation in all the circumstances is relatively slight, principally being attributable to the early acceptance of the Charge and the club's co-operation.

69. Having regard to all the forgoing matters, the Commission concludes that the appropriate sanction for the admitted breach of Rule E21.3 is:

- (a) A warning as to future conduct;
- (b) A fine in the sum of £50,000 (which would have been higher, but for the mitigation);  
and
- (c) SWFC will pay the costs of the Regulatory Commission in the sum of £675.



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

Christopher Stoner KC, Chair  
On behalf of the Regulatory Commission

Date: 16/10/2023