

**IN THE MATTER OF AN APPEAL**  
**FROM THE DECISION OF A DISCIPLINARY COMMISSION**  
**OF MANCHESTER FOOTBALL ASSOCIATION**

Case ID : 11476351M

**BETWEEN :**

**BURY FC**

**Appellant**

**and**

**MANCHESTER FA**

**Respondent**

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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.**

**Appeal Board constitution.**

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

Daniel Mole (Independent Football Panel member)

Peter Clayton (Football Association Council member)

Conrad Gibbons (Secretary to the Appeal Board)

Steven Flynn of counsel appeared on behalf of the Appellant.

Richard Stubbs of counsel appeared on behalf of the Respondent.

Date of appeal hearing : 4<sup>th</sup> March 2024

1. This document sets out the written reasons for the findings of an FA Appeal Board which sat on Monday 4<sup>th</sup> March 2024.
2. The Appeal Board met to hear an appeal brought by the Appellant against a decision of a non-personal Disciplinary Commission (“the Commission”) sitting in respect of disciplinary proceedings brought by Manchester FA against Bury FC (“BFC”).
3. This is the decision and written reasons of the Appeal Board. Necessarily, this is a summary document. It is not intended to be a record of all submissions to the Appeal Board and/or evidence adduced before the Commission.
4. For the avoidance of doubt, the Appeal Board carefully considered and took into account all the evidence and submissions made by the parties in this case.

### **(1) The charges.**

5. By “*misconduct charge notification*” dated 30<sup>th</sup> November 2023<sup>1</sup> the Manchester Football Association (“Manchester FA”) alleged that BFC during a match (“the match”) between BFC and West Didsbury & Chorlton AFC on 2<sup>nd</sup> September 2023, 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 BFC with:
  - i. Failing on 2<sup>nd</sup> September 2023 to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conducted themselves in an orderly fashion and refrained from improper, offensive, violent, threatening, abusive, indecent, insulting or provocative words and/or behaviour contrary to FA Rule E21.1;
  - ii. It was further alleged that the words and/or behaviour made reference to race, disability and sexual orientation contrary to FA Rule E21.4. This referred to the comments ‘*paki*’, ‘*faggot*’, ‘*retard*’, ‘*spastic*’ and ‘*limp wrist gestures*’ or similar.
7. BFC admitted the charge by response dated 30<sup>th</sup> November 2023<sup>2</sup> and requested a paper hearing.

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<sup>1</sup> Pages 75 to 76 of the appeal bundle.

<sup>2</sup> Page 98 of the appeal bundle.

## **(2) The Commission's factual findings and sanction.**

8. The totality of the evidence was considered by Nick Leale (Independent Chair) sitting alone as the Commission.

9. The Appeal Board read the document entitled "*Decisions and Written Reasons*" dated 8<sup>th</sup> January 2024 prepared by Nick Leale that sets out the reasoning, factual findings and sanction imposed by the Commission in this case<sup>3</sup>.

10. The Commission found the charge proved on the basis of the admission of BFC of the charge.

11. The Commission concluded factually on the entirety of the evidence before it as follows:

- i. The club admitted the charge and the evidence of the words and gestures used by the Club's supporters was clear and undisputed;
- ii. The evidence was clear that BFC supporters had repeatedly directed abusive and discriminatory comments at visiting supporters / others present at the match;
- iii. The words and actions used were repeatedly abusive, indecent and discriminatory by their reference to race, disability and sexual orientation;
- iv. A small number of supporters were involved but the behaviour was repeated numerous times during the course of the relevant match;
- v. The words were used in an aggressive way and coupled with intimidating, threatening and aggressive actions, including repeated offers to fight<sup>4</sup> with visiting supporters;
- vi. No proper action was taken to stop the behaviour or remove the relevant individuals from the stadium;
- vii. The Commission Chair was informed of BFC's offence history<sup>5</sup> going back to the start

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<sup>3</sup> Pages 140 to 144 of the appeal bundle.

<sup>4</sup> The written reasons states "right" but it is common ground that this was a typographical error.

<sup>5</sup> It was common ground that by oversight the Chair had not been aware of the existence of a further incident of serious misconduct involving an aggravated breach of FA Rule E21 involving sexist abuse directed at the Assistant Referee on 4 April 2023 that led to the imposition of a suspended sporting sanction on BFC on 13<sup>th</sup> September 2023.

of the 2018/19 season. There had been seven<sup>6</sup> relevant previous misconduct findings against that club in that period relating to spectator behaviour. Most significantly:

- a. Following events on 9<sup>th</sup> November 2021 the Club were fined £75 following a breach of FA Rule E20. Supporters had spat at the visiting goalkeeper and thrown beer on the pitch. This was recorded as the third incident of the season involving misconduct by Bury FC supporters.
- b. Following events on 27<sup>th</sup> March 2022 BFC were fined £65 following a breach of FA Rule E20. Supporters had repeatedly set off smoke flares.
- c. Following events on 2<sup>nd</sup> April 2022 BFC were fined £80 following a breach of FA Rule E20. Supporters had set smoke flares, thrown items onto the pitch and taken part in crowd disturbances.
- d. Following events on 15<sup>th</sup> November 2022 BFC were fined £140 following an aggravated breach (i.e. involving discriminatory behaviour) of FA Rule E21. A spectator had described the assistant referee as a “gay boy” and “faggot”.
- e. Following events on 26<sup>th</sup> November 2022 BFC were fined £190 following a breach of FA Rule E21. A supporter had used violent conduct towards opposition spectators.
- f. Following events on 11<sup>th</sup> March 2023 BFC were fined £215 following a breach of FA Rule E21. Supporters threw a flare onto the pitch and invaded the field of play.
- g. Following events on 28<sup>th</sup> March 2023 BFC were fined £165 following a breach of FA Rule E21. Supporters had attempted to strike the referee at the end of the match.
- viii. The Commission Chair concluded that the events of 2<sup>nd</sup> September 2023 at BFC were of the utmost seriousness, given the repeated poor behaviour of their supporters and the heavily discriminatory actions of their supporters at the match;
- ix. The conduct of their supporters was made significantly more serious by the numerous previous E20 / E21 misconduct findings against BFC as detailed above in the period from November 2021 to March 2023;

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<sup>6</sup> The correct number is eight but the Commission appears not to have been aware of the eighth relevant misconduct finding.

- x. Seven<sup>7</sup> serious misconduct findings involving supporters in such a short space of time (prior to the subsequent events of 2<sup>nd</sup> September 2023) is truly exceptional;
  - xi. Sadly, for BFC, the poor behaviour has now escalated into a further finding of abusive behaviour that included discriminatory references;
  - xii. The Commission Chair was left with no choice but to substantially increase the seriousness of the sanction passed against the Club.
12. The Commission imposed the following sanction :
- i. A fine of £350 (reduced from the maximum due to the club's guilty plea);
  - ii. A two-match full stadium closure. Namely that for two home matches, *“no spectators can be present at Bury FC's stadium. The stadium closures must occur on the date of the first two North West Counties League Premier Division matches to take place at the stadium after the receipt of the notification of this decision by Bury FC”*.

### **(3) The regulatory framework as to liability and sanction.**

13. Regulation 41 of the FA Disciplinary Regulations<sup>8</sup> (General Provisions) provides:

*“General*

*41 Save where expressly stated otherwise, a Regulatory Commission shall have the power to impose any one or more of the following penalties or orders on the Participant Charged:*

*41.1 a reprimand and/or warning as to future conduct;*

*41.2 a fine;*

*41.3 suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of Matches;*

*41.4 the closure of a ground permanently or for a stated period;*

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<sup>7</sup> There were in fact eight such findings if the events of 4<sup>th</sup> April 2023 are taken into account.

<sup>8</sup> Pages 173 to 174, FA Handbook 2023 – 24. This regulation applies to Disciplinary Commissions as provided for by Regulation 1.1 of the ‘General Provisions’ at page 169 of The FA Handbook.

*41.5 the playing of a Match or Matches without spectators being present, and/or at a specific ground;*

*41.6 any order which may be made under the rules and regulations of a Competition in which the Participant Charged participates or is associated, which shall be deemed to include the deduction of points and removal from a Competition at any stage of any playing season;*

*41.7 expulsion from a Competition;*

*41.8 expulsion from membership of The Association or an Affiliated Association;*

*41.9 such further or other penalty or order as it considers appropriate.”*

14. Regulation 42 of the FA Disciplinary Regulations<sup>9</sup> provides:

*“42 In imposing penalties, a Regulatory Commission must apply any:*

*42.1 applicable standard sanctions as may be communicated by The Association from time to time. A Regulatory Commission may only depart from such standard sanctions where it deems it appropriate having regard to the facts of an individual case (for example, where a particular act of Misconduct is sufficiently serious that the guideline sanction would not constitute a sufficient penalty for the Misconduct that has taken place);*

*42.2 mitigating and/or aggravating factors, to include but not limited to the disciplinary record of the Participant and other factors that may be communicated by The Association from time to time.”*

15. The regulations under the title “*Disciplinary proceedings before Disciplinary Commissions*” apply to this charge contrary to FA rule E21<sup>10</sup>.

16. Regulation 119<sup>11</sup> under the said heading provides:

*“A Disciplinary Commission shall comprise of no less than three and no more than five members, save for nonpersonal hearings where The Association may appoint a single Chair to determine the case alone. The Disciplinary Commission shall have no previous*

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<sup>9</sup> Page 174, FA Handbook 2023 – 24. This regulation applies to Disciplinary Commissions as provided for by Regulation 1.1 of the ‘General Provisions’ at page 169 of The FA Handbook.

<sup>10</sup> Page 219 of The FA Handbook onwards.

<sup>11</sup> Page 219 of The FA Handbook.

*personal knowledge of the events or any involvement with any of the Participants concerned.”*

17. Regulation 131<sup>12</sup> provides:

*“131. Where the Charge is found proven the Disciplinary Commission will decide what punishment, if any, is to be imposed. In so doing, the Disciplinary Commission must consider the overall nature and effect of the offence(s) and the Player’s disciplinary record during the current playing season and the previous five playing seasons and any plea in mitigation.”*

18. The *Grassroots Disciplinary Guide* and the *General County FA Sanction Guidelines* are available on the Manchester FA website<sup>13</sup> which specifically states that the links to the guides are to assist clubs, and other interested parties.

19. The “*FA CHARGING POLICY AND SANCTION GUIDELINES SPECTATOR MISCONDUCT*”<sup>14</sup> (“the FA charging policy”) applies to the circumstances of this case.

20. The FA charging policy states (amongst other things) that:

- a. A Club can defend a charge contrary to FA Rule E21.1 to E21.3 (only) by showing that the incident(s) complained of were the result of circumstances over which it had no control and its officers or agents used all due diligence to ensure the responsibility to ensure its spectators conducted themselves properly was discharged;
- b. Relevant factors as to the decision to charge the Club will include the extent to which the Club discharged its duty; the severity of the issues involved; the extent to which similar issues have arisen previously and whether the Club took sufficient action in preventing further such incidences;
- c. When imposing sanction the Commission shall consider any combination of a financial penalty; the closure of a stand or part thereof for a specified number of matches; or the closure of a Club’s stadium for a specified number of matches (i.e. the playing of matches without spectators present);
- d. A Commission will have due regard to the circumstances and seriousness of the

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<sup>12</sup> Page 220 of The FA Handbook.

<sup>13</sup> <https://www.manchesterfa.com/about/rules-and-regulations/discipline/procedures>

<sup>14</sup> Pages 50 to 53 of the appeal bundle.

incident when determining sanction and factors considered will include:

- i. The number of supporters involved;
- ii. The nature of their behaviour;
- iii. The duration of the incident(s);
- iv. The severity of the incident(s);
- v. Whether the Club took all reasonable steps planning and preparing for the fixture; dealing effectively with the incident; identifying the supporters involved; and taking sufficient action against those supporters where identified;
- vi. The previous disciplinary record of the Club in respect of crowd matters.

#### **(4) The regulatory framework as to appeal.**

21. Regulation 139 of the regulations under the title “*Appeals from Disciplinary Commission decisions*”<sup>15</sup> provides:

*“139. Participants shall have the right to appeal decisions of a Disciplinary Commission to an Appeal Board in accordance with Part C: Appeals – Non-Fast Track. A Participant wishing to appeal must:*

*139.1 lodge notification of an intention to appeal within seven days of notification of the decision being appeal against;*

*139.2 submit their appeal within 14 days of notification of the decision being appeal against.”*

22. Regulation 2 to Part C “*Appeals – Non-Fast Track*”<sup>16</sup> provides:

*“2 The grounds of appeal available to Participants shall be that the body whose decision is appealed against:*

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<sup>15</sup> Page 221, FA Handbook 2023 – 24.

<sup>16</sup> Page 186, FA Handbook 2023 - 24



*2.1 failed to give that Participant a fair hearing; and/or*

*2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or*

*2.3 came to a decision to which no reasonable such body could have come; and/or*

*2.4 imposed a penalty, award, order or sanction that was excessive.”*

23. Regulation 21 to Part C “*Appeals – Non-Fast Track*”<sup>17</sup> provides:

*“21 The Appeal Board shall have power to:*

*21.1 allow or dismiss the appeal;*

*21.2 exercise any power which the body against whose decision the appeal was made could have exercised, whether the effect is to increase or decrease any penalty, award, order or sanction originally imposed;*

*21.3 remit the matter for re-hearing;*

*21.4 order that any appeal fee be forfeited or returned as it considers appropriate;*

*21.5 make such further or other order as it considers appropriate, generally or for the purpose of giving effect to its decision.*

*21.6 order that any costs, or part thereof, incurred by the Appeal Board be paid by either party or be shared by both parties in a manner determined by the Appeal Board.”*

**(5) BFC’s grounds of appeal.**

24. The Appeal Board had before it the following documents in relation to the lodged grounds of appeal:

- i. “*Notice of Appeal*”<sup>18</sup> and associated documents<sup>19</sup>.

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<sup>17</sup> Page 187, FA Handbook 2023 - 24

<sup>18</sup> Pages 4 to 14 of the appeal bundle.

<sup>19</sup> Page 15 to 31 of the appeal bundle.

25. The Appeal Board read all of the above material and considered it with care.
26. BFC appeals against element (ii) only of the sanctions imposed by the Commission, namely the two-match “*full stadium closure*”.
27. In summary, BFC relies upon the following matters in support of the grounds of appeal in relation to the sanction imposed.

Ground 1. “The Commission imposed a sanction that was excessive”.

28. In summary, BFC makes the following submissions in support of the appeal:
- i. The sanction imposed is a drastic departure from the County Guidelines and is not justified in these circumstances. The financial impact on the Club will be 144 times more than the maximum fine recommended in the County Guidelines;
  - ii. In circumstances where BFC has never been subject to an Action Plan, the imposition of a stadium closure for 2-matches is not justified;
  - iii. The Charge Letter referred to the County Guidelines and that the relevant sanctions were a fine of up to £400. The sanction imposed on BFC far exceeds that recommended in the County Guidelines as detailed in the Charge Letter.
  - iv. It is acknowledged it is possible to deviate from the recommended sanction with valid reasons. BFC avers that there are insufficient reasons to justify increasing from a fine of £400 to an immediate full stadium closure for two matches;
  - v. If the Commission intended to depart from the County Guidelines and what was said in the Charge Letter, then it should have detailed its reasons for doing so. It did not;
  - vi. The Commission recited BFC’s disciplinary history but it did so incorrectly. The Commission did not refer to a sanction imposed on the Club on 13 September 2023. This arose from an aggravated breach of FA Rule E21. A suspended sanction of playing one match without spectators was imposed<sup>20</sup>;
  - vii. BFC acknowledges its previous misconduct and has made significant efforts to avoid

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<sup>20</sup> Pages 54 to 63 of the appeal bundle. The earlier misconduct offence occurred on 4 April 2023. The earlier misconduct offence was the subject of written reasons dated 24 August 2023 (imposing a suspended sporting sanction involving the playing of a match without spectators) but that sanction was not notified to BFC until after the date of this misconduct offence.

a repeat. It is submitted that these efforts substantially mitigate against the imposition of an immediate sporting sanction. The imposition of an immediate sporting sanction is excessive;

- viii. BFC will incur significant losses consequent to a full stadium closure for two matches. The Commission did not enquire with BFC as to the impact of any such sanction.
- ix. BFC acknowledges the FA Guidance. This was not referred to in the Charge Letter. Nor was it referred to by the Commission. To the extent that the FA Guidance was to apply to the Charge, this should have been made clear in the Charge Letter;
- x. BFC was directed to relevant sanctions as being a fine of up to £400. If the Manchester FA intended to seek a more severe sanction, then BFC should have been made aware of this;
- xi. An immediate full stadium closure for two matches is not justified under the FA Guidance. Whilst BFC had admitted prior aggravated misconduct, it was never subject to an Action Plan as mandated under the FA Guidance;
- xii. BFC had made its best efforts to ensure that there were no incidents of misconduct;
- xiii. BFC's Written Response detailed those steps. BFC has made significant steps recently (particularly since this incident) to ensure such matters do not happen again
- xiv. In deciding to order a two-match full stadium closure, the Commission did not consider whether BFC could be adequately punished by a lesser sanction, such as the closure of a stand or part thereof.

## Ground 2. "Misinterpreted the FA Disciplinary Regulations".

29 . In summary, BFC made the following submissions in support of the appeal:

- i. The Commission ordered a '*full stadium closure*' but then goes on to say that 'no spectators can be present at Bury FC's stadium'. The Decision appears to conflate the powers under FA Disciplinary Regulations 41.4 and 41.5;
- ii. Regulation 41.4 empowers a Commission to sanction a club by ordering the closure of a ground for a stated period. Regulation 41.5 empowers a Commission to order a Club to play matches without spectators;

- iii. The decision of the Commission is unclear as to which of these the Commission has ordered. The decision refers to a full stadium closure but also to “no spectators being present at BFC’s stadium”. There appears to be a conflation of the two regulations;
- iv. Any disciplinary sanction must be capable of being understood by the person sanctioned. That is currently not the case. It is unclear as to what is expected of BFC if the sanction is not set aside.

**(6) Manchester FA’s response to the appeal grounds.**

30. The Appeal Board had before it the following documents in response to the lodged grounds of appeal:

- i. “*Response to Appeal*”<sup>21</sup> with associated documents<sup>22</sup>.

31. The Appeal Board read all of the above material and considered it with care.

**Ground 1. “The Commission imposed a sanction that was excessive”.**

32. In summary, Manchester FA makes the following submissions in opposition to the appeal:

- i. The Commission has adequately given its reasons for departing from the “*County Guidelines*” on sanction. Those reasons include:
  - a. BFC admitted that it failed to ensure spectators conducted themselves in an orderly fashion. Spectators had used the terms “paki”, “faggot”, “retard”, “spastic” and also used limp wrist gestures or similar;
  - b. All the evidence and materials in the case were considered and taken in to account by the Commission;
  - c. Soft segregation only had been imposed at the ground. The matters raised in mitigation by BFC were referred to and therefore by implication given appropriate weight;

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<sup>21</sup> Pages 33 to 46 of the appeal bundle.

<sup>22</sup> Pages 48 to 70 of the appeal bundle.

- d. The Commission found that the evidence was clear that BFC's supporters had repeatedly directed abusive and discriminatory comments at visiting supporters / others (including children, babies, elderly and disabled fans, and a pregnant lady were all in close proximity to the offending spectators and in respect of whom there was evidence of significant impact);
  - e. A small number of supporters were involved but the behaviour was repeated numerous times throughout the match;
  - f. The words were used in an aggressive way and coupled with intimidating, threatening and aggressive actions, including repeated offers to fight;
  - g. No proper action was taken to stop the behaviour or to remove the relevant individuals from the stadium;
  - h. There had been several relevant previous episodes of misconduct. Seven were set out in the period 9 November 2021 to 28 March 2023. As BFC accepts, the Commission missed the 4 April 2023 incident, which could only have aggravated the matter further;
- ii. The conduct was determined to be of the utmost seriousness given the repeated behaviour involving heavily discriminatory actions and made significantly more serious by the numerous previous E20/21 misconduct findings, which frequency of offending was held to be "*truly exceptional*";
  - iii. In light of the escalation of previous offending and the escalation of the abusive behaviour to discrimination, the Commission was "*left with no choice but to substantially increase the seriousness of the sanction passed against the Club*"<sup>23</sup>;
  - iv. The Commission is not constrained by the '*County Guidelines*' as is acknowledged in the Notice of Appeal;
  - v. The evidence suggests that no or insufficient action was taken by BFC safety and stewarding staff when the discriminatory misconduct was (or ought to have been) plain and apparent to them;
  - vi. In addition to the conduct of the spectators itself, the Commission's stated reason was that this was due to the repeat offending of BFC. Such reasoning is entirely in

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<sup>23</sup> Paragraph 18 of the written reasons at page 21 of the appeal bundle.

accordance with the relevant Sanction Guidelines;

- vii. Insofar as it is submitted that BFC would incur significant losses by the imposition of this sporting sanction, no evidence was placed before the Commission and no application has been made to adduce it. BFC had a suspended Regulation 41.5 sanction already imposed upon the club relating to the playing of a match or matches without spectators being present<sup>24</sup>. It should have addressed these issues to the Commission at first instance;
- viii. In any event, the sanction is in accordance with the Sanction Guidelines and the losses incurred will be no more than would be incurred on a proportionate basis at a club with a smaller supporter base. It would be wholly inappropriate for a Commission to treat a perceived 'bigger' club differently to a 'smaller' one;
- ix. Insofar as it is submitted an Action Plan should have been ordered, this submission is misconceived. BFC is a repeat offender and so under the Sanction Guidelines should be treated with the utmost seriousness in which the Commission shall consider a stadium closure. BFC has had multiple chances to curb the behaviour of its supporters and has failed to do so. If anything, as was found by the Commission (and as it was entitled to find), that behaviour is escalating;
- x. Insofar as it is submitted the Commission's reasons do not state what more BFC should have done, the Commission's reasons make it sufficiently clear that these offending BFC supporters should have been ejected from the ground. The Commission's Written Reasons state that no proper action was taken. It is clear that the Commission concluded that the constant aggressive, discriminatory abuse should have been stopped. This would have been achieved by ejecting the supporters, as was done in *Birmingham FA -v- Atherstone Town [Written Reasons dated 22<sup>nd</sup> September 2023]*<sup>25</sup> and despite which Atherstone Town FC received a two match stadium closure;
- xi. Insofar as it is submitted a lesser sanction was appropriate and commensurate with the seriousness of the misconduct, the sanctions imposed against BFC have increased

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<sup>24</sup> Pages 54 to 63 of the appeal bundle. The earlier misconduct offence occurred on 4 April 2023. The earlier misconduct offence was the subject of written reasons dated 24 August 2023 (imposing a suspended sporting sanction involving the playing of a match without spectators) but that sanction was not notified to BFC until after the date of this misconduct offence.

<sup>25</sup> Pages 67 to 70 of the appeal bundle.

as there have been repeated E20 or E21 offences. The aggravating factors of the repeated discrimination and the repeat offending meant that the case fell into the category where the Commission was obliged to consider stadium closure;

- xii. The Commission adequately considered lesser sanctions. The last sentence at paragraph 18 of the reasons of the Commission state “*The Commission Chair was left with no choice but to substantially increase the seriousness of the sanction passed against the Club.*” The Commission therefore did consider lesser sanctions but found that the seriousness of the offending in the context of BFC’s record meant that a more serious sanction had to be imposed;
- xiii. BFC has taken no or insufficient action to properly control its supporters in the face of the repeated charges it has faced since 2021. With the background being a substantially aggravating feature, and taking into account the detail of the offending constituting this E21 offence, the sanction of a two match stadium closure was well within the bounds of a reasonable Commission to impose;
- xiv. The imposed sporting sanction is also consistent with the cases of *Birmingham FA -v- Atherstone Town [Written Reasons dated 22<sup>nd</sup> September 2023]*<sup>26</sup> and *Berks & Bucks FA -v- Newport Pagnell Town FC [Written Reasons dated 8<sup>th</sup> April 2023]*<sup>27</sup>, both of which clubs had better disciplinary records than BFC.

## Ground 2. “Misinterpreted the FA Disciplinary Regulations”.

33 . In summary, Manchester FA makes the following submissions in opposition to the appeal:

- i. It is disingenuous for BFC to suggest that it did not understand the sporting sanction imposed in circumstances where it has been able to issue press releases that demonstrate its clear understanding in relation to the sporting sanction imposed on BFC by this Commission.
- ii. This ground of appeal is without foundation.

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<sup>26</sup> Pages 67 to 70 of the appeal bundle.

<sup>27</sup> Pages 64 to 66 of the appeal bundle.

### **(7) The oral appeal submissions.**

34. The Appeal Board gave counsel for BFC and Manchester FA the opportunity to make further oral submissions they wished to make to support the written submissions before the Appeal Board.

35. Each counsel did so.

36. In oral submissions, the appellant withdrew ground of appeal (ii) on the basis that it was now conceded that BFC understood the nature of the sanction imposed by the Commission.

37. The appeal therefore was limited to ground of appeal (i), namely whether the sanction imposed was excessive.

38. Those oral submissions in essence emphasised certain aspects of the written submissions.

39. The oral submissions are not rehearsed in this judgment but have been fully taken into account and fully considered by the Appeal Board.

### **(8) The Appeal Board's findings.**

40. The Appeal Board considered the submissions made on behalf of the Appellant and the Respondent.

41. The function of the Appeal Board is to exercise a supervisory jurisdiction in relation to the Disciplinary Commission.

42. Although the appeal proceeded on the single ground as to whether the sanction imposed was excessive, the factual basis upon which the sanction was imposed plainly has relevance.

43. Accordingly, the Appeal Board applies the following principles in its approach to any *findings of fact* reached by the Commission insofar as relevant to the pursued grounds of appeal:

- i. An appeal such as this proceeds by way of review of the decision of the Commission. It is not a rehearing of the evidence and arguments at first instance;
- ii. It is not open to the Appeal Board to substitute its own decision for that of the



Commission simply because the Appeal Board might themselves have reached a different decision at first instance if seized of the case at first instance;

- iii. If the Commission has reached findings of fact which it was reasonably open to the Commission to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant;
- iv. The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Commission. Evidential assessments of the Commission should only be interfered with if they are clearly wrong (“Wednesbury” unreasonable<sup>28</sup> and/or irrational and/or perverse) or if wrong legal principles were applied to the making of those factual findings;
- v. The only likely scenario for the Appeal Board to interfere with factual findings of the Commission is where there is no proper evidential basis for a finding of fact that that has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;
- vi. The test for the Appeal Board in determining whether the Commission acted irrationally and/or perversely and/or “Wednesbury” unreasonably, or came to a decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review;
- vii. Any Appellant who pursues an appeal on the ground that a Regulatory / Disciplinary Commission has come to a decision to which no reasonable such body could have come has a high hurdle to clear or a high threshold to overcome;
- viii. The Appeal Board ought to accord the Commission a significant margin of appreciation when considering matters such as evidential assessments, factual findings and any exercise of discretion by the Commission.

### Ground 1. “The Commission imposed a sanction that was excessive”.

#### (i) The misconduct on 2<sup>nd</sup> September 2023.

44. The Appeal Board reiterates that the facts of the crowd misconduct involving BFC

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<sup>28</sup> A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it.

supporters on 2<sup>nd</sup> September 2023 are extremely serious.

45. The misconduct involved multiple incidents of racist, homophobic and disability abuse from multiple supporters directed at supporters of the opposing team at close quarters during “soft segregation” by BFC stewarding staff.

46. The evidence before the Appeal Board supports the contention that this was repeated discriminatory conduct with associated serious threatening behaviour on multiple occasions throughout all or most of the match.

47. It caused very significant harm to a multitude of football spectators who had come to watch football rather than be victimised and abused. In one instance, a spectator had alcohol poured over him. That in itself amounts to the criminal offence of common assault.

48. The victims included a pregnant lady, children, at least one disabled spectator and a member of an ethnic minority. Each adult victim was specifically targeted by BFC supporters. The children witnessed that threatening and abusive behaviour first hand.

49. The harm to the reputation of football by such discriminatory conduct is obvious. The harm has been documented over many years. Such behaviour is hugely offensive to genuine football supporters. It discourages under-represented communities from participating in football whether as players, officials, spectators or in administrative capacities.

50. Plainly, such discriminatory misconduct very substantially harms all the efforts being made by various organisations to improve issues of equality, diversity and inclusivity in football.

51. It is because of the substantial harm to football caused by discriminatory misconduct that breaches of FA Rule E21.4 are in effect strict liability offences.

52. It is plain, however, that issues of due diligence are relevant in categorising culpability for such breaches of FA Rule E21.4.

53. The Appeal Board notes that, although BFC play at step 5 of the football pyramid, that categorisation is somewhat of a historical anomaly. BFC achieves an average home attendance of in excess of 3,000 supporters per match.

54. Accordingly, the resources available to BFC far outweigh those available to all or the vast majority of other clubs playing at the same step of the football pyramid.

55. Once the misconduct was notified to BFC safety and stewarding staff at the match, it

should have been taken far more seriously than it was. The lack of action by BFC stewarding staff is extremely disappointing to the Appeal Board.

56. The fact that no action appears to have been taken to eject the offending fans is disturbing. It is submitted on behalf of BFC that the actual discriminatory and/or threatening behaviour was not detected by stewarding and security staff despite the offenders being monitored.

57. This explanation lacks weight and credibility. The multiple reports of offensive behaviour made by spectators at the match indicates that the discriminatory behaviour was widespread, repeated and obvious to any bystander.

58. The only sensible inference to be drawn on the evidence is that either BFC stewarding staff did not scrutinise the behaviour carefully enough or (even worse) did nothing when it was within their knowledge as to what had happened or was happening. Neither scenario is acceptable.

59. There was evidence before the Commission that towards the end of the match one member of BFC stewarding staff was seen in friendly exchanges with some of the offending spectators and indeed to hug one or more of them. This behaviour is inexplicable in the circumstances.

60. Whilst FA Rule E21 does not require detailed scrutiny of each individual spectator by BFC security or stewarding staff, it does require the application of due diligence.

61. The Appeal Board is satisfied that the Commission was correct in its categorisation of this misconduct as very serious indeed. The culpability of BFC is increased by the lack of due diligence of its staff.

62. In these circumstances, looking at the misconduct on 2<sup>nd</sup> September 2023 in isolation, it is a particularly prolonged and serious example of crowd misconduct involving discriminatory behaviour of a wide and extensive scope.

(ii) BFC's previous misconduct record.

63. The documented previous misconduct history of BFC was described as "*truly exceptional*" by the Commission. The Appeal Board agrees with that description.

64. Indeed, the seven instances of individually serious misconduct in breach of FA Rule

E21 that was not noted by the Commission should properly have been supplemented by an eighth very serious series of events on 4<sup>th</sup> April 2023 when the female Assistant Referee was very seriously abused by BFC supporters who called her various misogynistic, sexist and hugely offensive terms repeatedly.

65. It was this latter misconduct that led to a sporting sanction on 13<sup>th</sup> September 2023 consisting of the playing of one match without spectators (such sanction suspended for a period of twelve months).

66. The Appeal Board concludes that the misconduct record of BFC indicates that the club has not in recent times placed sufficient resources nor has the club made sufficient efforts to eradicate, or at the very least to significantly reduce, the risk of such discriminatory crowd misconduct by its spectators.

67. The Commission was perfectly entitled to regard the documented background of serious crowd misconduct by BFC supporters as a very significant aggravating factor in all of the circumstances.

(iii) The applicable Sanctioning Guidelines and an Action Plan.

68. It is correct that the applicable Sanctioning Guidelines and other policy or guiding documents that have relevance to good practice generally as to issues of discriminatory crowd misconduct indicate that the focus of disciplinary sanction should be an action plan for first offenders.

69. However, BFC is far from a first offender in all of the circumstances of this case.

70. The submission on behalf of BFC is that an action plan would serve to reduce the risk of such discriminatory crowd misconduct in the future. It is further submitted that the fact such an action plan has not been imposed upon BFC is unfair in all of the circumstances. The final submission by BFC is that a jump from financial penalties (and a suspended one-match sporting sanction) to a 2-match immediate sporting sanction is an excessive leap in sanction.

71. The Appeal Board reiterates that BFC is a club with significant resources and it could and should be able to obtain independent advice and indeed be able to review excellent examples of action plans within the FA database readily available to the public in order to utilise that material as a foundation for good practice in the future. There is no evidence it has made any efforts or any serious efforts in this regard.

72. BFC has accumulated a very substantial number of misconduct sanctions for breaches of FA rule 21 both in its simple and its aggravated form.

73. Although the Appeal Board was directed to examples of measures said to have been taken by BFC relevant to crowd control and attempts to reduce the risk of crowd misconduct generally, those efforts were insufficient and failed completely on 2<sup>nd</sup> September 2023.

74. As all of the relevant or potentially relevant guidelines and policy documents make plain, repeat offences must be treated particularly seriously and appropriate punitive sanctions will be entirely appropriate in such cases.

75. Indeed, had the Commission been aware of the suspended sporting sanction that was imposed upon BFC on 13<sup>th</sup> September 2023, this would only have served to further strengthen the argument that a more severe sporting sanction was entirely appropriate and commensurate with the seriousness of the instant offence with the background of previous similar offending by BFC supporters.

(iv) Whether the sporting section is excessive.

76. The seriousness of the individual and cumulative behaviour of BFC supporters on 2<sup>nd</sup> September 2023 coupled with all of the previous recent instances of crowd misconduct mean that the imposition of a sporting sanctions pursuant to Rule 41.5 of the FA Disciplinary Regulations ("*the playing of a Match or Matches without spectators being present*") was inevitable in this case.

77. It has been submitted on behalf of BFC that a lesser sanction was appropriate. There is always space within the boundaries of reasonable discretion for lesser penalties to have been appropriate in all of the circumstances of this case.

78. However, the test for the Appeal Board is not what sanction we would have imposed at first instance but whether a sporting sanction amounting to the playing of two matches without spectators being present is excessive.

79. In all of the circumstances, the Appeal Board unanimously concludes that, although the sanction imposed by the Commission is a severe penalty, in all of the circumstances of this case it is not excessive.

80. The sanctions imposed by the Commission are to remain.

81. For the avoidance of doubt, the sporting sanction is the playing of the next two competitive BFC home matches in the North West Counties League Premier Division without spectators being present.

82. The appeal fee is to be retained. There is no order as to costs.

83. The Appeal Board's decision is final and binding on all parties.

ABDUL S. IQBAL KC

DANIEL MOLE

PETER CLAYTON

4<sup>th</sup> March 2024