IN THE MATTER OF THE FOOTBALL ASSOCIATION REGULATORY COMMISSION **Case ID: FTMC/23/0014**

BETWEEN:

THE FOOTBALL ASSOCIATION

and

NOTTINGHAM FOREST FOOTBALL CLUB

DECISION AND REASONS AS TO SANCTION

Regulatory Commission constitution (personal hearing)

HH Clement Goldstone KC (Chair) (Independent Specialist Panel Member)

Abdul S. Iqbal KC (Independent Legal Panel Member)

Stuart Ripley (Independent Football Panel Member)

Michael O’Connor (Judicial Services Assistant Manager) acted as Secretary to the Commission

The FA

Amina Graham (Counsel representing The FA)

Tarik Shamel (FA Chief Regulatory Officer as observer)

Madeleine Deasy (FA Regulatory Advocate as observer)

Stuart Tennant (Premier League Senior Regulatory Solicitor as observer)

Nottingham Forest FC

Michael Rawlinson (Counsel representing Nottingham Forest FC)

Taymour Roushdi (Head of Football Administration – Nottingham Forest FC as observer)

(1) Introduction

1. On 27 June 2024, a Regulatory Commission ("the Commission") conducted a hearing in order to determine whether Nottingham Forest FC [NFFC / 'the Club'] were in breach of Rule E3.1 of The FA Rules following its posting on X [formerly Twitter] of certain remarks on 21 April 2024 in the immediate aftermath of NFFC's match against Everton FC.

2. Because there were at the time ongoing discussions between the Professional Game Match Officials Ltd [PGMOL] and the Club which may have broken down and led to Rule K arbitration proceedings, it was decided, by agreement with and at the instigation of both parties, that the Commission's decision should not be communicated to the parties until the outcome of those discussions, and if necessary, of any arbitration proceedings, was known.

3. On 19 August, the Commission was informed that the dispute between NFFC and PGMOL had been resolved and would not be proceeding to arbitration.

4. On 21 August, the Commission notified the parties that it had found the alleged breach of Rule E3.1 proved, and on 3 September, it provided its written decision on liability and the reasons therefor, and confirmed its previous provisional direction that the sanctions hearing would proceed on 27 September 2024.

5. On 27 September 2024, the Commission conducted a virtual hearing by Microsoft Teams in order to determine the appropriate sanction. It was much assisted by written submissions which it had received from both parties, which were augmented by oral

submissions made on the day.

6. The Commission also had the opportunity of reading again the hearing bundle and, in so far as they could be of relevance and assistance to the Commission, copies of authorities provided to us.

7. This decision and reasons will not address or refer to all the points which were made in writing and/or orally, but the parties can be assured that they have all been properly considered and taken into account in the Commission's determination.

(2) The Facts

8. The parties are referred to the Commission's findings on liability, and the background which gave rise to the institution of breach proceedings against NFFC. This decision should be read in conjunction with those findings and background. It is neither necessary or appropriate for the Commission to repeat them in the course of this decision.

9. It is, however, necessary to refer to the post itself, and to set out, albeit briefly, our specific findings in relation thereto. The post, which appeared seven minutes after the end of the match, read as follows:

> "Three extremely poor decisions – three penalties not given – which we simply cannot accept.
>
> We warned the PGMOL that the VAR is a Luton fan before the game but they didn't change him. Out patience has been tested multiple times.
>
> NFFC will now consider its options."

10. The charge laid by The FA stated as follows:

> "It is alleged that your comments posted to X from account @NFFC at 3.37pm on 21 April 2024, constitute improper conduct in that they imply bias and/or question the integrity of the Match Official[s] and/or the Video Assistant Referee and/or bring the game into disrepute contrary to FA Rule E3.1."

11. It was a post which, as we found, involved an implication of actual bias against the Video Assistant Referee ("VAR"), Stuart Attwell, and thus has to be distinguished from

one which involved unconscious, perceived or apparent bias.

12. As such, the post called into question the integrity of a match official and amounted to improper conduct. Furthermore, the means of publication, by a post which it was realised (if not intended) would 'go viral' and generate massive levels of publicity, had the inevitable consequence of bringing the game into disrepute.

13. In the judgment of the Commission, the seriousness of this breach of Rule E3.1 has to be assessed by reference to the twin issues of Culpability and Harm. We deal with each issue in turn.

(3) Culpability

14. The FA has submitted that the Club's culpability is at the '*highest end of the scale*' for eight reasons set out in paragraph 21 of its written submissions, namely at [i] to [vi], [ix] and [x].

15. The Club has submitted (referring to the judgment in *Reading FC -v- The Football Association* [7 October 2015] as referred to within *The FA -v- Manchester City FC* [6 October 2022] that the following scale is appropriate to assess and calibrate the issue of culpability:

a. Very High - Deliberate intention i.e. a deliberate, pre-meditated and calculated decision by the Club as a collective organisation to explicitly allege actual bias against an official and/or bring the game into disrepute, with full foresight, acceptance and contemplation of the actual and obvious consequences that arose;

b. High - Reckless disregard - here, for the content of social media posts, such that the Club did not properly regulate the content at all, or indeed did not care one way or the other whether bias was implied or not, with little or no thought given to what was a real risk in terms of the foreseeable potential consequences of such comments;

c. Medium - Gross negligence – a serious lack of care in assembling social media posts, such that there was insufficient oversight, thought or care when they were assembled, creating a foreseeable risk in terms of both imputing bias, bringing the game into disrepute and/or the extent of the potential consequences of the post;

d. Lower - Simple negligence – a lack of care in assembling social media posts, such that there was a risk they would impute bias or bring the game into disrepute, though only limited appreciation at the time of the potential consequences of the post;

e. Lowest - Cases which only just '*cross the line'* in terms of being impermissible comments, with little or even no appreciation that the comments may have that effect.

16. The Commission regards such an approach as appropriate and indeed helpful insofar as consistency of approach as between separate instances of this form of misconduct is concerned. Accordingly the Commission applies this sliding scale approach to the issue of culpability.

17. We have considered each of these competing submissions and now address them in turn.

18. Whilst we acknowledge the accuracy of the facts behind the reasons on which The FA relies in support of its assessment, we do not accept that they can all be used in a proper quantification of culpability.

19. In particular, whilst we accept that NFFC, as a Premier League Club must be '*held to the highest standard*', we do not accept that the source of the post (namely the Club) can be relevant to culpability simply because a Club, as opposed to an individual is the respondent to the charge.

20. Whilst it may be unprecedented, in the literal sense of the word, that a professional football club (as opposed to a player or coach) is the source of the post, this in itself does not necessarily mean that culpability is at the highest level.

21. Of course, it is acknowledged by both parties that the fact a corporate entity is the respondent to these proceedings will be reflected in sanction due to the fact that a corporate body will invariably have far greater financial income and resources than an individual.

22. Nor do we accept that the failure of the Club to identify the author[s] of the post is, in this case, itself relevant to culpability. That is because we cannot be satisfied that the Club is able to precisely identify the author[s] of each aspect of the post. This in our judgment is, however, symptomatic of the wholly cavalier approach to the contents of the post and the decision to publish it in the way NFFC did with the knowledge of the impact which they knew it would have. That clearly is relevant to the issue of culpability.

23. The situation would be different if we considered it probable that names were deliberately being withheld in order to avoid further charges being brought against such other unnamed individuals. The Commission cannot so conclude on the balance of probability.

24. Nor do we consider that the damage-limitation exercise, contained in the second and third posts, which NFFC sought to pass off as a genuine apology, is relevant to culpability. It merely deprives the Club of any mitigation in respect of those later posts in which they sought, largely unsuccessfully, to put the earlier offending post into some form of context.

25. Finally, in relation to the factors relied upon by The FA, we do not consider the failure of NFFC to remove the offending post to be relevant to culpability. We reject, however, the submission of the Club that the only reason why the offending post has remained in situ was to enable it to be considered in context with the two later posts. It would have been easy for the offending tweet to have been removed had the Club been so minded and it would not have detracted from the 'context' which it was seeking to emphasise.

26. Nevertheless, we consider that this failure falls into the same category as the absence of a genuine apology, namely a factor which points to the absence of any genuine remorse in this regard.

27. We have considered whether this case falls at the 'highest end of the scale' in the 'very high' category which is 'roughly translated' by NFFC as "*deliberate intention i.e. a deliberate, premeditated and calculated decision by the Club as a collective organisation to explicitly allege actual bias against an official and/or bring the game into disrepute, with full foresight, acceptance and contemplation of the actual and obvious consequences that arose"*. NFFC submitted that such behaviour might be exemplified by messaging such as *'the ref is bent, retweet if you agree!!'*

28. Whilst we are far from saying that this was anything other than a very serious case of its kind (and we address the Club's attempt at categorisation below), we are unable to conclude that it falls at '*the highest end of the scale*' for offences of this type.

29. We note that this was an imputation of actual bias rather than an express allegation of bias and, further that there was no incitement to followers of NFFC on X. We note also that the Club's realisation that the post would go viral falls short of an intention that it should do so. The fact that the post did go "viral" (having been viewed 46.2 million times thus far), and that it would inevitably lead to an angry reaction from some of those that viewed

it is nonetheless relevant to the issue of harm (as to which, see below).

30. Whilst the absence of any careful thought and attention being given to the post is serious – and implicit in the charge – the situation has in our judgment to be distinguished from that where careful thought and attention is given to deliberately bringing the game into disrepute. As a matter of principle, it is important when categorising the culpability of misconduct to reserve the most damning nomenclature for the most heinous offending. '*The highest end of the scale*' is not, we conclude, the correct label for this breach.

31. Nor do we consider that this case can be described as one of '*medium*' culpability. We note that the Club defines 'high' culpability as "*reckless disregard – here for the content of social media posts, such that the Club did not properly regulate the content at all, or indeed did not care one way or the other whether bias was implied or not , with little or no thought given to what was a real risk in terms of the foreseeable potential consequences of such comments*."

32. Mr. Rawlinson has striven with care, both in writing and orally, to argue that although there may be features of this offence which might warrant inclusion in the '*high culpability*' category, nevertheless an overall and objective assessment should lead to the Commission concluding that the circumstances of this case warrant a '*medium culpability*' finding.

33. We are content to adopt Mr. Rawlinson's definition of '*high' culpability*" as set out above and conclude that for the following reasons, this case falls into such a category:

i. the clear implication of actual bias;

ii. against a readily identifiable individual;

iii. the irresponsibility and lack of accountability in the drafting of the post and its mode of circulation;

iv. a reckless disregard to the consequences or impact of the post in that NFFC did not care one way or the other whether bias was implied or not in the post, or about the consequences which might well follow upon its publication;

v. the fact that Evangelos Marinakis (NFFC's owner) on 11 May 2024 (well after the damage or potential damage done by the offending Tweet was clear) stated in an interview with The Mirror newspaper that there was the possibility of a "*vendetta*" by match officials against NFFC.

34. Whilst we acknowledge that the Club later rued its choice of words and the way in which its grievances were aired, by that stage the damage had been done. We reiterate our earlier finding that the subsequent posts fell far short of a genuine apology, but were in the nature of a damage-limitation exercise. There is a world of difference between an expression of regret and a genuine apology extended to an individual who has been impacted by the Club's behaviour.

(4) Harm

35. Miss Graham, on behalf of The FA submits that, as with culpability, harm falls to be assessed at the highest end of the scale.

36. The FA rely not only on the harm caused to the VAR, Stuart Attwell, as evidenced by his statement, but also on the following:

i. the impact on all match officials officiating in England, because of the '*direct attack on the integrity of one of their fellow professionals'*;

ii. the opinion of Mr. Howard Webb, Chief Refereeing Officer of PGMOL to the effect that the conduct of NFFC '*has the potential of serving as a green light to those who seek to abuse officials and normalises questioning the integrity of all Referees*";

iii. the ongoing impact of posts such as this once posted onto social media;

iv. the fact that harm is ongoing almost six months after the event, not least because the post has not been removed, nor has an apology been posted.

37. Mr. Rawlinson, on behalf of the Club submits, on the other hand, that a label of '*highest end of the scale*' should be reserved for cases where the post amounts to an incitement, and not one borne out of frustration at '*objectively incorrect decisions'* of which one, by virtue of an acknowledgment by Mr. Webb, fell into that category.

38. He submits that this case, however regrettable it is, and without minimising its seriousness, is about the harm caused to an easily identifiable match official, namely Stuart Attwell, and that the Commission must be careful to avoid '*double counting'* of features which have already been taken into account when deciding whether the alleged breach was proved.

39. He seeks to persuade us that the Club '*genuinely sought to..significantly reduce*' the level of harm created by the offending post when it published the second and third posts on the following day.

40. Thus, it is submitted the 'primary' harm was caused in a relatively short period of little more than 24 hours immediately following the initial post. That may be, factually, an accurate observation but its value to NFFC as a pointer towards a finding of lesser harm is limited because in the first 24 hours after the post appeared, it had received no fewer than 39.2 million views[1].

41. Now, more than 5 months later, that figure has grown by 7 million views, and the post continues to be posted, reposted and liked. So the dust has not settled, although we accept that the interest in the post has diminished with the passage of time.

42. Furthermore, the first post attracted far more media interest than the second and third posts which, as at today's date, stand at 9.1m and 4.6m views respectively.

43. The Commission takes the view that the principal (but not the sole) victim of this ill-chosen and irresponsible post was Stuart Attwell, and we have in mind the contents of his statement which sets out the stress, distress, fear and embarrassment caused to him [redacted] as a result. The impact upon Mr. Attwell [redacted] has plainly been very significant indeed.

44. To Stuart Attwell, the harm has continued well beyond the short period contended for by NFFC. The post, of course, continues to appear, without apology, on the Club's X account. Whilst this may not be an aggravating feature in its own right, it will inevitably impact, albeit at a diminishing level, on Mr. Attwell and is further evidence of a lack of remorse on the part of NFFC.

45. We do not consider that there is any evidence that other match officials have suffered, any more than they do, deplorably and sadly regularly, when their colleagues are abused. We do, however, take very much on board and accept the observations of Mr. Webb, who is well-qualified to express the opinion that the conduct of NFFC has the potential to serve as a '*green light*' for the purposes identified above.

46. Balancing all of the factors set out above, we consider that the level of harm caused as a result of the offending is at least high, although we decline to adopt or accept

[1] Paragraph 5 of Mr. Greenaway's statement at page 9 of the hearing bundle.

The FA's assessment of harm as being at the '*highest end of the scale'*.

(5) The Commission's approach to sanction.

47. We are invited by the FA to:

i. impose a fine;

ii. to require NFFC to immediately remove the offending post;

iii. to require NFFC to issue a public apology to Mr. Attwell and the FA.

48. Given that the time limit for an appeal against the Commission's finding on liability does not start to run until written reasons for the sanction have been given, we do not consider that we have the power to require NFFC to remove the post and/or issue an apology in the terms suggested by The FA. It would be quite wrong to emasculate NFFC's right of appeal in this way.

49. However, the fact that no such apology has been made, as well as the fact that the post has not been withdrawn by NFFC despite a specific invitation by The FA to do so, are, as this judgment has already made clear, evidence of a lack of genuine remorse on the part of NFFC. This is relevant to the level of the financial penalty which we assess is necessary and proportionate in this case.

50. Mr. Rawlinson indicated that if we ordered the Club to remove the post and to issue a public apology, the Club would in "*all probability*" comply. However, the Club has had ample time to take both courses of action and has chosen not to. In our view, the removal of the post at this stage would achieve precious little, as it has been in the public domain for so long.

51. Further, if the Club is not minded spontaneously to remove the post and, in particular, issue an apology to Mr. Attwell for the harm and offence which it caused by its post, an order by the Commission in those terms would merely add significant insult to the injury already suffered.

52. Each party has made submissions as to the level of financial penalty which is appropriate in this case. On behalf of The FA, it is submitted that a sanction '*in excess of £1 million'* should be imposed in order properly to '*reflect the seriousness of the misconduct, the*

culpability of NFFC and the other legitimate sanctioning objectives such as punishment, deterrence, harm and the overall aim of protecting/preventing damage to the integrity, reputation and image of the game'.

53. It is submitted by The FA that no other professional club has ever breached the Regulations designed to control the use of social media in this manner, and even that the drafters of the Rule could not have foreseen a breach of this nature by a professional club – an assertion upon which it is not necessary for us to comment.

54. The Club's misconduct is described by The FA as an '*egregious, direct and public attack on the integrity of a Match Official and, in turn, the game of football, on an unparalleled scale'*.

55. NFFC understandably has declined to suggest an alternative figure, but is highly critical of the approach adopted by The FA in a case where, it seems to be accepted, there is no precedent. Thus, it is submitted that the Commission cannot be assisted by reference to cases involving the imposition of 6-figure fines on Premier League Clubs for different types of offence. With that latter observation, we agree.

56. We note Miss Graham's point that The FA's invitation to conclude that this breach merits a financial penalty in excess of, or at least £1 million is not borne out of a desire to create a sensation, and that had the breach contained even worse features, such as an element of racism, or other features consistent with the highest level of culpability and harm, other sanctions such as stadium closure or a points deduction might well have been appropriate.

57. The Commission notes that this is a serious breach of Rule E3.1 by NFFC, although there will inevitably be other more serious breaches of Rule E3.1. However, discriminatory behaviour such as that used for illustrative purposes by The FA would be a separate very serious aggravated breach in its own right and therefore the Commission is not assisted by that particular submission.

58. We acknowledge that there have been cases in which managers and players (the related cases of *Nuno Espirito Santo* and *Neco Williams* are two in point), have been heavily sanctioned for breaches of Rule E3.1, and that it is reasonable to expect that a financial sanction imposed upon a Club for such a breach will be significantly greater.

59. In our judgment, the justification for that approach is not so much that the respondent is a football club rather than an individual. It is more related to the fact that the

Club is accepting collective responsibility for the actions of those persons responsible for the post and, as a general principle, its means will almost always be greater than those of an individual offender, however well-paid he (or she) may be. We note of course that NFFC is an English Premier League club.

60. The Commission's approach to the nature of the sanction must be (and is) governed by:

a. the need for consistency of approach;

b. the importance of imposing a penalty which is proportionate to the culpability of the Club and the harm which it caused; and

c. the need to deter other clubs from behaving in a similarly cavalier and irresponsible manner in an era where social media 'rules', which is linked to the Commission's aim of protecting the integrity, reputation and image of the game.

61. In this way, we can achieve a result which is 'just and fair' to both parties, which we are enjoined to do, by virtue of Regulation 4 of the FA's Disciplinary Regulations.

62. We have also considered the 'character' of NFFC. Whilst it is correct to observe that it has no previous findings recorded against it for breaches of Rule E3.1, it does have several significant and recent findings against its name for breaches of Rule E20.1 (and its predecessor, Rule E20), which make the Club responsible for ensuring that its officials (to use a generic term) do not behave in a way which is 'improper, offensive …… insulting or provocative'.

63. We accept, having listened with care to Mr. Rawlinson's submissions on the point, that it is not appropriate to equate the Club's governance of its obligations in relation to social media, with the behaviour of its playing and managerial staff in relation to on-field activity. Nor has The FA sought to argue to the contrary.

64. To that extent, we have concluded that, however unenviable the Club's record in that regard may be, it would not be fair or just to allow it to impact significantly on our assessment of the appropriate sanction in this case. It does, however, mean that (as Mr. Rawlinson properly conceded) the Club cannot rely on its 'character' as a significant mitigating factor.

65. We noted The FA's concern that the Club has failed to identify any steps which it

has taken to ensure that there will be no repetition of similar conduct in the future. Accordingly, in the course of submissions, we asked Mr. Rawlinson to identify what if any steps had been taken, and in particular what '*significant and salutary lessons'* had been learnt by the Club as a result of these proceedings. He assured us that the Director of Communications now has to 'sign off' and approve any social media comments or posts.

66. Sadly, and somewhat surprisingly, NFFC's Director of Communications has not been invited to consider whether the offending post should be removed, or an official apology be made to Mr. Attwell. As previously observed, that is the Club's right, but is clear evidence of the fact that this breach of Rule E3.1 is, in reality, a continuing offence and must be dealt with as such.

67. Finally, but of great importance, we noted the background to the breach of Rule E3.1, namely the disputed decisions in the match and the subsequent engagement and rapprochement between the Club and PGMOL to address the Club's pre-stated concerns about the appointment of Mr. Attwell as VAR.

68. The Commission is satisfied that NFFC's concerns pre-match fell well short of a request for Mr. Attwell to recuse himself and could not begin to excuse the '*exceptionally poorly judged'*[2] method which the Club deliberately chose to adopt as a means of conveying its concerns and anger after the match. That does put into context why the Club behaved in the way in which it did, and whilst it does not begin to excuse it, it at least provides a reason, albeit not approaching a justification, for its conduct.

(6) Conclusions as to sanction.

69. We express our gratitude to Miss Graham and Mr. Rawlinson for the considerable assistance which their oral and written submissions have given us.

70. In all the circumstances, balancing our assessment of culpability and harm with all of the aggravating and mitigating factors, we have concluded that the appropriate sanction is a financial penalty of £750,000.

71. We were invited by Mr. Rawlinson to consider whether a proportion of the financial penalty could be suspended, in accordance with our powers under Regulation 44, in order to

[2] Paragraph 17 of NFFC's submissions on sanction dated 23 September 2024.

act as a deterrent to the Club.

72. Whilst we acknowledge that in certain circumstances, the deterrent effect of a suspended penalty can be a clear and compelling reason for so directing, we see no reason for doing so in this case. In the related decision of Nuno Espirito Santo, to which Mr. Rawlinson referred us, we stated as follows at paragraph 64:

> *"The Commission concludes that in the case of someone who is genuinely remorseful, and who has not previously been sanctioned in this way, a long period of suspension may serve as a greater deterrent to further misconduct than the simple imposition of an immediate sanction."*

73. Those considerations do not apply in the present case. The financial penalty is therefore not suspended.

74. In addition, the Club is formally warned as to its future conduct.

75. NFFC will pay the costs of the Commission.

76. This decision may be appealed in accordance with FA regulations.

HH CLEMENT GOLDSTONE KC

ABDUL S. IQBAL KC

STUART RIPLEY

3 October 2024

9 October 2024 – Amended