

**IN THE MATTER OF THE FOOTBALL ASSOCIATION**

Case ID : FTMC/23/0016

**REGULATORY COMMISSION**

**BETWEEN :**

**THE FOOTBALL ASSOCIATION**

**and**

**NUNO ESPIRITO SANTO**

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Case ID : FTMC/23/0015

**REGULATORY COMMISSION**

**BETWEEN :**

**THE FOOTBALL ASSOCIATION**

**and**

**NECO WILLIAMS**

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**DECISION AND REASONS**

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**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)

Paddy McCormack (Judicial Services Manager) acted as Secretary to the Commission.

## **The FA**

Amina Graham (Counsel representing The FA)

## **Nuno Espirito Santo & Neco Williams.**

Michael Rawlinson (Counsel representing Nuno Espirito Santo and Neco Williams)

George Pennington (Nottingham Forest FC)

Taymour Roushdi (Nottingham Forest FC)

1. On Wednesday 14 August 2024, an independent Regulatory Commission (“the Commission”) of The FA conducted a sanctions hearing to determine the appropriate penalties to be imposed upon Nuno Espirito Santo [NES] and Neco Williams [NW], following their earlier admissions that each was guilty of a breach of FA Rule E3 in respect of post-match media comments made by them after the Premier League match between Everton FC [EFC] and Nottingham Forest FC [NFFC], played at Goodison Park on Saturday 21 April 2024. The delay between the match and the hearing was due to the disapplication of the Fast Track provisions by the Judicial Panel Chair at an early stage for reasons which it is not necessary to set out in this decision.

2. Following the hearing, the Commission delivered its decision in writing, which was as follows:

### **(a) In the case of NES:**

- i. A 1 match suspension. NES is sanctioned with a Standard Touchline Suspension, applicable to all domestic club football, until such time as his Club completes one (1) First Team Competitive Match (FTCM), Category 1 level, in an approved competition;
- ii. The standard touchline suspension from one FTCM is suspended in full up to and including 31 May 2026. If at any time on or before 31 May 2026, NES commits a further breach of FA Rule E3, he will be suspended for one (1) FTCM (in addition to any separate penalty imposed for any such further breach). In the event of any such breach the suspended period of suspension will be activated with effect from the date of the final determination of the proceedings before the Regulatory Commission dealing with the new breaches, in addition to any penalty for the new breaches imposed by the Regulatory Commission;

- iii. A fine of £40,000.00;
- iv. A warning as to his future conduct;
- v. A Hearing Fee of £100.00;
- vi. NES is to pay one half of the costs of the Regulatory Commission to be quantified and notified to him by the FA in due course.

**(b) In the case of NW:**

- i. A fine of £24,000.00.
- ii. A warning as to future conduct;
- iii. A Hearing Fee of £100.00;
- iv. NW is to pay one half of the costs of the Regulatory Commission to be quantified and notified to him by The FA in due course.

3. The reasons for our decisions are as follows.

4. This document does not set out every aspect of the evidence considered by the Commission. It summarises those relevant aspects of the evidence considered by the Commission in reaching relevant findings of fact.

**(1) The charged participants.**

5. NES is Head Coach of NFFC.
6. NW is a NFFC first-team player.

**(2) The match and its potential significance to both teams.**

7. On Saturday 21 April 2024, EFC hosted NFFC in a Premier League fixture which was of huge potential significance to both teams, which were hovering on the brink of the relegation zone.

8. In addition, their plight was made more perilous because each had suffered points

deductions earlier in the season for financial irregularities. The fixture was, to coin a well-known phrase, a 'six pointer'.

### **(3) The controversy.**

9. During the match, NFFC had four penalty appeals turned down. The match referee did not consult the Video Assistant Referee ("VAR") in relation to any of them, nor did the VAR intervene as he could have done if he had felt on review that any of the decisions was clearly wrong.

10. The appointed VAR is a supporter of Luton Town FC, who were also in the relegation zone. The Commission mentions that for the sake of completeness, not because it has any bearing on this case, but because NES specifically stated in his post-match media interviews, the relevant transcripts of which appear below, that the VAR's footballing "loyalties" [our words] were irrelevant to the problem which lay with the refereeing decisions during the match.

11. The refereeing decisions had not gone the way of NFFC either on that day, or in other matches where NES, NW and NFFC generally felt that they had been harshly if not wrongly treated. In some instances, their feelings had been vindicated after the event.

12. Indeed, following this fixture, and the controversy which it generated, Howard Webb, the Chief Refereeing Officer of Professional Game Match Officials Ltd ("PGMOL") acknowledged that one of the four penalty decisions was wrong.

### **(4) The comments by NES.**

13. NES made the following comments in the course of two post-match interviews, which have been transcribed in some detail in order that they can be put into proper context. There was a third interview [which sequentially took place between the two in issue] which adds little if anything to the case for or against NES. Nonetheless part of that third interview is transcribed and reproduced below.

#### **(i) Post-match interview 1 [available on Forest TV]**

**Start – 03:41**

**Interviewer:** Nuno, we have to start with what we've spoken about so many times before this season, and that's decisions that look as if you were going to get and didn't get. What was your opinion of three decisions today?

**NES:** Bad decisions, poor decisions. It's difficult after you lose a match and we speak about referees, it looks like an excuse and all these things, and our fans are going to see it and say, 'Oh, look at the coaches speaking about... prepare the team all these things,' okay, that's my responsibility. The question that you made is regarding the work of the referee so I have to tell you it's poor work, not only today but before. You're being punishing...punished, by poor decision, not only by the refs but VAR also, they have time to assess. I saw the images, I saw it over and over again, it's a clear penalty on Gio Reyna by Ashley Young, it's a hand ball. Okay. It's a penalty on Callum because he's in front, he's been touched. Someone tell me why they didn't give us, and you see in other games the same referees with different situations and they decide the other way.

**Interviewer:** Yes, very frustrating. The club has obviously put out a very strong statement, virtually on the final whistle, and also suggested that they suspected something might happen beforehand because they asked for the VAR, Stuart Attwell, to be removed from the game.

**NES:** Yes, I'm aware of that complaint, it's a formal complaint. Because you know, he didn't see the same way as us but it's here to see, it's a poor work on the referee. They should go home and assess and say, 'Okay, my bad,' Anthony Taylor should assume and say, 'My bad, was bad decisions,' Stuart Attwell, is he a fan of Luton or not? I don't care, but he is there to do a job. He has time, he's sitting in the chair, tell me why he didn't give it. Then comes the letter from them asking, 'Okay, the panel decides you were right, bad decision.' Okay, how many points? We should have had more, we don't know what's going to get...but there are clear moments, not only in this game, that everything can change. Everything can change.

**Interviewer:** Okay. In this game today particularly, because if you get one of those penalties, I mean, I know you've got to score them, but then it becomes a different game in the second half if you can get level with one of those.

**NES:** Totally, totally. Totally, totally. We played, we had some chances, we didn't play as good as we wanted, we concede goals from long range, but we were there in the box, Gio Reyna, it's a clear one. A clear one. Callum, but all these things can change, we never know what's going to happen after that, then you assess in the end and say, 'Why?' But the point, the main point, is trying to understand when we are at home, we see matches and we see decisions and by the referee and by VAR, and say, 'Okay, let's hope, if something happens to Forest, they will decide the same way,' so if they decide a different way. Why, Colin? Tell me why. Someone to explain to me, it's not contact on Gio Reyna, it's a penalty. Why? Why? And you see on previous games, the same referee with similar situations giving penalties.

**Interviewer:** So, I mean, it's a very hard thing to prove, but are you thinking now it's happened so many times, not only today but going back as well, are you starting to think the unthinkable, that there's conspiracy here?

**NES:** If we were in another country, for sure, that will come up.

**05:18 – End**

**NES:** I think we cannot say anything to the character, fighting of our players. They give everything that they have, sometimes they play good, sometimes they play not so good, but the spirit and the will and the commitment is there. And that's what we have to hold on to.

**Interviewer:** I suppose, if you've got a level playing field.

**NES:** Sorry?

**Interviewer:** If you've got a level playing field, if you get decisions that you expect to get.

**NES:** Yes, everything is different, and then let's wait on the appeal. Do we have 30 points or do we have 26? Let's wait and see.

(ii) Post-match interview 2 [available on YouTube]

**NES:** On that aspect. So, tough, tough game to take, yes.

**Interviewer:** The club have put a very strong statement out on the social media channels about the standard of the referees and all the VAR in particular, do you share the view that you have had unto today in terms of the decisions?

**NES:** Yes, I share because I saw the images when we go back to the dressing room and we have access to the images and we see it so clearly. You don't understand why the decision was against us, because I honestly think the situation on Gio Reyna on the first half, it's a clear one, it's a clear one. The end ball, okay, we can ask if it's not but the ball goes to Wood and there's another incident with Callum, also with Ashley Young. So, I share, of course, the feeling of the club, because it's not only this game, it's been a while that we have poor decisions against us. It's not an excuse but we are not comfortable with the work of the referees.

**Interviewer:** So, it was said in a Tweet that there were concerns raised before.

**NES:** Sorry? I don't understand.

**Interviewer:** It said, in a Tweet, it said there were concerns raised before the game about the VAR being a Luton fan. Are you aware of this?

**NES:** I'm aware of the complaint, of a formal complaint to the club, that was not comfortable with the VAR, PGMOL decided the other way. But it's not important if he is a fan of another club or not, that's not important. The referee, especially the VAR, they are sitting down in a chair, they have time to assess the images. I just would like to understand why, the why, why we've been always on the end of bad decisions.

**Interviewer:** Have you been able to try and speak to the referee today?

**NES:** Not yet, but what's the point? You know, you go and speak and, before, you look back, it's a feeling of....disappointing that we are always being punished and it's difficult to control especially the players with all these feelings because they felt they work hard and are not given what they deserve, especially on the referees here.

### (iii) Post-match interview 3 [Talksport]

#### **Start – 03.30**

**Interviewer:** We're going to get back to calls in a minute but let's talk about what on earth happened at Everton today, when Nottingham Forest had four penalty shouts in their 2-0 defeat. After the game, this statement was made on X by the club, *'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 it didn't change him. Our patience has been tested multiple times. NFFC will now consider its options.'* That was the club statement, but now let's hear from Nottingham Forest boss, Nuno Espirito Santo, who didn't hold back after the game.

**NES:** I was aware of that complaint, it's a formal complaint, every club is entitled to do it if they feel that they are not comfortable. The PGMOL decide the other way. If Stuart Attwell is not a fan of Luton, it doesn't matter, that doesn't matter at the end of the day, that doesn't matter. He's there to do his job and, starting with Anthony Taylor today, he did a bad job. And VAR did a bad job because the decisions are bad. I'm telling you, after we lose a game, everybody will say, 'Okay, look at the manager, look, he's getting excuses.' No, it's not an excuse, it's a reality. It's the reality. We don't know what can happen with that decision but they are bad decisions for penalties. VAR should help the referee. I saw it.

**Interviewer:** I mean, the club says that it will consider its options now, I just wonder, are you

comfortable?

**NES:** Sorry?

**Interviewer:** The club said in a statement that it will consider its options now, going forwards. I just wonder, are you happy with this playing out on social media, with this playing out in public? Because you know, I wonder how you feel as the manager coming down and having to answer questions about it?

**NES:** Yes, so look, I'd rather speak about other things, I'd rather speak about the need that we have in these four games. I'd rather speak about the performance and the standards of the players. But this has been going on so long. Since I arrive I have this feeling growing and growing. So, you must understand the reaction of the club, we mustn't sense, because we have....we owe this to our fans. The....a thousand people, more, 2-3,000 people, thousands of people travel, they are on Instagram, they need to be respected. The referees must know and assess that there have been bad decisions against us, decisions that are costing us points, not only penalties. Just remember the final minutes, 30 seconds to go on the game against Liverpool. You know what I mean? So, you must understand that we react like that.

**Interviewer:** But I just want to clarify, finally, you're talking about bad decisions.

**NES:** Poor decisions.

**Interviewer:** Are you saying these are just bad decisions? You're not intimating there's something untoward going on here?

**NES:** Look, if we were in another country, we will start speaking about conspiracy, you know what I mean?

**Interviewer:** So, you think we should be talking about conspiracy?

**NES:** No, I don't. I'm not talking about that. But why always this? And then comes the answer from the panel that they have, one week after, saying, 'No, you were right,' you were entitled to a penalty, blah blah blah. But what's the point? It seems like they are playing with us.

### **(5) The comments by NW.**

14. NW made the following relevant comments in the course of one post-match interview.

(i) Sky Sports interview which took place immediately following the match.

**0.19 – 02.14**



**Interviewer:** You had, I think, four penalty shouts. Out of the four, how many do you think should you have had?

**NW:** Listen, it's three clear blatant penalties. Everyone watching that game knew they were all penalties, they're clear. Every single week, this happens now. We're getting decisions against us, I don't know why. Is it because we're lower bottom half of the table team? Because I guarantee all the top six teams, they're getting every single one of them and I know every single person watching that game today knew all three of them were clear, blatant penalties. It's ridiculous. It's week after week now, we're getting decisions against us and I'm not here to make excuses, I'm not that type of person, but every week, it's something. And I don't know what it is, and it needs to stop because, like I said, it's three clear, blatant penalties and -,

**Interviewer:** One more than another, perhaps. I mean, the third one, Ashley Young on Callum Hudson-Odoi, is that the one you're most angry at?

**NW:** Every single one of them. We had Gio Reyna, he's kicked him and it's a clear pen. The handball where we've tried playing it back across and he's hand-balled it, and Callum when he's through on goal. They're all clear, blatant penalties. And like I say, I'm not here to make excuses, but it changes the game massively and, at the end of the day, we're down there and we're fighting to stay in this league and we're having absolutely zero help from the Premier League and everyone up in their rooms looking at, I don't know, VAR. And the referee's got to see that as well, you can't just rely on the VAR, but I can't make it any more clear that they were all three penalties. It changes the game completely, and, to be honest, it's just ridiculous now. It's absolutely ridiculous and I've got nothing else to say on it.

### **(6) FA Rule E3.1.**

15. FA Rule E3.1<sup>1</sup> provides:

*“E3.1 A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.”*

16. The relevant parts of the charge letters read as follows:

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<sup>1</sup> Page 141, FA Handbook 2023 – 24.

(i) NES<sup>2</sup>

It is alleged that your comments set out below constitute improper conduct in that they imply bias and/or question the integrity of the Match Officials and/or bring the game into disrepute, contrary to FA Rule E3.1.

**Post-match Interview 1**

“You see in other games the same referees with different situations, and they decide the other way.” (1:07 – 1:12)

*“The main point is trying to understand. When we are at home we see matches and see decisions by the referee and VAR, and we say ok, lets hope if something happens to Forest, they will decide the same way. They decide a different way. Why Colin? Tell me why. Someone explain to me. It’s not contact on Gio Reyna? It’s a penalty. Why? Why? You see on previous games the same referee with similar situations giving penalties”* (2:50 – 3:22)

interviewer asking, “it’s a very hard thing to prove but are you thinking now that it’s happened so many times, not only today but going back as well, are you starting to think the unthinkable and that there is conspiracy here?” (3:24 minutes):

“If we were in another country, if we were in another country, for sure that would come up.” (3:34 – 3:40)

**Post-match interview 3**

“Look if we were in another country we would start speaking about conspiracy, you know what I mean.” (2:59 – 3:09)

“Then comes the answer from the panel that they have one week after and they’ll no you were right and you were entitled to a penalty, but what’s the point? It seems like they are playing with us.” (3:14 – 3:30)

(ii) NW<sup>3</sup>

It is alleged that your comments set out below constitute improper conduct in that they imply bias and/or question the integrity of the Match Officials and/or bring the game into disrepute,

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<sup>2</sup> Page 1 of the case bundle.

<sup>3</sup> Page 1 of the case bundle.

contrary to FA Rule E3.1.

**Sky Sports post-match interview on Sunday 21 April 2024:**

*“Every single week this happens now, we’re getting decisions against us, I don’t know why, is it because we’re lower bottom half of the table team, because I guarantee all the top six teams, they’re getting every single one of them”.*

**(7) The written and oral submissions,**

17. The stance of NES and NW is set out at paragraphs 66 [i] – [xii] and paragraphs 74 [i] – [xii] respectively, of the ‘*Participants’ Response to the Charges*’, and was developed by Mr Rawlinson in the course of his oral submissions.

18. The Commission does not replicate all of the submissions here, but has them very much in mind and for the purpose of this ruling, they can be summarised as follows:

- i. Although NES and NW admitted that their comments, all of which were, to a greater or lesser extent, solicited by the questions which they were asked, constituted improper conduct, in that they crossed the line between that which was permissible comment, however forcefully expressed, and that which was impermissible comment, they disputed that their comments implied bias and/or attacked the integrity of the referee or referees generally;
- ii. In particular as far as NES was concerned, the focus of his comments was on the poor quality of the officiating during the match, and in some other fixtures in which NFFC had been involved, and amounted to no more than an expression of genuine bafflement;
- iii. Where NES overstepped the mark was by failing to condemn out of hand the idea of a ‘conspiracy’ [which was first mooted by the interviewer] and by implying that some features of a conspiracy might be present, but could be discounted because this was England and not elsewhere;
- iv. Furthermore, NES never intended to convey such an opinion, although he realised, with the benefit of hindsight, that his remarks had the potential to damage the image

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<sup>4</sup> Pages 17 to 37 of the NES case bundle. Pages 11 to 31 of the NW case bundle.

of the game;

- v. As far as NW was concerned, it was accepted that, by expressing a 'guarantee' that top-six teams would have been treated more favourably than other [lower-ranking] teams on every occasion in question, the comment identified in the charge letter could have implied 'something almost conscious or deliberate within the prevailing systems of officiating generally' but he denied that his remarks implied bias on the basis that they did not represent an allegation against any individual match official;
- vi. As in the case of NES, NW did not intend that his remarks should bring the game into disrepute and/or imply bias.

19. The implication of bias was a major component of The FA's case developed by counsel Miss Graham, and its arguments in relation to each of NES and NW are set out at paragraphs 22-26 [NES]<sup>5</sup> and 9-13 [NW]<sup>6</sup> of its "Responses to reply".

20. The FA submitted, again in brief, that:

- i. Although the fact that a particular remark or remarks was prompted or led by the nature of the question which preceded it, that fact at best amounts to mitigation, and does not in any way detract from the responsibility of the interviewee for the answers he gives and the comments he makes;
- ii. Accountability is addressed directly in The FA's guidance documents entitled '*Essential Information for Managers, Owners and Directors, 2023-4. Level: Professional and Semi-Professional*' and '*Essential Information for Players 2023-2024*' the contents of which both respondents were familiar with;
- iii. In the case of NES, it was submitted that by his adoption and subsequent use of the word 'conspiracy' which has no place in a discussion about match officials, in conjunction with queries about specific decisions going against NFFC, there was a clear implication of bias by the officials, which could not be negated by his dissociation of ideas about 'conspiracies' from English football;
- iv. In the case of NW, it was submitted that whereas the comments made may not have implied bias against a particular match official, the imputation was being made against

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<sup>5</sup> Pages 38 to 48 of the NES case bundle.

<sup>6</sup> Pages 32 to 36 of the NW case bundle.

match officials in general;

- v. Furthermore, it was submitted by The FA that the lack of intention of the charged participant in either case to imply bias (if established) was, because of the applicable objective “reasonable bystander” test, relevant only to mitigation;
- vi. It was accepted in the cases of both NES and NW, who were familiar with the terms of the guidance document, that an allegation of actual or implied bias, if proved on a balance of probabilities, was highly relevant to the level and nature of sanction to be considered;
- vii. Accordingly, the Commission had to conduct that which in a criminal jurisdiction would be called a “trial of issue” in order to determine the proper basis upon which each should be sanctioned.

21. The Commission considered the case of and the evidence relating to each of NES and NW separately, the arguments advanced by Mr Rawlinson on behalf of the charged participants and Miss Graham on behalf of the FA, to both of whom we are most grateful for the clarity of their submissions.

### **(8) The law to be applied.**

22. Where it is necessary for the Commission to come to any conclusion(s) as to the relevant facts or as to whether an evidential burden has been discharged, the burden of proof is borne by The FA to prove the fact(s) or discharge the evidential burden upon the balance of probability

23. The authorities to which the Commission has been referred make it clear, and it is accepted by the charged participants, that the test for our consideration is an objective one [see for example, but not exclusively, *The FA -v- Frank Lampard*<sup>7</sup> at paragraphs 19-32].

24. It is for the Commission to determine whether, on a balance of probabilities, the ‘*reasonable bystander*’ armed with that general knowledge of the sport which might be attributable to a reasonable follower of Premier League football, would conclude that the comments made in the interview[s] in question:

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<sup>7</sup> Pages 46 to 55 of the NES case bundle.

- i. are improper and, as such, amount to misconduct, whether by implying bias, attacking the integrity of a match official, or match officials generally; and/or
- ii. whether the comments(s) bring the game into disrepute.

25. The Commission has no difficulty in concluding that the reasonable bystander is well aware of the problems which have been caused by VAR in its technical operation, and the inability to correct errors retrospectively. Indeed it has been a source of frustration from time to time for all those who follow football.

### **(9) The Commission's conclusions on the issue of implied bias.**

#### **(i) NES**

26. The Commission notes that throughout the interviews, NES spoke in a controlled and measured manner, giving careful thought to his comments. He has a good command of English [not that the contrary was suggested by any party].

27. For part of the interview, his comments fell clearly on the 'permissible' side of the line both in tone and content.

28. However, having carefully considered the transcripts of his interviews and having watched the interviews with care, as well as considering the submissions of Miss Graham and Mr Rawlinson, the Commission is satisfied on the balance of probabilities that the reasonable bystander would conclude that the remarks, considered as a whole, went far beyond mere bafflement and an unfortunate adoption and use of the word 'conspiracy'.

29. The Commission concludes that the attempt by NES to seek to neutralise the obviously harmful effect of the use of the word "conspiracy" by linking it to an unnamed hypothetical overseas jurisdiction does not have the effect of neutralising the plain implication of bias attached to that word.

30. The reasonable bystander would conclude that NES was not making a bona fide or genuine enquiry into why decisions were not being made in favour of NFFC which appeared to be made, in similar circumstances, in other matches in favour of other teams.

31. Constructing in effect a statement in the form of a question simply by prefixing the statement with the word 'why' does not mean that it may not be appropriate to draw an inference adverse to the maker of that statement particularly when the context over all of the

purported 'question' is clear.

32. Finally, the use of the words '*they are playing with us*' by NES must again be placed into proper context with what preceded them.

33. The Commission is satisfied that NES was not simply seeking to criticise inconsistent officiating (whether the benefit of the inconsistency rested with or against NFFC).

34. NES sought to imply that match officiating was biased against NFFC because officiating decisions would have been given in favour of other teams in an identical or similar match situation to that faced by NFFC but were not given in favour of NFFC in those situations.

35. Once that analysis is performed, the words used by NES (taken in proper context) cannot be considered to be similar to the tenor of the interviews which were considered at length by the Regulatory Commission in *The FA -v- Mikel Arteta*<sup>8</sup>, and support the inference to be drawn by the reasonable bystander, namely that bias is being imputed by NES to those officiating in matches involving NFFC.

#### (ii) NW

36. As with the case of NES, NW's comments were carefully thought out, and no doubt represented his innermost feelings.

37. However in the Commission's judgment, by linking the position of NFFC in the Premier League table to the decisions which were and were not made, and by expressing in no uncertain terms the '*guarantee*' that all 3 '*clear and blatant penalties*' would have been awarded to "*teams in the top 6*", NW was not simply criticising inconsistency.

38. By making the comments that he did, NW was crossing the line between the permissible and the impermissible. NW did not simply say that NFFC sometimes benefitted from inconsistent decisions and sometimes suffered the detriment of such inconsistency. He was implying and indeed "*guaranteeing*" that "*the top 6*" teams would have been awarded the decisions that NFFC had not been awarded.

39. On the balance of probabilities, the Commission is satisfied that NW's comments left no room for any reasonable inference other than that they implied match officials were biased against lower-placed league teams generally, and NFFC in particular.

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<sup>8</sup> Pages 81 to 117 of the NES case bundle.

**(10) Sanction in relation to the breach of FA rule E3.1 – general considerations.**

40. The reasons for the sanctions which the Commission imposed and, where applicable, the reasoning behind the sanctioning decisions are as follows.

**(i) Credit available to the charged participants.**

41. Both NES and NW challenged an important element of the case raised against them, namely on the issue of implied bias. This issue required resolution by the Commission. That issue has been resolved against each of them.

42. It is therefore appropriate to reflect these circumstances in the credit afforded to each of them for their admission of the charge.

43. In all the circumstances, the Commission considered that whereas the appropriate discount to reflect the respondents' contrition and remorse, and other mitigation, would have been in the order of one-third if the charges had been admitted at an early opportunity in full, the appropriate discount should be reduced to 20%.

**(ii) Previous character**

**(a) NES**

44. The Commission noted, and have taken into account as we are bound to do as an aggravating factor, that NES has two relevant previous findings against him upon his disciplinary record:

- i. When he was Head Coach of Wolverhampton Wanderers FC ("WWFC") in January 2019 he received a standard penalty fine;
- ii. More importantly, for a breach of Rule E3.1, by virtue of media comments which he made following a match between WWFC and Burnley FC on 21/12/20, he was fined £25,000 and warned as to his future conduct.

45. The Commission bears in mind the points made by Mr Rawlinson as to the period of time for which NES has worked in England since then without further breach of the Rules and also the observations made by Miss Graham as to the fact that the penalty imposed following that earlier misconduct did not deter him in the long term.



(b) NW

46. The Commission noted that NW had no disciplinary record (save for occasional cautions received during matches, which we have disregarded).

47. The Commission therefore treated NW as a person of good character for these purposes. This is relevant to mitigation generally.

(iii) The pressure and responsibility attached to participants.

48. In relation to both NES and NW, the Commission bears very much in mind the stress and feelings of emotion and frustration which players and, in particular, managers and coaches feel in the aftermath of a potentially crucial match in which they have been on the receiving end of what they believe to be, at best, dubious and at worst, wrong decisions.

49. However, these charged participants are provided with media training and are well remunerated in highly desirable and influential positions.

50. Managers and coaches in particular have a heavy responsibility to ensure that they and the clubs they represent as senior staff members are portrayed in a responsible and professional light and that those over whom they have a high degree of influence, including the grassroots of the game, are not adversely influenced by their actions.

**(11) Sanction in the case of NES.**

51. This was a serious breach, aggravated not only by NES' previous misconduct record but also because the breach of E3.1 involved, on this occasion, an implication that NFFC had been the victims of biased decisions.

52. The proved misconduct amounts to an escalation of his previous misconduct and, as Mr Rawlinson was at pains to concede, there is no place for such irresponsible and dangerous comment in the game of football.

53. The breach was mitigated, in the Commission's judgment, by the following factors:

- i. NES did not introduce the suggestion of '*conspiracy*' into the first interview. He merely adopted it as (to a lesser extent) he adopted the interviewer's reference to a '*level playing field*' and '*getting the decisions you expect to get*' at the end of the first interview;
- ii. Although NES introduced the reference to '*conspiracy*' in the third interview, he

emphatically declined the opportunity to follow it up;

- iii. NES did not intend to impute bias to the decision-makers, either specifically or in general. This apology is expressed in far more extensive terms in his letter in which he accepted the charge levelled against him.

54. The Commission has taken account of the submissions of Miss Graham and Mr Rawlinson in determining the level of sanction.

55. The Commission is assisted only to a limited extent by reference to previous Regulatory Commission decisions, albeit we have striven to achieve a degree of consistency.

56. In particular, the Commission does not derive much assistance from the decision in *FA -v- Klopp* [15/5/23]<sup>9</sup>, the facts of which case are somewhat similar but contained an element of aggression and personal animosity to the match official, and were set against a significantly worse disciplinary record, and which clearly (in the view of the Commission) necessitated the imposition of a heavier sanction than the facts of the instant case.

57. The Commission notes in particular the nature of the breach and the escalation in misconduct and, taking all matters onto account, decides that the appropriate principal sanction which is necessary, proportionate and intended to provide legitimate deterrence, is a one-match standard touchline suspension, allied to a financial penalty and a warning as to his future conduct.

58. Having so decided, the Commission then went on to consider (as invited to by Mr Rawlinson and in the FA's written submissions - although these were not adopted by Miss Graham in her oral submissions) in accordance with Regulations 43 and 44, whether there is a clear and compelling reason for suspending the one match standard touchline ban.

59. Regulation 43 of the FA Disciplinary Regulations<sup>10</sup> provides that:

*“Save where any Rule or regulation expressly requires an immediate penalty to be imposed and subject to paragraphs 43-46 below, the Regulatory Commission may order that a penalty imposed is suspended for a specified period or until a specified event and on such terms and conditions as it considers appropriate”.*

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<sup>9</sup> Pages 118 to 127 of the NES case bundle.

<sup>10</sup> FA Handbook 2023-24 at page 174.

60. Regulation 44 of the FA Disciplinary Regulations<sup>11</sup> provides that:

*“When considering imposing a suspended penalty a Regulatory Commission must:*

*a) Determine the appropriate penalty for the breach, irrespective of any consideration of it being suspended, and*

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

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

*(ii) Decide the period of the suspension or event until which the penalty will be suspended*

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

61. The Commission concludes that the wording of the regulation (taken in its entirety) probably precludes the Commission from considering mitigation which has already been taken into account in determining the appropriate penalty for the breach and that this was the intention of the draftsman of the rules.

62. In this regard, the Commission is assisted by the approach of the Regulatory Commission in the *Klopp*<sup>12</sup> case referred to above, in which quite apart from the remorse relied upon, the Commission decided that the deterrent element of a suspended sanction was a clear and compelling reason for so acting, and did so.

63. *A fortiori*, The FA accepted that this was a legitimate interpretation of Regulation 44b. indeed, The Commission concludes that this was probably what the author of the original submission, not adopted by Miss Graham, had in mind.

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.

65. Accordingly the Commission concludes that such an effect of a long period of suspension

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<sup>11</sup> FA Handbook 2023-24 at page 174.

<sup>12</sup> Pages 118 to 127 of the NES case bundle.

of the one-match touchline ban amounts to a clear and compelling reason for so ordering.

66. The risk of activation of the suspended touchline ban will hang over NES for two complete seasons, and he should appreciate the consequences of any further misconduct particularly should it involve a breach of Rule E3.1.

67. In relation to a financial penalty, the Commission takes into account the declared income of NES.

68. The Commission concludes that the aggravating factors and mitigating factors cited above necessitate a starting point of a £50,000 fine. That starting point is reduced by 20% to £40,000 to reflect the admission of the misconduct as stated above.

69. The Commission concludes this fine is one which is proportionate to NES' means, character and culpability.

70. A warning as to future conduct merely serves to amplify the impact of the length of the suspended touchline ban, and will remain in force, in accordance with FA practice, throughout this and the next five seasons, long after the suspension has ceased to have effect.

### **(12) Sanction in the case of NW.**

71. Serious though NW's misconduct was, the Commission notes that The FA did not invite us to consider a sporting sanction in his case, no doubt because he had no previous relevant disciplinary record, which is a powerful mitigating factor.

72. The admission of the charge is also a powerful mitigating factor although, as already observed, the credit to which NW is entitled for that admission is reduced to reflect the adverse finding against him on the issue of bias.

73. As with NES, the Commission regards the imputation of bias as a serious aggravating factor.

74. In relation to a financial penalty, the Commission takes into account the declared income of NW.

75. The Commission concludes that the aggravating factors and mitigating factors cited above necessitate a starting point of a £30,000 fine. That starting point is reduced by 20% to a £24,000 fine to reflect the admission of the misconduct as stated above.

76. The Commission concludes this fine is one which is proportionate to NW's' means,

character and culpability.

77. A warning as to future conduct will continue to have effect for a significant period of time, as indicated in para 70 above.

78. The above sanctions are formally imposed.

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

HH CLEMENT GOLDSTONE KC

ABDUL S. IQBAL KC

STUART RIPLEY

22 August 2024