

IN THE MATTER OF AN APPEAL FROM THE DECISION OF A
REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

BETWEEN:

SOUTHAMPTON FC

Appellant

~~and~~

THE FOOTBALL ASSOCIATION

Respondent

Appeal Board: Christopher Quinlan KC (Chair) – Independent Judicial Panel Chair
Aidan O’Brien – Independent Legal Panel Member
Alison Royston – Independent Football Panel Member

Nathan Greenslade – Judicial Services Administrator (Secretary)
Michael Williams – Pupil Barrister (Observing)

Attendees: Mr Jim Sturman KC
Dr Katie Smith – Solicitor, Squire Patton Boggs (UK) LLP
Ms Katrina Dick – Club’s General Counsel
Ms Katie Petrie – mini pupil of Mr Sturman KC (Observing)

Football Association
Rebecca Turner – Head of Regulatory Advocates for The FA

Date: 23 January 2025

Venue: Wembley Stadium, London

WRITTEN REASONS OF THE APPEAL BOARD

A. INTRODUCTION

1. This is the decision of an Independent Appeal Board. The Appeal Board (“**the Board**”) was appointed under the Terms of Reference for the Composition and Operation of the Judicial Panel to determine an appeal brought by Southampton FC (“**SFC**”).
2. By letter dated “XX July 2024” [sic]¹ The FA charged the Appellant for breaching E21.1, E21.2 and E21.3 of the Rules of The FA in that during the EFL Championship match against West Bromwich Albion FC (“**WBA**”) on 17 May 2024 SFC 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 (“**the Charge**”). SFC admitted the charge.
3. By a written decision dated 18 November 2024 (“**the Decision**”) the Regulatory Commission (“**the Commission**”) appointed to determine the case imposed the following sanctions upon SFC:
 - a. A fine in the sum of £75,000.
 - b. A formal warning as to future conduct
4. The Commission ordered the Appellant to pay the Commission’s costs (“**the costs order**”).
5. By way of a Notice of Appeal dated 16 December 2024 (“**the Notice**”) SFC appealed against the amount of the fine and the costs order. There was no appeal against the formal warning.
6. The appeal was heard at Wembley Stadium, London on 23 January 2025. At the conclusion of the hearing we allowed the appeal and substituted a fine of £45,000. The cost order remained in place. This document is our written reasons for allowing the

¹ We were told the date of charge was 31 July 2024.

appeal. The decision and reasons are unanimous. We considered the entirety of the materials that the parties put before it.

B. FACTS

7. This is a summary of the facts. It is taken largely from the Decision.
8. On 17 May 2024 SFC hosted WBA in the EFL Championship Play-off semi-final second leg (“**the match**”) at St Mary’s Stadium, Southampton. The following of relevance to the Charge occurred during and after the match.
9. In the 49th minute of the fixture
 - a. A red pyrotechnic smoke device was thrown onto or near to the field of play by SFC supporter(s). The incident was dealt with by fire stewards and caused a minimal delay to play.
 - b. One SFC supporter entered the field of play and was dealt with by a designated member of the stewarding team. The supporter was escorted from the pitch and arrested.
 - c. Both incidents were caught on CCTV footage.
10. In the 69th minute of the match, another red pyrotechnic smoke device was thrown onto or near to the field of play by SFC supporter(s). The incident was again dealt with by fire stewards and caused a minimal delay to play.
11. In the 74th minute of the match, a further red pyrotechnic smoke device was thrown onto or near to the field of play by the Club’s supporters. The incident was dealt with by fire stewards and caused a minimal delay to play.
12. In the 78th minute of the match:

- a. A further red pyrotechnic smoke device was thrown onto or near to the field of play by the Club's supporters. The incident had to be dealt with by fire stewards and caused a minimal delay to play.
 - b. Another SFC supporter entered the field of play and was dealt with by a designated member of the stewarding team. The supporter was escorted from the pitch and arrested.
13. Approximately 45 seconds after the final whistle, there was a mass pitch incursion by SFC supporters. It was captured in its entirety on CCTV.
- a. It was plainly impossible at this point to prevent a pitch incursion so the priority of SFC shifted, in line with the relevant policy, to protecting players, staff and officials.
 - b. The CCTV footage shows that in general the mood of SFC supporters was celebratory. Very quickly most, if not all, the players on the pitch were engulfed by invading home supporters.
 - c. The SFC players are seen being escorted from the field of play, including the Senior Safety Officer assisting SFC's manager.
 - d. The match officials left the field of play without incident.
 - e. However, no stewards can be seen on the footage helping WBA players to leave the field of play and/or seeking out players who were not accounted for.
 - f. At one point a lone WBAFC player is seen on the footage applauding the away supporters. In the background a home supporter can be seen laughing at him and goading him from close quarters. No stewards are in the vicinity of the WBA player.
 - g. The CCTV footage indicates thousands of SFC supporters had entered the field of play and congregated around the centre circle and in front of the WBA supporters.
 - h. As the incident developed, a number of additional red and white pyrotechnic smoke devices were set off and a proportion of SFC supporters moved towards the WBA fans. A number of objects were thrown towards the WBA fans.

- i. The footage shows that a well-defined cordon of stewards had been set up in front of the tunnel. However, only a single line of stewards can be seen in front of the WBA fans.

14. Accordingly, The FA charged SFC with failing on 17 May 2024:

“to ensure that spectators and/or supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the match and do not behave in a way which is improper, threatening or provocative and/or throw missiles or other potentially harmful or dangerous objects (at or on to the pitch); and/or encroach on to the pitch or commit any form of pitch incursion contrary to FA Rules E21.1, E21.2 and E21.3.”

15. SFC admitted the Charge and thereby misconduct in correspondence dated 6 August 2024. It requested what is known as a ‘paper hearing’ which took place on 15 November 2024 when the Commission met to consider the case.

B. DECISION OF THE REGULATORY COMMISSION

16. The Commission’s findings and full reasons are set out in the Decision. There is no purpose in repeating them in detail and what follows is a summary.

17. The Commission made the following findings and directed itself as follows:

- a. That “[s]anctioning principles applicable to mass pitch incursions have relevance (with appropriate adjustments for the nature of the pitch incursion and the other aspects of the misconduct) to assessment of both harm and culpability in this case”².
- b. Relying on relevant previous decisions, that the correct approach when considering the appropriate sanction, should be by reference to the following factors:
 - i. The seriousness of the breach committed by the club;
 - ii. The culpability of the club;

² Decision, [21].

- iii. The harm caused by the incident; and
 - iv. The mitigation available to the club.³
 - c. The Commission purported to follow that approach, as well as having regard to paragraph 41⁴ (“*Penalties and Orders*”) of the *General Provisions of the Disciplinary Regulations, FA Handbook 2023/24* (“**the Disciplinary Regulations**”)⁵.
18. In respect of the seriousness of the breach committed by SFC the Commission observed that, “any mass pitch incursion is very likely to be considered a serious breach of FA Rule E21” and that “[w]hen associated with the ignition of pyrotechnic devices, the seriousness of the breaches will almost inevitably be regarded as serious”⁶. For reasons it explained, the Commission categorised the seriousness of SFC’s breaches as “at a high level”⁷.
19. Following its analysis of the relevant evidence and for reasons set out the Commission concluded that SFC’s culpability “properly falls somewhere between category 4 (‘negligence’) and category 3 (‘gross negligence’)”⁸.
20. The Commission considered that “the harm caused is at a high level generally”⁹.
21. The Commission identified the following mitigation available to SFC:
- a. SFC had no relevant misconduct FA Rule E21 record for the current season and the 5 preceding seasons.
 - b. SFC co-operated with the disciplinary investigation by The FA and responded promptly by admitting the misconduct.
 - c. SFC responded appropriately post-match by liaising appropriately with relevant agencies to seek to identify individuals involved in relevant misconduct.
 - d. SFC apologised for the misconduct to all parties concerned.

³ Ibid, [24]-[25].

⁴ The internal referencing is to “*paragraph*” not “*regulation*”.

⁵ Notice, [26].

⁶ Ibid, [42]-[43].

⁷ Ibid, [44].

⁸ Ibid, [58].

⁹ Ibid, [69].

- e. SFC has demonstrated a willingness to address relevant issues raised by this misconduct to reduce risk in the future.¹⁰

22. Further, the Commission “*found very limited assistance*” from The FA’s Policy Guidance on the Regulation of Discriminatory Conduct by Spectators¹¹.

23. The Commission concluded:

“71. This was multiple incidents of misconduct culminating in a mass pitch incursion. SFC should have realistically had an appreciation of the real risk of such a mass pitch incursion in such an important fixture.

72. The totality of the misconduct culminating in a mass pitch incursion amounts to a series of damaging incidents for all the reasons already identified.

73. The Commission unanimously concludes that a financial penalty is warranted and appropriate for the admitted misconduct.”¹²

24. For the reasons it explained, and balancing the aggravating and mitigation factors (which it identified) the Commission fixed the starting point for the fine at £100,000, which it then reduced to £75,000 to “*reflect the acceptance of the misconduct by SFC*”¹³. Applying paragraph 44 of the Disciplinary Regulations, it declined to suspend any part of the fine.

C. GROUNDS OF APPEAL

25. Pursuant to paragraph¹⁴ 2 of the Football Association’s (“FA”) Disciplinary Regulations – Appeals 2023/24 (“**the Appeal Regulations**”), SFC may appeal against a decision of a Regulatory Commission on the grounds that it:

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

¹⁰ Ibid, [70].

¹¹ Ibid, [85].

¹² Ibid, [71]-[72].

¹³ Ibid, [92].

¹⁴ The internal referencing is “*paragraph*” not “*regulation*”.

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.

26. SFC relied upon Regulation 2.4. It contended that the fine was excessive and it sought to have the costs order quashed. In respect of the fine, SFC argued that the fine should be reduced to no more than £30,000 with all or part of that fine suspended or “*such other reduced and/or suspended amount as the Appeal Board considers appropriate*”¹⁵.

27. In summary to make good its argument in respect of the quantum of the fine, SFC advanced (in writing and before the Board) these points, namely that the Commission

- a. Erred in its application of the correct approach to sanction by
 - i. Double-counting the aggravating factors.
 - ii. Failing to apply the mitigation it identified.
- b. Made incorrect findings on seriousness of breach, culpability, and level of harm.

28. In consequence, it submitted that the Commission arrived at a starting point of £100,000, which was excessive. SFC submitted it should have been no greater than £50,000 “*and/or there would have been a far greater reduction for mitigation*”¹⁶.

29. Further, SFC argued that the Commission:

- a. Erred in its findings in respect of the assessment of the seriousness of the breaches, SFC’s culpability (by reference to other cases) and the level of harm.
- b. Failed to have sufficient regard to decisions in factually similar cases.
- c. In fixing the starting point, failed to have sufficient regard to FA guidelines published in respect of “*other E21 offences and E20 offences*”¹⁷.

¹⁵ Notice, [9].

¹⁶ Ibid, [9] & [14].

¹⁷ Ibid, [38].

30. SFC sought to rely on two videos dated 4th May 2024. One showed the arrival of the Ipswich Town FC team bus accompanied by pyrotechnics and the other a mass pitch incursion and letting off pyrotechnics after that club secured promotion to the Premier League. The FA did not object to the admission of these videos. SFC did not comply with paragraph 10 of the Appeal Regulations which, after an unsuccessful forensic side-step, Mr Sturman KC acknowledged and for which he apologised. We did not admit the evidence on the grounds of relevance.

D. RESPONSE

31. The FA replied in writing by way of a response dated 9 January 2025 (“**the Response**”). Therein, The FA summarised its position thus:

- (i) *The FA is neutral in respect of the appeal solely in relation to SFC’s assertion that the Commission erred in their approach in identifying the appropriate starting point. The FA does so on the basis that it accepts that (1) the Commission appears to have double counted the aggravating factors and (2) the Commission’s approach in reaching the starting point of £100,000 was also incorrect.*
- (ii) *The FA does not, however, accept SFC’s submissions that the Commission erred in respect of their assessment of the seriousness of the breach, the culpability and the harm caused. Those were factual matters open to the Commission to determine on the evidence before it.*
- (iii) *The FA does not accept SFC’s assertion that the Commission erred in not taking into account sanction guidelines for other offences in reaching the starting point.*
- (iv) *Given The FA’s position in paragraphs 5ii) [sic]¹⁸ above, it is not accepted that the appropriate sanction ought to be reduced to one of no greater than £30,000.*
- (v) *It should also be noted that The FA does not accept that, in the event the appeal is successful, the Costs Order ought to be reversed.”¹⁹*

32. Further, The FA:

¹⁸ That must be a reference to [6 ii]

¹⁹ Response, [6].

“...accepts the assertion at paragraph 20 of the Notice that the Commission have not provided an explanation for the starting point of £100,000 save for the suggestion, at paragraph 88 of the Written Reasons, that the starting point was reached following a “balancing of the aggravating and mitigating factors”. This is plainly problematic given the starting point ought to have been reached before balancing any aggravating or mitigating factors. It is not clear, therefore, what the starting point was, or how it was reached, based on culpability, seriousness and harm only.”²⁰

33. Further, in respect of mitigation The FA conceded:

“The FA notes that they plainly identify the mitigating factors available to SFC at paragraph 70 of the Written Reasons. However, as a result of the Commission’s erroneous approach in reaching the starting point, it is difficult to identify how those mitigating factors were meaningfully applied to the sanction given they have not, as identified by SFC, reduced the starting point as they ought to have done.”²¹

34. On the issue of the Commission’s alleged erroneous approach in respect its assessment of the seriousness of the breaches, SFC’s culpability and the level of harm, The FA submitted that they were factual matters. Since it was not contented those findings were unreasonable, The FA argued that it was not appropriate for us to go behind them.

35. On the relevance of decisions in other cases, The FA relied upon this observation in *The FA v Birmingham City FC* (“Birmingham City”):

“Each case will however depend on its own facts. We did not therefore find it useful to try to assess whether this case was more or less serious than other previous Decisions or to try to ‘apply’ or ‘adjust’ the financial penalties that were imposed in those previous Decisions to reflect similarities or differences between this case and previous cases.”²²

²⁰ Ibid, [8].

²¹ Ibid, [10].

²² 16 September 2019, [38].

36. The FA also submitted that it was for the Commission to determine whether the guidance on levels of financial penalty for clubs facing different types of offences under E21 and E20 were helpful in reaching the appropriate sanction. Its decision in that respect did not amount to an error.

E. DECISION

(1) Approach to FA Rule E21 Cases

37. FA Rule E21 provides:

A Club must ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending any Match and do not:

E21.1 use words or otherwise behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative;

E21.2 throw missiles or other potentially harmful or dangerous objects at or on to the pitch;

E21.3 encroach on to the pitch or commit any form of pitch incursion;

E21.4 conduct themselves in a manner prohibited by paragraph E21.1 in circumstances where that conduct is discriminatory in that it includes a reference, whether express or implied, to one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

E21.5 it shall be a defence to a Charge in relation to Rules E21.1 to E21.3 (only) if a Club can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged. However, when considering whether this defence is made out a Regulatory Commission will have regard to all relevant factors including:

- The extent to which the Club has discharged its duty;*
- The severity of the issues involved;*
- The extent to which similar issues have occurred previously in which case whether the Club took sufficient action in preventing further such incidences.*

E21.6 For the avoidance of doubt Rule E21 shall apply to the conduct of both a Club's home and/or away supporters.

38. The parties agreed that the Commission stated the correct approach to sanctioning in such cases. The Commission was, with respect, right that the approach in FA Rule E21 is “well settled”, namely that Regulatory Commissions should consider the following factors:

- a. The seriousness of the breach committed by the club.
- b. The culpability of the club.
- c. The harm caused by the incident.
- d. The mitigation available to the club.²³

39. That approach is consistent with and supplemented by paragraph 42 of the Disciplinary Regulations which 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. [emphasis added]*

40. Consistent with paragraph 42 of the Disciplinary Regulations, a Regulatory Commission sanctioning in a Rule E21 cases will follow that staged approach and also consider separately any aggravating factors. In doing so, it must be careful not to count factors

²³ *Birmingham City FC*, [6]. It is to be noted that the relevant FA Rule applicable in this case was E20 which included responsibility for supporter behaviour. The FA Handbook 2023/24 contained a new Rule E21 entitled “supporter behaviour”.

already taken into account in assessing the gravity of the breach/es, the club's culpability and harm²⁴.

41. There are no standard sanctions or sanctioning guidelines, nor a minimum sanction for FA Rule E21 breaches.

(2) Meaning of excessive and the correct approach on appeal

42. "Excessive" means **materially** more than was necessary or proportionate in the circumstances of the case. It is not qualified. It would be wrong to interfere with a sanction imposed by a Regulatory Commission simply because the Appeal Board would have imposed a slightly lower penalty. That is the approach we took.

43. Further, the factual findings of Regulatory Commissions are to be afforded the appropriate margin of appreciation. That is also the approach we took.

44. We turn to the individual complaints.

(3) Erred in its application of the correct approach to sanction

45. In writing The FA described its position on this submission as neutral:

- a. It accepted that:
 - i. The Commission "*appears to have double counted the aggravating factors*" and
 - ii. Its approach in reaching the starting point of £100,000 was also incorrect.
- b. Further, as a result of what it said was the Commission's erroneous approach in reaching the starting point, it was "*difficult to identify how those mitigating factors were meaningfully applied to the sanction given they have not, as identified by SFC, reduced the starting point as they ought to have done.*"²⁵

²⁴ See *Birmingham City*, [33]-[34] and *The FA v Bristol Rovers FC* 28 July 2022, [53]. Again, *Bristol Rovers* concerned breaches of Rule E20 in the 2022 season which would, if they occurred this season or last, be caught by FA Rule E21.

²⁵ Response, [10].

46. In her oral submissions Ms Turner recognised that the reality of The FA's position in writing was not one of neutrality but agreement. She conceded the points and did not seek to uphold the Commission's approach in these respects. That concession is informative but not dispositive.

47. The derivation of the submission that the Commission double counted the aggravating factors are the following parts of the Decision:

*"The actions of SFC pre-match in promoting the "meet and greet" and the actions of SFC's press department post-match seeking to highlight in positive terms images of the use of pyrotechnic devices at the match are deplorable and **are a significant aggravating factor** in this case generally because they show the attitude of SFC staff and officials generally in this regard."*²⁶

*"The Commission notes the various aggravating and mitigating factors set out above."*²⁷

*"Balancing all of the aggravating and mitigating factors, the Commission concludes that had SFC contested the misconduct, the appropriate financial sanction would be £100,000 ('the starting point')."*²⁸

48. The simple point is that the 'meet and greet' and the actions of SFC's press department post-match cannot be taken into account both in assessing culpability and then as additional aggravating factors.

49. Notwithstanding The FA's concession in this respect, we are far from satisfied that this Commission, which is experienced in FA Rule E21 cases, erred in principle and did, in fact, double count. It is obviously right that the Commission used (in paragraph 53) the words "**aggravating factor**" but our reading of that paragraph in the context of that part of the Decision, and of the Decision as a whole, is that it was not using those words as a term of art. We reach that conclusion for these reasons:

²⁶ Decision, [53].

²⁷ Ibid, [74]

²⁸ Ibid, [88]

- c. The Commission identified the correct approach to sanctioning in FA Rule E21 cases.
- d. The matters it identified in paragraphs 52 and 53 were relevant to its assessment of SFC's culpability, which was what it was addressing in that part of the Decision.
- e. Had it double counted those matters we would have expected to read - and we do not - in the Decision a separate section addressing specifically aggravating factors, as for example was done in the *Birmingham City*²⁹ and *Bristol Rovers*³⁰ decisions.

50. What we infer the Commission meant and was saying in paragraph 53 of the Decision is that those factors were relevant to assessing SFC's culpability. They aggravated SFC's culpability, namely made it greater. That reading is also not inconsistent with its later reference to balancing aggravating and mitigating factors. While the words "*aggravating factors*" might be said to be infelicitous (to the counsel of perfection) the meaning and approach the Commission took is - to us - tolerably clear.

51. We turn to the treatment of SFC's mitigation. The Commission stated:

*"In these circumstances, the Commission concludes it is nonetheless appropriate and proportionate to reduce the financial sanction from the starting point of £100,000 to £75,000 to reflect the acceptance of the misconduct by SFC."*³¹

52. It was submitted that by virtue of that approach the Commission gave SFC insufficient reduction to reflect the mitigation. The submission was that the Commission reduced the otherwise appropriate sanction only because of the admission. What it should have done, is to reduce it to reflect the admission and the other mitigation. In consequence the reduction should have been greater than 25 per cent.

53. Consistent with the established approach to sanctioning in such cases and more generally in football cases and, as reflected by paragraph 42 of the Disciplinary Regulations, a

²⁹ See [33] thereof.

³⁰ See [53] thereof.

³¹ Decision, [92]

participant is entitled to appropriate credit for all mitigation. Credit is a reduction of the otherwise appropriate sanction.

54. The Commission identified what it considered to be mitigation at paragraph 70 of the Decision. It referred – more than once – to the exercise of balancing the aggravating and mitigating factors. In doing so, it was plainly taking into account the other mitigation (i.e. not the admission in respect of which it discounted separately) at that stage. The FA conceded that “*it is difficult to identify how those mitigating factor were meaningfully applied*”³². We agree, though that of itself is not determinative of the appeal. The ultimate issue is this: has SFC established that the sanction was excessive? To answer that we concluded we must look at the sanctioning exercise undertaken by the Commission and in doing so consider the specific complaints made by SFC in that regard.

(3) In fixing the starting point, failed to have sufficient regard to FA guidelines published in respect of “other E21 offences and E20 offences”

55. There are no guidelines published in respect of breaches of E21 not involving discriminatory elements.

56. It is right, as SFC submitted, that Regulatory Commissions have had regard to guidelines published by The FA. In *The FA v West Bromwich Albion FC*³³ (“*West Bromwich Albion FC.*”) an FA Rule E21 case, a fine of £30,000 was imposed in respect of multiple breaches. In that case, the Regulatory Commission was invited by The FA to have regard to the “*Policy and Guidance on the Regulation of Discriminatory Conduct by Spectators*”. Those guidelines recommend a financial penalty of between £5,000 and £75,000 being imposed on an EFL club found in breach of (what would now be) FA Rule E21.4 for the first time. That Regulatory Commission rightly observed:

³² Response, [10].

³³ 4 July 2024.

“While the Guidance (a) is precisely that – guidance, and (b) addresses breaches of FA Rule E20.1³⁴ involving discriminatory behaviour (which this case was not), the principles set out in the Sanctions Guidance were in our view of some assistance to us

i) When considering the approach to be taken when determining the appropriate financial penalty to be imposed on the Club, and

ii) In identifying the order of magnitude of financial penalties that might be imposed for breaches of other limbs of FA Rule E21 on clubs at different levels in the football pyramid”³⁵

57. The *Standard Penalty Guidelines for FA Rule E20* relate to Mass Confrontations &/or Surrounding the Match Official offences. They provide that for breaches of FA Rule E20 involving mass confrontations the maximum sanction for Championship Clubs is £50,000. They also illustrate that a relevant consideration when determining the sum of any financial penalty is a club’s place in the football pyramid. However, they do not apply directly to breaches of E21 and of this nature. The factual circumstances in FA Rule E20 cases are different from those of FA Rule E21.

58. The assistance to be had from guidelines such as the two referred to herein goes no further than the generality described by the Regulatory Commission in *West Bromwich Albion FC*. In this respect, the Commission stated:

“In addition, the Commission found very limited assistance from comparison of the multiple instances of serious misconduct in this case and guidelines related to instances of discriminatory misconduct pursuant to FA Rule E21.4.”³⁶

59. We were not persuaded that was inconsistent with the limited utility expressed in *West Bromwich Albion FC*. There is, with respect, nothing in this complaint.

(4) Erred in its findings in respect of the assessment of the seriousness of the breaches, SFC’s culpability and the level of harm

³⁴ Now FA Rule E21.

³⁵ Decision [60(b)]

³⁶ Ibid, [85].

(a) *Seriousness of the breaches*

60. As the Commission correctly noted, what is being assessed is the seriousness of the breaches of FA Rule E21, not the consequences. In our judgment the following are its core findings leading to the Commission's assessment of the seriousness of the breaches as "*at a high level*"³⁷:

- a. The assessment of this match as medium risk (until shortly before kick-off) when it should always have been high risk.
 - i. That informed many of the planning decisions which were taken and with which the Commission found fault.
 - ii. A higher risk assessment at an earlier stage would also have led to a greater police presence.
- b. The failure to provide an adequate number of stewards. Both to act as a visible deterrent to minimise against supporters coming onto the pitch or, if an incursion cannot be reasonably prevented, then to execute the stewarding deployment plan effectively. That would include the establishment of a sterile area between the home and away supporters. That was especially so given its own risk assessment noted that "*as this is the last match of the season we would expect supporters to want to enter the playing area after the final whistle*".

61. However, there is some force in the submissions made by SFC that the Commission did not give proper weight "*to the points that SFC did well*". Further, it was important to have proper regard to the matters outside SFC's control. Both were recognised in The FA's submissions to the Commission:

"32.2. The FA accepted the following regarding SFC's planning in its submissions, which the [Commission] should have taken into account:

32.2.1. "there is little football clubs can do to stop large numbers of passionate supporters intent on entering the field of play" (paragraph 24 of the FA's submissions);

³⁷ Ibid, [44]

32.2.2. SFC's Pitch Protection Plan 'adequately and clearly set out the actions that should be taken in the event of a mass pitch incursion' (paragraph 21(b) of the FA's submissions); and

32.2.3. 'there were aspects of the Club's planning and implementation of the plan which worked well' (paragraph 27 of the FA's submissions).

62. With respect to the Commission, we concluded that The FA's acceptance that "there is little football clubs can do to stop large numbers of passionate supporters intent on entering the field of play" is more realistic than its conclusion that proper pre-match planning may have avoided the mass pitch incursion.³⁸

63. Further, in its assessment of SFC's "inadequate pre-match planning", which fed into the assessment of seriousness, the Commission did err in finding that: "SFC thought it appropriate to conclude that '14 Police Officers in the stadium plus Operation Football Officers' was regarded as appropriate"³⁹. As a matter of fact, as is clear from the evidence, SFC did not conclude this. Mr Darbyshire's evidence on this point was that he attended an in-person meeting with police and requested police support in respect of (1) the risk of a pitch incursion and (2) in front of the away stand in furtherance of the pitch protection plan.

(b) Culpability

64. We appreciate the margin of appreciation properly to be afforded to the Commission's categorisation of SFC's culpability as falling "somewhere between category 4 ('negligence') and category 3 ('gross negligence')"⁴⁰. The Commission correctly adopted the sliding scale of culpability which ranges from (1) the most serious [for example a deliberate decision not to provide the necessary resources for financial reasons], to (2) a reckless disregard in respect of the Club's duties, to (3) gross negligence to (4) negligence simpliciter, down to, finally, [5] a situation where a club has marginally failed to avail itself of the "due diligence" defence set out in Rule E21.

³⁸ Ibid, [78]

³⁹ Ibid [37].

⁴⁰ Ibid, [58]

65. We were exercised by the following aspects of the Commission's findings in this regard.
The Commission found:

"The Commission regards the use of the phrase 'meet and greet' to describe the invitation by SFC to its supporters to await the arrival of the opposing team coach at the stadium as wholly misleading. Any such invitation by the home club to its supporters can only sensibly be seen as an attempt to intimidate the opposing team and its coaching staff. Such actions are provocative and risk disorder.

*The actions of SFC pre-match in promoting the 'meet and greet' and the actions of SFC's press department post-match seeking to highlight in positive terms images of the use of pyrotechnic devices at the match are deplorable and are a significant aggravating factor in this case generally because they show the attitude of SFC staff and officials generally in this regard."*⁴¹

66. As Steve Graham (The FA Safety and Security Advisor) recognised in his report (relied upon by The FA):

"There is an issue with the Meet and Greet that the Club encouraged for the SFC fans to welcome their team into the ground. This was clearly done to replicate the sort of welcomes that are often staged and seen at Anfield and the Etihad Stadium. While it may have been intended to cheer the team on, experience at both of those grounds (and others who have since replicated it, such as Villa Park) shows that this greeting is often accompanied by the mass usage of pyrotechnics. While there is no evidence that the Club openly encouraged the use of pyro..."

67. The 'meet and greet' invitation was extended by SFC to its supporters to await the arrival of **its** team coach at the stadium, not the opposing team's. It was not an attempt to "intimidate the opposing team" nor an encouragement to do so. We do not think it right therefore to describe – as the Commission did – the actions of encouraging the 'meet and greet' as "deplorable".

⁴¹ Ibid, [52]-[53]

68. Further, in respect of the actions of SFC in posting images of the use of pyrotechnic devices, the evidence from SFC before the Commission was that SFC accepted that those were ill-advised. SFC accepted that they were posted in error “*as a result of over-exuberance in the context of the match and its importance*”. SFC acknowledged that “*the team did not understand the potential impact and implications of those posts and did not intend in any way to ‘celebrate, encourage and endorse’ the use of pyrotechnics*”. The posts were taken down from official accounts quickly and the Commission was told that SFC was working with its social media team and reviewing its protocols to ensure there was no repeat. With respect to the Commission, we think this evidence more accurately portrays the “*attitude of SFC staff and officials generally*” to the events and its breaches.

69. In our judgment those errors did influence the Commission’s finding on culpability. In light thereof, taken together with the proper assessment of SFC’s fault, we would assess its culpability as negligent rather than any greater.

(c) *Harm*

70. Correctly, the Commission identified harm as encompassing both the immediate adverse consequences of an incident and the wider implications, including for example

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

71. Rightly the Commission also considered the totality of the six separate incidents, including three separate pitch incursions. The Commission categorised the final 3 pitch incursions, including the mass incursion after the final whistle. Its conclusion that even if that incursion was largely celebratory it was not entirely so,⁴² is correct.

⁴² Decision, [40] & [66].

72. When considering the level of harm, the Commission observed:

*“There were many thousands of supporters involved in the mass pitch incursion. They were on the pitch for a long time. Some spectators possessed pyrotechnics that were deployed in close proximity to other spectators. That plainly created a **huge risk of serious harm** to others.”*⁴³ [emphasis added]

And

*“Although mercifully no wider disorder actually occurred, nonetheless the **wider harm** caused by the disorder generally and the mass pitch incursion was **very significant**.”*⁴⁴ [emphasis added]

73. However, the Commission concluded thus:

*“The totality of the misconduct, consisting of multiple incidents of misconduct and the mass pitch incursion in particular, was such that the harm caused is at a high level generally.”*⁴⁵

74. We have reflected on whether the Commission was putting harm at a very high level. We have concluded that the Commission assessed the level of harm as high. On the facts of this case that is not open to sensible criticism.

(d) Aggravating factors

75. As distinct from those factors which are relevant to an assessment of the seriousness, culpability and harm, there are no aggravating factors.

(e) Mitigation

76. The Commission found the following:

⁴³ Ibid, [62]

⁴⁴ Ibid, [67]

⁴⁵ Ibid, [69].

- a. SFC has no relevant misconduct FA Rule E21 record for the current season and the 5 preceding seasons.
- b. SFC cooperated with the disciplinary investigation by The FA and responded promptly by admitting the misconduct.
- c. SFC responded appropriately post-match by liaising appropriately with relevant agencies to seek to identify individuals involved in relevant misconduct.
- d. SFC apologised for the misconduct to all parties concerned.
- e. SFC had demonstrated a willingness to address relevant issues raised by this misconduct to reduce risk in the future.

77. We agree with (a)-(d) above. In respect of (e), SFC not only demonstrated a willingness to address relevant issues raised by the misconduct, but we would add – and give additional credit for – the fact it has also done so. Those steps included:

- a. Implemented increased messaging around the risk of pyrotechnics in advance of the play off final at Wembley and engaged with police and others to assist in stopping the supply of pyrotechnics to fans in the city.
- b. Implemented an already planned new stadium layout which has assisted with the segregation lines between home and away fans.
- c. Continued to invest in its safety and security teams with 11 members of staff having successfully completed a Level 5, 4, or 3 course on Crowd Safety, Management and Preparedness; and (vi) seeking ways to improve its processes and procedures.

(5) Failed to have sufficient regard to decisions in similar factually cases

78. SFC placed before us a significant number of previous decisions. In addition to *Birmingham City*, *Bristol Rovers* and *West Bromwich Albion* the following previous decisions:

- a. *The FA v Reading FC* 5 August 2015
- b. *The FA v Huddersfield Town FC* 22 September 2022
- c. *Wilfried Zaha v The FA* 15 February 2019
- d. *The FA v Reading FC* 13 August 2024
- e. *The FA v Ivan Toney* 23 May 2023

- f. *The FA v Plymouth Argyle FC* 30 October 2024
- g. *The FA v Luton Town FC* 30 October 2023
- h. *The FA v Nottingham Forest FC* 3 May 2023
- i. *The FA v Carlisle United FC* 20 November 2023
- j. *The FA v Aston Villa FC* 18 May 2015

79. In its written submissions SFC drew our attention to principles to be derived from some of those decisions. SFC also provided us with a helpful factual analysis of those it placed particular reliance upon to make good its submissions that by reference thereto the fine and assessment of seriousness of breaches, culpability and harm were excessive.

80. As has been (correctly) observed many times before⁴⁶ each case will turn on its own facts. Contrary to what was submitted on SFC's behalf, it is not helpful to seek to apply the categorisation of seriousness, culpability or harm in one case to the facts of another, including this. A Regulatory Commission is required to make its own assessment of categorisation of seriousness, culpability or harm by reference to its factual conclusions.

81. However, that is not to say such cases have no relevance. We agree with and endorse the approach of the Regulatory Commission in *West Bromwich Albion FC*:

"i) We derived assistance from those previous decisions only to the extent that they demonstrate the broad order of magnitude of fines that other Regulatory Commissions and Appeal Board have imposed on other clubs for breaches of the same FA Rules

*ii) However, since so much turns on the individual facts of each case, we did not find it helpful to try to tailor what has been done in other cases to reflect the facts of the present case."*⁴⁷

82. That is the approach we adopted.

(6) Conclusion

⁴⁶ See for example *Birmingham City* and *Bristol Rovers* decisions.

⁴⁷ [60c]

83. SFC did not suggest that the Commission erred in concluding that a financial penalty was appropriate. In the context of its concessions, The FA submitted that the starting point of £100,000 was “very high”. In light of our conclusions above, and when looking at this fine in the broad order of the magnitude of fines imposed on other clubs in similar cases, we concluded that before considering an appropriate reduction for mitigation, £100,000 was excessive. In our judgement the financial penalty should not have been greater than £65,000.

84. To the sum of £65,000 we considered the appropriate reduction to reflect all the mitigation, including its admission, was such as to reduce the fine to £45,000. That reflects credit of just over 30 per cent, greater than the Commission determined, and consistent with our findings in respect of the mitigation. The sum, £45,000, we assessed to be proportionate in the circumstances.

(6) Suspension of fine

85. Paragraph 43 of the Disciplinary Regulations provides that save where the rules provide otherwise, and subject to paragraphs 44-46 thereof, a 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.

86. Paragraph 44 states:

44 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; and*

ii. Decide the period of the suspension, or event, until which the penalty will be suspended; and

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

[emphasis added]

87. The Commission concluded that there was no clear and compelling reason to suspend the fine. The fact that in other cases Regulatory Commissions have concluded that features of mitigation have justified suspending part of a financial penalty, does not establish that the Commission was wrong not to do so in this case. Indeed, we concluded that the Commission was right to conclude that there was no clear and compelling reason to do so in this case.

(7) Costs order

88. Paragraph 52 of the Disciplinary Regulations provides:

Save where otherwise provided, any costs incurred:

52.1 in bringing or defending a Charge will be borne by the party incurring the costs; and

52.2 by a Regulatory Commission, which are considered by the Chairman of the Regulatory Commission to be appropriate, may be ordered to be paid in full or in part by either party (such costs may include, but are not limited to, the costs of the Regulatory Commission and related expenses).

89. Once more, the fact that other Regulatory Commissions have not imposed an order for costs does not establish that the Commission was wrong to do so in this case. We could find no basis properly to criticise the Commission's order for SFC to pay its costs.


F. SUMMARY

90. For the reasons set out,

- a. SFC's appeal was allowed to this extent: the fine is reduced to £45,000.
- b. The appeal in respect of the Commission's decision not to suspend any part of the financial penalty and its costs order was dismissed.
- c. There is no order as to costs in respect of the appeal.
- d. The appeal having been in large measure successful, no fee will be payable in respect thereof.

91. Finally, we add this. This case proceeded before the Commission by way a so-called ‘paper hearing’. The reference to ‘hearing’ is apt to mislead. There is no hearing. In such circumstances the Regulatory Commission meets (invariably remotely) and deliberates on the case based on the written materials provided to it. In the instant case, SFC requested such a course. The FA consented to it and the Commission did not direct otherwise.

92. Nothing we say in this respect is a criticism of the parties or of the Commission. What happened in this case is by no means unusual. We also understand the benefits of such a procedure, including convenience and the savings of time and expense. However, it is, we think, worth reminding all parties and future Regulatory Commissions of the benefits of in-person hearings, which could include attendance remotely. The Commission did not have what we found was the considerable assistance of hearing directly from the parties, for which we record our gratitude.

A handwritten signature in dark ink, appearing to read 'Chris Quinlan', is written over a horizontal line.

29 January 2025

Christopher Quinlan KC

Chair

Signed on behalf of the Appeal Board