

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

**BETWEEN:**

**TOTTENHAM HOTSPUR FC**

**Appellant**

**-and-**

**THE FOOTBALL ASSOCIATION**

**Respondent**

Appeal Board: Christopher Quinlan KC (Chair) – Independent Judicial Panel Chair  
Ken Brown – Independent Panel Member  
Alison Royston – Independent Panel Member

Attendees: *Tottenham Hotspur FC*  
Kendrah Potts, Counsel  
Jennifer Urquhart, Football Secretary  
Rebecca Caplehorn, Director of Football Administration &  
Governance

*Football Association*  
Andrew Phillips – Senior Regulatory Advocate

Paddy McCormack – Judicial Services Manager (Secretary)

Date: 6 June 2025

Venue: *Microsoft Teams* conference call

**WRITTEN REASONS OF THE APPEAL BOARD**

**A. INTRODUCTION**

1. This is the decision of an Independent Appeal Board. It is not the decision of The Football Association (“**The FA**”). The Appeal Board was appointed by its Chair in his capacity as the Independent Judicial Panel Chair.

2. 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 Tottenham Hotspur FC (“**THFC**”).
3. By letter dated 5 November 2024 The FA charged the Appellant with two breaches of FA Rule in that:
  - a. In or around the 45+4<sup>th</sup> minute of the Premier League match against Manchester United FC (“**MUFC**”) on 29 September 2024 (“**the Match**”) THFC failed to ensure spectators and/or its supporters (and anyone purporting to be its supporters or followers) conducted themselves in an orderly fashion whilst attending the Match and did not use words or otherwise behave in a way which is improper, offensive, abusive, indecent, or insulting with either express or implied reference to sexual orientation, contrary to FA Rules E21.1 and E21.4.
  - b. In or around the 79<sup>th</sup> minute of the Match THFC failed to ensure spectators and/or its supporters (and anyone purporting to be its supporters or followers) conducted themselves in an orderly fashion whilst attending the Match did not use words or otherwise behave in a way which is improper, offensive, abusive, indecent, or insulting with either express or implied reference to sexual orientation, contrary to FA Rules E21.1 and E21.4.
4. THFC admitted both charges and did not request a personal hearing. The matter was determined ‘on the papers’.
5. By a written decision dated 19 March 2025 (“**the Decision**”) the Regulatory Commission (“**the Commission**”) appointed to determine the case imposed the following sanctions upon THFC:
  - a. A fine in the sum of £150,000.
  - b. A formal warning as to future conduct.
  - c. Imposed an Action Plan.

6. The Commission ordered the Appellant to pay the Commission's costs ("**the Costs Order**").
7. By way of a Notice of Appeal dated 14 April 2025 ("**the Notice**") THFC appealed against the amount of the fine and aspects of the Action Plan. There was no appeal against the Costs Order.
8. The appeal was heard by *Microsoft Teams* conference call on 6 June 2025. At the conclusion of the hearing we reserved our decision. This document is our decision and the written reasons for it. The decision and reasons are unanimous. We considered the entirety of the materials that the parties put before us, which this document necessarily summarises.

## **B. FACTS**

9. This is a summary of the facts. It is taken largely from the Decision.
10. Following the Match, The FA (a) received reports from Kick It Out; and (b) was aware of media reports concerning the following two incidents which occurred during the Match:
  - a. Incident 1 – 49th Minute
    - i. Prior to play restarting, following a foul by Mason Mount [MUFC] on Rodrigo Bentancur [THFC] the crowd begin to chant "*You know what you are, you know what you are, Chelsea rent boy, you know what you are.*"
    - ii. Once the free kick was taken the following can be heard again "*you know what you are, you know what you are*", before being drowned out by another chant.
  - b. Incident 2 – 79th Minute
    - i. Following a THFC goal scored by Dominic Solanke in the 77<sup>th</sup> minute and the celebration which followed, television cameras in the 79<sup>th</sup>

minute caught a section of the crowd chanting “*Mik<sup>1</sup> Arteta [Arsenal Manager] takes it up the arse, 60 million down the drain, Dom Solanke cores again*”.

- ii. This continued with “*Dom Solanke he’s fucking class, Mik<sup>2</sup> Arteta takes it up the arse, 60 million down the drain, Dom Solanke scores again.*” This chant is repeated fully three more times. On the fourth occasion, the chant begins with “*Dom Solanke he’s fucking class, Mik<sup>3</sup> Arteta*” before becoming inaudible.
- iii. This incident was repeated, in part, on social media, via an Instagram video uploaded to an account in the name [REDACTED].

11. On 2 October 2024, The FA contacted THFC for its observations. On 14 October 2024, THFC responded to The FA by attaching a report from their Safety Officer:

*“Tottenham Hotspur’s Safety Team contacted Manchester United in advance of our fixture (as is normal practice) and arranged to send 6 THFC Stewards to the match. There was no specific intelligence to suggest that there would be any behavioural problems from our visiting supporters. All of the THFC Stewards that travelled to Old Trafford are experienced and have attended away fixtures on several occasions.*

*Tottenham Hotspur were made aware of the alleged chanting via Proud Lilywhites on the day of the match and the Club also released a statement that same day that stated the chanting was “simply unacceptable, hugely offensive and no way to show support for the team*

<https://www.tottenhamhotspur.com/news/2024/september/club-statementhomophobicchanting/>

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<sup>1</sup> Not Mikel.

<sup>2</sup> Ditto,.

<sup>3</sup> Ditto.

*On Monday 30 September, Tottenham Hotspur's Safety Team contacted Manchester United's Safety Officer to see if any footage of the alleged incidents had been captured on CCTV or Body Camera. Manchester United responded later that morning and stated that nothing had been captured, which was obviously disappointing as we were hoping to have some footage to take forwards.*

*Our next away fixture was on Sunday 6th October v Brighton & Hove Albion. This fixture was again live on TV. We spoke with Brighton's Safety & Security Officer in advance of the match and made him aware of the chant. We agreed with him that if the chant (or similar) was heard to get as much footage and information as possible so that we could deal with the people involved. We also asked permission for one of our Stewards to bring their own Body Camera so that they could also capture anything of relevance. Brighton were fully supportive of the idea.*

*The Club also released a statement in advance of the match to inform supporters travelling to Brighton that we would be carrying out this operation. This seemed to have the right affect as nothing was heard on TV and the chant itself wasn't sung. This is something that we will continue to proactively monitor with the support of the clubs that we will visit. We will also continue to educate our supporters and work with the FA and the Premier League to eradicate chants such as these from our fanbase."*

12. Accordingly, The FA charged THFC with two breaches of FA Rule E21:

*Charge 1:*

*It is alleged that in or around 45+4th minute of the fixture, Tottenham Hotspur FC failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match and do not use words or otherwise behave in a way which is improper, offensive, abusive, indecent, or insulting with either express or implied reference to sexual orientation, contrary to FA Rules E21.1 and E21.4.*

*Charge 2:*

*It is alleged that in or around 79th minute of the fixture, Tottenham Hotspur FC failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match and do not use words or otherwise behave in a way which is improper, offensive, abusive, indecent, or insulting with either express or implied reference to sexual orientation, contrary to FA Rules E21.1 and E21.4.*

13. By a Reply Form, signed and dated 29 November 2024, THFC admitted the charges and requested that the matter be dealt with without a personal hearing.

The Reply Form was accompanied by

- a. "Submissions on Behalf of the Club"
- b. Sixteen Exhibits
- c. Three authorities - *FA v Leeds United FC* (10 August 2023); *FA v Wolverhampton Wanderers FC* (22 June 2023); *FA v Luton Town* (5 November 2023).

**B. DECISION OF THE REGULATORY COMMISSION**

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

15. It should be noted that the Commission was provided with a bundle of 360 pages and as it made clear in the Decision, it considered and discussed the entirety thereof. We were also provided with that bundle, together with other materials all which totalled 476 pages. We read and had appropriate regard to it all.

16. The Commission expressly stated:

*“For the avoidance of doubt, the Commission carefully considered all the submissions and materials provided and, in particular, how they applied to relevant factors to be considered when determining sanction – including:*

*(a) The number of supporters involved;*

*(b) The nature of the behaviour of those involved;*

*(c) The duration of the incident(s);*

*(d) Whether THFC (and/or its officers):*

*i. took all reasonable steps in its preparation and planning for the fixture in which the Relevant Breach occurred;*

*ii. took all reasonable steps in dealing effectively with the incident, when it arose;*

*iii. took all reasonable steps in identifying the supporter(s) involved;*

*iv. took sufficient action against those supporters responsible where those individuals were identified;*

*(e) Whether THFC cooperated in full with The FA;*

*(f) The previous disciplinary record of THFC or its Participants in relation to Aggravated Breaches or Relevant Breaches.”<sup>4</sup>*

17. It summarised the competing submissions<sup>5</sup> and made the following findings:

- The misconduct was aggravated by the fact that there had been two separate incidents of chanting;*

- The chants were, particularly, harmful, given their nature and contents;*

- This harm was aggravated by the fact that this was a Premier League match, televised live to a worldwide audience;*

- On balance, it was not persuaded that THFC had taken all reasonable steps in [...]*

- THFC had co-operated with the FA – albeit relevant documentation (eg. The pre-match risk assessment) had not been provided, and ought to have been;*

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<sup>4</sup> Decision [17].

<sup>5</sup> Ibid, [18]-[19].

- THFC had admitted the charge;
- THFC had no relevant previous breaches;
- THFC had not, previously, been subject to an Action Plan.”<sup>6</sup>

18. In light of those findings, the Commission assessed that THFC’s culpability was medium and the nature of the harm was “*between medium and serious*”<sup>7</sup>. In light of these findings, and having particular regard to the appropriate FA guidelines and authorities, the Commission imposed an Action Plan in the detailed terms set out in an accompanying Appendix; fined THFC £150,000 and formally warned THFC to its future conduct.

### **C. GROUNDS OF APPEAL**

19. Pursuant to paragraph<sup>8</sup> 2 of the *Football Association’s (“FA”) Disciplinary Regulations – Appeals 2024/25* (“**the Appeal Regulations**”), THFC 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*

*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.*

20. In the Notice THFC advanced three Grounds:

- Ground 1: the Commission came to a decision to which no reasonable such body could have come in concluding that THFC’s level of culpability was “medium” In reaching this conclusion, it was submitted that the

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<sup>6</sup> Ibid, [20].

<sup>7</sup> Ibid, [21].

<sup>8</sup> The internal referencing is “*paragraph*” not “*regulation*”.



Commission relied on various individual findings in respect of which the Commission's approach was clearly wrong and/or the Commission applied the wrong principle.

- b. Ground 2: the fine of £150,000 was excessive.
- c. Ground 3: advanced submissions certain actions specified in the Action Plan have been complied with or are "*not practical*"<sup>9</sup> or in respect of which "*further clarity*" is sought.

21. In summary THFC developed those Grounds in submissions, in the Notice and orally before the Board.

22. In respect of Ground 1 –

- a. THFC submitted that given the steps taken prior to the Match and in responding to the incident, its culpability should have been considered low. This was particularly the case where it said there is no evidence or legal basis (or even guidance) to find that there were other reasonable steps it should and could have taken in the context of an away match.
- b. Through its submissions THFC criticised the Commission's findings in the following respects:
  - i. The misconduct was aggravated.
  - ii. THFC had not taken all reasonable steps.
  - iii. THFC had not provided relevant documentation

23. Turning to Ground 2, THFC made three points, each of which it developed:

- a. First, the level of fine imposed is clearly excessive when its conduct is considered by reference to sanctions imposed in previous cases. THFC submitted that the Decision makes no reference to any of the relevant decisions cited in its Submissions at §§47-49 in respect of sanction.
- b. Second, it was contended that the Commission failed to take into account by way of mitigation THFC's consistent and strong efforts to combatting

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<sup>9</sup> Notice [37]

discrimination (set out at §§9-18 of its Submissions) or its response to the incident.

- c. Third, for the reasons advanced in the Notice and orally, THFC's level of culpability should have been assessed as low (rather than medium). On this basis alone (and before credit is given for mitigating factors), the sanction imposed on the Club should have been considerably lower than the sanction imposed in the cases it relied upon.

24. Finally, and in respect of Ground 3 THFC submitted that a number of the new actions required by the Action Plan were not practical and/or it sought further clarity. However, in advance of the appeal hearing THFC and The FA had agreed to work together on those aspects of the Action Plan with which THFC took issue. We were content with that agreement and so no ruling or determination was necessary or appropriate.

#### **D. FA's RESPONSE**

25. The FA replied in writing by way of a response dated 9 January 2025 ("**the Response**"). On Ground 1 the FA's position was summarised thus:

*"The FA adopts a neutral position in this regard and is content for the Appeal Board to determine whether such an assessment of culpability was one which no reasonable such body could have made."*<sup>10</sup>

26. On Ground 2 The FA observed:

*"If the level of culpability is assessed as being low, then it may be appropriate to reduce the level of fine imposed to reflect that adjustment."*<sup>11</sup>

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<sup>10</sup> Response [8]

<sup>11</sup> Ibid [20].

## **E. DECISION**

### **(1) Approach to FA Rule E21 Cases**

27. 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."*

28. There are no standard sanctions or sanctioning guidelines, nor a minimum sanction for FA Rule E21 breaches except those which involve – as in this case – discriminatory conduct by spectators. In that respect The FA has issued “*Guidance on the Regulation of Discriminatory Conduct by Spectators*” (“**the Guidance**”). The Guidance expressly makes clear that the ‘due diligence defence’ does not apply to a Charge of Misconduct for a breach of FA Rule E20.1 where the relevant conduct includes a reference, whether express or implied to any one or more of the following: ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

29. However, as the Guidance also makes clear, a club is entitled to rely as a mitigating factor the extent to which it used all due diligence to ensure that it discharged the responsibility set out at FA Rule E20.1. In that regard, the sanction guidelines expressly refer to the following factors (amongst others) to be considered in determining sanction whether the Club (and/or its officers):

- a. took all reasonable steps in its preparation and planning for the fixture in which the breach occurred;
- b. took all reasonable steps in dealing effectively with the incident, when it arose;
- c. took all reasonable steps in identifying the supporter(s) involved;
- d. took sufficient action against those supporters responsible where those individuals were identified.

30. The Guidance lists factors to be taken into account in determining sanction. Those factors are:

*“A Regulatory Commission will have due regard to the circumstances and seriousness of the incident when determining the appropriate sanction (to include*

*the level of any financial penalty that may be imposed). In so doing, the Regulatory Commission will consider a range of factors, to include the following:*

- 1. The number of supporters involved;*
- 2. The nature of the behaviour of those involved;*
- 3. The duration of the incident(s);*
- 4. Whether the Club (and/or its officers):*
  - a. took all reasonable steps in its preparation and planning for the fixture in which the Relevant Breach occurred;*
  - b. took all reasonable steps in dealing effectively with the incident, when it arose;*
  - c. took all reasonable steps in identifying the supporter(s) involved;*
  - d. took sufficient action against those supporters responsible where those individuals were identified;*
- 5. Whether the Club cooperated in full with The FA;*
- 6. The previous disciplinary record of the Club or its Participants in relation to Aggravated Breaches or Relevant Breaches;*
- 7. In cases where an Action Plan has previously been imposed on a Club, whether the Club has complied in full with that Action Plan.”*

31. We note that is precisely the approach the Commission adopted in this case. We also note that the order of the matters listed in paragraph 20 accords exactly with the ordering in that part of the Guidance cited in the previous paragraph.

32. The Guidance explains that the primary question in determining the appropriate sanction is whether the Club took “*all reasonable steps*” in preparing/planning for the fixture, dealing with the incident and identifying the supporters involved.

33. The Guidance states that a Regulatory Commission may also consider imposing a financial penalty in accordance with Table 1 where it considers it appropriate, having regard to the particular circumstances of the case and the factors set out. Table 1 provides:

League	Fine Range
Premier League	[20,000 – 300,000 ]
EFL Championship	[5000- 75,000 ]
EFL League One	[2500-37,500 ]
EFL League Two	[1000 – 15,000]
National League	[500-7500]
National League (North and South)	[375- 5000]
Northern Premier League, Southern League and the Isthmian League	[250-3750]
The FA WSL	[500-7500]
The FA WC	[250-3750]

34. The Guidance sets out particular advice in respect of Action Plans which is set out below in the consideration of Ground 3.

35. The Guidance is consistent with and must be read with 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.”*

## **(2) The correct approach on appeal**

36. Correctly THFC recognised that the appeal is conducted by way of a review. The burden is upon THFC to establish that the Commission’s decision was one to which no reasonable Regulatory Commission could have come. It is not for an

Appeal Board to substitute its own opinion on sanction unless it finds that the Regulatory Commission's decision was unreasonable or one that was not open to the Commission to have reached. That is a high hurdle.

37. Further, when considering evidential assessments, factual findings and matters of judgement or discretion the decision of a Regulatory Commission (comprised of persons with considerable sporting and other relevant experience) should be afforded an appropriate margin of appreciation. Therefore, such evidential assessments and factual findings made by a Regulatory Commission should only be disturbed by an Appeal Board if they are clearly wrong or wrong principles have been applied; it is not for an Appeal Board to substitute its own view simply because it might have reached a different decision.

38. “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 an Appeal Board would have imposed a slightly lower penalty.

39. That is the approach we adopted.

### **(3) Ground 1**

40. THFC submitted that given the steps taken prior to the Match and in responding to the incident, its culpability should have been considered ‘low’. This was particularly the case where it said there is no evidence or legal basis (or even guidance) to find that there were other reasonable steps it should and could have taken in the context of an away match. Through its submissions THFC looked at the following of the Commission's findings in the relevant part of the Decision, namely paragraph 20.

41. We consider them seriatim.

a. THFC had not taken all reasonable steps.

- b. THFC had not provided relevant documentation.
- c. The misconduct was aggravated.

The misconduct was aggravated

42. The first bullet point of paragraph 20 of the Decision states:

*“The misconduct was aggravated by the fact that there had been two, separate incidents of chanting”*

43. We are confident that the Commission was simply and correctly observing that two separate instances of offensive chanting was more serious than one. In this context the word “aggravated” means more serious. With respect there is nothing in this complaint.

44. We also agree with the approach taken by the Commission to sanction in this case *in culmulo*, namely to impose one sanction which reflects the totality of the culpability in both Charges.

THFC had not provided relevant documentation

45. The fifth bullet point of paragraph 20 of the Decision states that whilst THFC cooperated with The FA, *“relevant documentation (e.g. the pre-match risk assessment) had not been provided, and ought to have been”*.

46. The FA requested observations on 2 October 2024. THFC responded on 14 October 2024 and did not provide supporting documentation.

47. With respect we do not think there is substance in THFC’s submissions that *simply* because The FA did not ask THFC to provide any documentation it cannot properly be criticised for not doing so. The request for “*observations*” is standard and if a participant is charged, then the submission of the Reply Form is the time



when ordinarily documentation in support thereof is provided. However, the request for “observations” was *an* opportunity for THFC to provide if it wished to volunteer it.

48. If this criticism had substance and relevance, we consider it would arise when considering mitigation. Paragraph 20 is not inconsistent with the Commission having approached the matter in that way, for listed in that paragraph are features that one would expect to be mitigation, such as THFC’s admission of the Charges and the absence of any previous breaches.

THFC had not taken all reasonable steps

49. The fourth bullet point of paragraph 20 of the Decision records:

“[...]

- *On balance, it was not persuaded that THFC had taken all reasonable steps in:*

- *Its preparation and planning for the fixture;*
- *Dealing effectively with the Incident;*
- *Trying to identify those responsible*

*By way of examples:*

- *no pre-match risk assessment had been provided by THFC;*
- *no evidence of any briefing/guidance, given to the THFC stewards by the Club prior to departure for the fixture, was provided;*
- *the risk assessment, for the return fixture on 16.02.25 and provided as evidence of progress, appeared generic and non-specific – for example, it referenced Manchester City, rather than MUFC [cf. pages 237 and 238 of the Bundle];*
- *there were no reports or statements from the THFC stewards, in attendance at the game;*
- *THFC’s communications to supporters, pre, post and during the match, could have been better;*

- *in light of Mason Mount’s connection to Chelsea, THFC provided no evidence of any steps taken, following the January 2023 missive from The FA, to prevent such chanting, and/or how it would deal with it;”*

50. Each of those factual findings was criticised by THFC. We consider those criticisms.

- (i) *No pre-match risk assessment had been provided by THFC*

51. It is important to remember that THFC was the away club. Responsibility for carrying out of a detailed risk assessment to address such matters as crowd trouble and mass chanting rested with the home club, MUFC. We were not told what that club did in that regard.

52. In any event, THFC, as we would expect, did carry out a pre-match risk assessment for this away match. Further THFC detailed that in evidence and submissions before the Commission<sup>12</sup>. That included a call between THFC’s Safety Officer (Mr Smith) and his counterpart at Manchester United to discuss any potential issues. Neither THFC nor MUFC considered that this was a high risk fixture. Further, there was no intelligence, either from THFC’s side or from MUFC, that indicated that there would be any crowd behaviour issues. Additionally, THFC sent experienced and appropriately trained stewards to the Match, as well as the Club’s Supporter Liaison Officer. THFC’s stewards attended the pre-match briefing given by MUFC based on its home pre-match risk assessment. We accept this is consistent with standard procedure before away matches.

53. With respect to the Commission, and in light thereof, we concluded that this criticism was not sustainable on the available evidence.

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<sup>12</sup> THFC Submissions to the Commission [21]-[24].

*(ii) No evidence of any briefing/guidance, given to the THFC stewards by the Club prior to departure for the fixture, was provided*

54. It was submitted that there is no evidence before the Commission that it is either standard practice or recommended by any guidance that clubs provide a match specific briefing/guidance to their stewards before an away match. It was therefore argued that THFC cannot have failed to take a 'reasonable step' when that step is not even usual practice or recommended in guidance.

55. We disagree. We do think this would have been a useful and indeed a reasonable step to take. There would have been utility in the stewards meeting, and receiving a briefing on why they were going and the matters of which they should have been especially mindful.

56. However, when assessing the significance of that omission, the context is important. We accept all the stewards were all well qualified and trained, though that is a prerequisite for a responsible club at this level such as THFC. We also acknowledge that the specific details of how to respond to such an incident at Old Trafford were a matter for MUFC to communicate to both its own stewards and THFC's stewards when it delivered the pre-Match briefing.

*(iii) The risk assessment, for the return fixture on 16.02.25 appeared generic and non-specific*

57. With respect to the Commission, this error is not relevant to an assessment of the fault in respect of the breaches of FA Rule E21. It is not relevant to any consideration of a failure to take steps months earlier.

*(iv) There were no reports or statements from the THFC stewards, in attendance at the game*

58. With respect, this finding is contrary to THFC's evidence and submissions before the Commission<sup>13</sup>. The stewards did report back to THFC after the Match and explained what happened and where the chanting took place. Based upon that information, THFC asked MUFC for CCTV footage of the relevant section of the stands, which did not exist.

59. It is correct that THFC did not obtain *written* statements. While that would have been – in our view – best practice – the omission to do so does not amount to a failure to take a reasonable step in this regard.

60. On the topic of the making and keeping of written records or statements of briefings, meetings or actions taken, the Board's view is that even if such are not mandated there is much to commend them. They provide an audit trail. They provide contemporaneous record readily available in the event of dispute. There is an obvious benefit to the holder to have such to deploy should the need arise. To us the modest effort in compilation is much outweighed by the advantages.

(v) *THFC's communications to supporters, pre, post and during the match, could have been better*

61. As regards its pre-match communications, as was before the Commission, THFC sent an email to supporters before the Match drawing attention to the Spurs Respect programme and asking supporters to report any anti-social behaviour. Further, THFC's stance against discrimination is also set out on its website.

62. As regards communications during the Match, we agree that it is unclear what THFC should have done. THFC's stewards raised the issue with the police at the time of the Incident but were informed by the police that there was nothing they could do. Further, this was an away match, so THFC did not have control over the stadium.

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<sup>13</sup> Ibid [7b].

63. As for THFC's communications after the Match, it put out a statement (on the day of the Match) condemning the behaviour and asking supporters who saw anything to report it. Its response was praised by Proud Lilywhites. We are unclear what else THFC should have done.

64. All of this evidence was before the Commission. It did not, in our judgement, support this conclusion. We appreciate that THFC was especially exercised by this criticism. On the basis of the material before us we think it fair to say – as Ms. Potts did in her submissions – that THFC has taken consistent steps to demonstrate and communicate its zero tolerance attitude to discrimination and ensure that supporters behave properly.

*(vi) In light of Mason Mount's connection to Chelsea, THFC provided no evidence of any steps taken, following the January 2023 missive from The FA, to prevent such chanting, and/or how it would deal with it*

65. THFC put before the Commission evidence of steps it had taken to prevent such chanting. In February 2023, THFC specifically invited the Co-Chair of Proud Lilywhites to attend the Safety Officers' briefing on the morning of its match against Chelsea FC to speak about the 'rent boy' chant. Further, THFC produced a short video to educate stewards and supporters about, inter alia, the 'rent boy' chant. THFC was not aware that there were any further instances where the chant was heard until the Match, on 29 November 2024. It is simply incorrect to say THFC took no steps.

66. We agree with The FA's submissions that even if we found – as we have – that the Commission fell into error in any of its findings, the essential question is what effect those errors had, if any, on its assessment of THFC's culpability. We appreciate that the six listed examples were just that. They were not said to be exhaustive. However, no others were cited and so it is not possible now to know what other factors the Commission considered elevated the culpability to

‘medium’. While generally there is virtue in brevity, written reasons should contain sufficient particulars to inform the reader of the *reasons* for factual conclusions and other decisions.

67. Having examined the other relevant features of the case, we are satisfied that the finding of ‘medium’ culpability cannot survive. Put another way, we are persuaded that the finding of ‘medium’ culpability was unreasonable. Eliminating five of those six factors, we were satisfied that THFC’s culpability is properly assessed as ‘low’.

#### **(4) Ground 2**

68. Turning to Ground 2, THFC made three points, each of which it developed:

- a. First, the level of fine imposed is clearly excessive when its conduct is considered by reference to sanctions imposed in previous cases. THFC submitted that the Decision makes no reference to any of the relevant decisions cited in its Submissions at §§47-49 in respect of sanction.
- b. Second, it was contended that the Commission failed to take into account by way of mitigation THFC’s consistent and strong efforts to combatting discrimination or its response to the incident.
- c. Third, for the reasons advanced in the Notice and orally, THFC’s level of culpability should have been assessed as low (rather than medium). Solely on this basis (and before credit is given for mitigating factors), the sanction imposed on the Club should have been considerably lower than the sanction imposed in the cases it relied upon.

69. We have already addressed the third argument when considering Ground 1. On that basis alone the fine of £150,000 cannot survive.

70. As for the first argument, as has been (correctly) observed many times before each case will turn on its own facts. A Regulatory Commission is required to make its own assessment of categorisation of seriousness, culpability or harm by to its

factual conclusions. However, that is not to say such cases have no relevance. We agree with and endorse the approach of the Appeal Board in *Southampton FC v The FA* <sup>14</sup>.

*“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.”*

71. Turning to the second argument THFC submitted that the Commission failed to take into account by way of mitigation THFC’s consistent and strong efforts to combatting discrimination or its response to the incident. We have already found that THFC has taken consistent steps to demonstrate and communicate its zero tolerance attitude to discrimination and ensure that supporters behave properly. It deserves credit for so doing.

72. In light of

- a. Our finding that THFC culpability was ‘low’,
- b. the other features we have set out above,
- c. the Guidance, and
- d. when looking at this fine in the broad order of the magnitude of fines imposed on other clubs for breaches of the same FA Rules

we concluded that the fine £150,000 was excessive. In our judgement the proportionate fine in all the circumstances was £75,000.

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<sup>14</sup> 29 January 2025.

73. In arriving at that figure we have taken fully into account and given credit for the following mitigation:

- a. THFC early admission of both Charges.
- b. THFC cooperation with The FA which Mr Phillips described before us as “full”.
- c. The absence of previous ‘offending’
- d. The demonstrable steps THFC has taken to demonstrate and communicate its zero tolerance attitude to discrimination and ensure that supporters behave properly.
- e. The further steps THFC has taken:
  - i. Resolution for stewards to wear body cameras at away fixtures, subject to the Home Club’s approval.
  - ii. Direct emails to spectators in respect of certain high risk fixtures
  - iii. Continuing work with Proud Lilywhites.

## **F. SUMMARY**

74. For the reasons set out,

- a. THFC’s appeal is allowed to this extent: the fine is reduced to £75,000.
- b. The appeal having been successful, no fee will be payable.
- c. We make no order for costs.

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

76. Nothing we observe in that 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 savings



of time and expense. However, this is the second time this season that two members of the Board find it worth reminding all parties of the advantages of in-person hearings, which include attendance remotely. The Commission did not have what we found was the considerable assistance of hearing directly from the parties, for which we repeat our gratitude.

A handwritten signature in black ink, appearing to read 'Christopher Quinlan', is positioned above a horizontal line.

10 June 2025

**Christopher Quinlan KC, Independent Judicial Panel Chair**

Chair

Signed on behalf of the Appeal Board