

IN THE MATTER BEFORE

THE FOOTBALL ASSOCIATION REGULATORY COMMISSION

B E T W E E N :-

THE FOOTBALL ASSOCIATION

and

MIKEL ARTETA

**WRITTEN DECISION AND REASONS
OF THE REGULATORY COMMISSION**

Regulatory Commission: Graeme McPherson KC (Chairperson)
Stuart Ripley
Ken Brown

Secretary to Commission: Paddy McCormack
(Judicial Services Manager)
Marc Medas
(Judicial Services Officer)

Date: 7 December 2023

Venue: Wembley Stadium

In attendance: For the FA: Jonathan Laidlaw KC
Rebecca Turner (Head of Regulatory Legal)

For Mr Arteta: Ian Mill KC
Rowan Stennett
Richard Garlick
(Director of Football Operations, Arsenal FC)
Svenja Geissmar (General Counsel, Arsenal FC)
Patrick Camerer Cuss
(Associate General Counsel, Arsenal FC)
David Woolfman (Legal Counsel, Arsenal FC)

(A) Introduction and Background

i) The Match

- 1) On 4 November 2023 Arsenal FC (*'Arsenal'*) played Newcastle United FC (*'NUFC'*) at St James' Park (*'the Match'*). Mikel Arteta (*'MA'*) was the manager of Arsenal.
- 2) Going into the Match Arsenal was undefeated in the Premier League and was sitting second in the league, two points behind the then leaders, Tottenham Hotspur FC. NUFC was sitting sixth in the league. NUFC had developed a reputation for being a difficult away fixture for clubs visiting St James' Park. MA expected the Match to be a close and hard-fought contest.
- 3) MA's expectations proved to be well-founded:
 - a) The first half of the Match was scoreless and featured a number of strong challenges, two of which the Premier League's Independent Assessment Panel (*'the IAP'*) subsequently concluded ought to have been punished with red cards. The second of those challenges (which occurred shortly before half-time) was by an Arsenal player on a NUFC player, which prompted a fierce reaction from a number of NUFC players (three of whom were shown yellow cards by the Match referee) and heightened the tension and hostility towards Arsenal (as the visiting team) in the stadium;
 - b) In the 63rd minute NUFC scored what proved to be the only (and so decisive) goal of the Match (*'the Goal'*).
- 4) Before the Goal was confirmed the Video Assistant Referee (*'the VAR'*) reviewed three individual incidents which had occurred in the build up to the Goal:
 - a) First, whether the ball had been allowed to go out of play by a NUFC player (Willock) near the corner flag before being crossed into the penalty area (*'the First Incident'*). The on-field decision (by the Assistant Referee) was that the ball had not gone out of play. The VAR did not overturn that decision;
 - b) Secondly, whether the NUFC recipient of the cross (Joelinton) had fouled an Arsenal player (Gabriel) for the ball (*'the Second Incident'*). The on-field decision (by the

Match Referee) was that no foul had been committed. The VAR did not overturn that decision;

- c) Thirdly, whether the scorer of the Goal (Gordon) had been in an offside position when he received the ball before scoring (*'the Third Incident'*). The on-field decision (by the Assistant Referee) was that the NUFC player had not been in an offside position. The VAR did not overturn that decision.
- 5) The VAR Review took more than four minutes.
 - 6) MA was, by his own admission, highly emotional about the Goal being awarded:
 - a) He considered that there had been (at least) two infringements in the run up to the Goal (the First and Second Incidents summarised above). He believed that the VAR had been wrong not to overturn the relevant on-field decisions and that the VAR had thus been wrong to allow the Goal to stand;
 - b) He also considered that the lengthy delay in conducting the VAR Review was unacceptable.
 - 7) MA remained in that emotional state following the Match; indeed, his frustration at Arsenal having lost the Match (and having lost it in what he considered to be highly controversial circumstances) was heightened when, immediately following the Match:
 - a) review of video footage reinforced his belief that that the Goal should not have been allowed to stand in light of either or both of the First and Second Incidents;
 - b) he was told by certain Arsenal players that Willock (a former Arsenal player) had expressed the view that the ball had gone out of play before he crossed into the penalty area.Those matters increased what MA described as his '*sense of injustice and frustration*' that the Goal had been allowed to stand.
 - 8) The on-field decisions and the VAR's decisions in relation to each Incident were subsequently reviewed by Premier League's IAP. The IAP concluded:
 - a) (by 4-1) that the on-field decision in respect of the First Incident had been correct and (by 5-0) that the VAR decision in respect of the First Incident had been correct;

- b) (by 3-2) that the on-field decision in respect of the Second Incident had been correct and (by 4-1) that the VAR decision in respect of the Second Incident had been correct;
 - c) (by 5-0) that the on-field decision in respect of the Third Incident had been correct and (by 5-0) that the VAR decision in respect of the Third Incident had been correct.
- 9) MA's opinions about the Incidents and whether the Goal should have been disallowed, while plainly genuinely and strongly held, were thus not ones with which the Premier League's IAP agreed.

ii) Post-match interviews

10) Following the Match MA participated in a number of mandatory television interviews and press conferences. For present purposes three are relevant. For convenience, we refer to them in these Written Reasons as '*the First Interview*', '*the Second Interview*' and '*the Third Interview*'. Transcripts of each of those interviews are annexed to these Written Reasons as Annexes 1, 2 and 3.

iii) The FA's reaction to the post-Match interviews

11) On 7 March 2023 the FA wrote to MA (and also to Arsenal). The FA's letter to MA:

- a) Explained that MA's '*comments and conduct throughout [the Three Interviews]*' were of '*concern*' to the FA;
- b) Invited MA's observations '*in relation to the interviews as a whole*' as well as specific comments made during the Interviews – in particular:
 - i) during the First Interview:
 - (1) '*And then we lose the match because of the clear and obvious decisions. It's embarrassing, it's a disgrace. That's what it is, a disgrace*';
 - (2) '*It's a disgrace, it's embarrassing. That's how I feel and that's how everybody feels in that room. You cannot imagine the amount of messages we got saying this can't continue. It's embarrassing. I'm sorry, embarrassing*';
 - (3) '*You will look at the images. And I feel honestly, I don't know how to feel. I'm wasting my time, we are wasting our time. I don't want to be in the hands of people. It's difficult enough to compete against this team. They are a really good*

team. The way we play, the way we competed. It cannot continue like that. It's embarrassing, there's too much at stake. Again, I repeat myself.

ii) during the Second Interview:

- (1) *'We have to talk about the result, because we have to talk about how the hell this goal stands up. And it's incredible. I feel embarrassed. But I have to be the one now coming here to try to defend the club and please ask for help, because it's an absolute disgrace that the goal is allowed. It's an absolute disgrace.'*;
- (2) *'It's an absolute disgrace, again I feel embarrassed. I've been more than 20 years in this country. And this is nowhere near the level to describe this as the best league in the world, I am sorry'*;
- (3) *'I have to stand here now and explain and we lost three points here today guys. You know what that means. It's too hard this league, it's too hard. It's too much at stake. It's embarrassing.'*;
- (4) *'It's incredible the way these guys play with 20 years, 21 years, the way they play here, the way they competed against this team, because they are a top team. It's incredible, so to get the game out of that like this, it's just honestly, I feel sick. That's how I feel. I feel sick to be part of this'.*

iii) during the Third Interview

- (1) *'It's embarrassing what happens and how this goal stands, in the Premier League, in what we say is the best league in the world. We really have to think about that deeply. Because I have been 20 years in this country and now I feel ashamed. It's an absolute disgrace. You look at it on the TV and it's an absolute disgrace'*;
- (2) *'The outcome is nowhere near the level that this league needs to have. And the way this league is getting competed in each and every single day, and in every single ball. It's not good enough. Honestly, I feel embarrassed to be part of this, embarrassed. This is my words'.*

12) MA responded by letter (from Arsenal) dated 13 November 2023. In that letter MA explained:

- a) What was described as *'Match Context'*. That context reflected the matters that we have

summarised at paragraphs 2 to 5 above;

- b) What was described as *‘Further Context’*. In particular, MA described:
- i) the considerable efforts that he has made in the past (and continues to make) to work with other stakeholders (including the PGMOL and the Chief Refereeing Officer), in the pursuit of improving the standards of match officiating (including VAR officiating) in the Premier League; and
 - ii) his frustration that such efforts (on his part and by others) had *‘failed to produce any meaningful improvements’* in those standards.

The letter asserted that MA’s comments during the Interviews had derived *‘from a passionate desire to improve standards and not simply pick up on perceived injustices suffered by [MA] or [Arsenal] during the Match’*;

- c) That having reviewed the section of the FA’s *‘Essential Information for Managers, Owners and Directors – 2023/2024’* addressing *‘Media Comments and Social Media’*, MA did not believe that his comments fell within any of the types of behaviour referenced therein;

- d) That the word *‘disgrace’* used by MA in the Interviews *‘has a very similar spelling and pronunciation to the Spanish ‘desgracia’ ... the Spanish word has connotations of misfortune, tragedy or bad luck rather than the connotations of the English equivalent which suggest contempt, dishonour or disrespect. While the English meaning may lead to interpretations of abuse or insult, this was not the intended meaning of the Comments’*.¹

13) The letter concluded with the following Summary:

‘[MA] was expressing the genuine frustration felt by him and his players following a tense, highly pressurised fixture that contained several contentious decisions. These incidents were the latest in a growing number which [MA] has witnessed in [Arsenal’s] matches and other matches across the Premier League, despite the efforts by him and other parties to help raise the standards of officiating. Indeed, it is MA’s understanding

¹ At the hearing before us MA made it clear (1) that he was not suggesting that, when he used the word *‘disgrace’* in the Interviews, he had in fact been intending to use the word *‘descgracia’* or at least to use a word which carried with it connotations of *‘misfortune, tragedy or bad luck’* rather than connotations of *‘abuse or insult’* - he explained that he had intended to use the English word with knowledge of the English meaning of that word; and (2) that any suggestion to the contrary in the letter was the result of miscommunication between him and Arsenal when the letter had been prepared. We accepted that explanation. There was no repetition of that suggestion in his witness statement or in the Response to the Case Summary and MA was clear in his oral evidence about any erroneous impression given by that paragraph in the letter.

that the Premier League's Key Match Incident Panel has concluded that certain decisions in the Match were serious errors.²

With time to step back following the Match [MA] has spoken rationally and reasonably about the Comments and fully explained the context in which these should be considered. As well as underlining his respect for the match officials and for the FA and his desire to follow all applicable rules, [MA] has also emphasised his ongoing commitment to the improvement of standards with the aim of ensuring that any similar incidents are dealt with as efficiently and accurately as possible'.

iv) The Charge

14) On 16 November 2023 the FA charged MA with a breach of FA Rule E3³. The FA alleged that comments used by MA in the Interviews amounted to misconduct *'in that they are insulting towards Match Officials and/or detrimental to the game and/or bring the game into disrepute, contrary to FA Rule E3.1*. The specific comments identified by the FA as *'Particulars of the Breach'* were as follows (emphasis as in the Charge Letter)⁴:

a) During the First Interview:

- i) *'And then we lose the match because of the clear and obvious decisions. It's embarrassing, it's a disgrace. That's what it is, a disgrace';*
- ii) *'It's a disgrace, it's embarrassing. That's how I feel and that's how everybody feels in that room. You cannot imagine the amount of messages we got saying this can't continue. It's embarrassing. I'm sorry, embarrassing';*
- iii) *'You will look at the images. And I feel honestly, I don't know how to feel. **I'm wasting my time, we are wasting our time. I don't want to be in the hands of people. It's difficult enough to compete against this team.** They are a really good team. The way we play, the way we competed. **It cannot continue like that.** It's embarrassing, there's too much at stake. Again, I repeat myself'.*

b) During the Second Interview:

- i) *'We have to talk about the result, because we have to talk about how the hell this*

² Although not, as we have noted above, in relation to any of the Incidents.

³ FA Rule E3 reads: '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'.

⁴ Although the Charge Letter references comments in three discrete Interviews, the FA's case was not that each Interview amounted to a separate breach of FA Rule E3. Instead, it invited the Commission to view the comments *'in their totality as one breach'*. For that reason we refer in these Written Reasons to *'the Charge'* in the singular rather than the plural

goal stand up. And it's incredible. I feel embarrassed. But I have to be the one now coming here to try to defend the club and please ask for help, because it's an absolute disgrace that the goal is allowed. It's an absolute disgrace';

ii) **'It's an absolute disgrace, again I feel embarrassed. I've been more than 20 years in this country. And this is nowhere near the level to describe this as the best league in the world. I am sorry';**

iii) *'I have to stand here now and explain and we lost three points here today guys. You know what that means. It's too hard this league, it's too hard. It's too much at stake. **It's embarrassing.**';*

iv) *'It's incredible the way these guys play with 20 years, 21 years, the way they play here, the way they competed against this team, because they are a top team. It's incredible, so to get the game out of that like this, it's just honestly, **I feel sick. That's how I feel. I feel sick to be part of this?***

c) During the Third Interview:

i) *'It's embarrassing what happens and how this goal stands, in the Premier League, in what we say is the best league in the world. We really have to think about that deeply. Because I have been 20 years in this country and now I feel ashamed. It's an absolute disgrace. You look at it on the TV and it's an absolute disgrace';*

ii) *'This outcome is nowhere near the level that this league needs to have. And the way this league is getting competed in each and every single day, and in every single ball. It's not good enough. **Honestly, I feel embarrassed to be part of this, embarrassed. This is my words?***

15) The Charge Letter did not explain why some words used by MA in the Interviews had been highlighted/emphasised in the manner set out above while others had not. However the FA subsequently clarified (in its Case Summary dated 16 November 2023, to which we refer further below) that it was only those words highlighted (in bold and underlined) in the Charge Letter that were alleged to amount to a breach of FA Rule E3; the remaining words set out in the Charge Letter had been included to provide context and were not words or language which the FA contended breached FA Rule E3. In light of that, we distinguish below between:

a. ***'Highlighted Words'*** (which we intend to mean the words in each Interview said by the FA in the Charge to amount to a breach of FA Rule E3); and

- b. ‘*Other Words*’ (which we intend to mean the words in each Interview not forming part of the Charge and not alleged by the FA to amount to a breach of FA Rule E3).

16) It will be apparent from a comparison of paragraphs 11 and 14 above that not every passage about which the FA had expressed ‘*concern*’ in its letter to 7 November 2023 became Highlighted Words; some of those passages became Other Words which formed no part of the Charge.

17) In support of the Charge the FA relied on:

- a) the three Interviews (in both ‘live’ and transcript form);
- b) the post-Match correspondence between it, MA and Arsenal;
- c) the section of the FA’s ‘*Essential Information for Managers, Owners and Directors – 2023/2024*’ that addresses ‘*Media Comments and Social Media*’ and ‘*What happens if I make comments about the match officials in my pre- or post-match press conference?*’. That document identifies certain types of comment that may lead to disciplinary charges, including:
 - i) any implication of bias on the part of a match official;
 - ii) any questioning of the integrity of a match official;
 - iii) any personally offensive comments in relation to match officials;
 - iv) any abusive or insulting⁵ comments about match officials;
 - v) any comments which are detrimental to the game. The document acknowledges that concepts of ‘disrepute’ and ‘best interests of the game’ are inherently broad and cannot precisely be defined, but explains ‘*Charges may be brought where comments cause, and/or may cause, damage to the wider interests of football and/or the image of the Game*’.⁶

v) MA’s response to the Charge

18) MA submitted his Reply Form on 24 November 2023. He denied the Charge. In support of that denial he served:

- a) a document titled ‘*Participant’s Response to the Charge*’ drafted by Mr Mill KC and Mr Stennett;

⁵ ‘*Insulting*’ is not defined in FA Rule E3. In our view it bears the normal and ordinary meaning of that word.

⁶ MA confirmed in his evidence that prior to the Match he was aware of this document and the obligations on Managers that it sets out. We accepted that evidence.

- b) a witness statement from MA;
- c) the transcripts of the three Interviews;
- d) the Premier League IAP's Key Match Incidents report for the Match;
- e) Examples of post-match media comments made by other Participants which had not given rise to any charge from the FA.

19) On 29 November 2023 the FA served a Response to MA's Reply to the Charge.

vi) The hearing

20) The hearing to determine the Charge took place at Wembley Stadium on 7 December 2023.

21) The FA's case on the Charge was set out in a Case Summary dated 16 November 2023:

- a) The FA's overarching case was that the Highlighted Words (and the manner in which they had been delivered) were insulting towards Match Officials⁷ and/or detrimental to the game and/or had brought the game into disrepute;
- b) In that regard the FA drew a distinction between comments made by MA in relation to the VAR decision following the Goal (which the FA did not contend breached FA Rule E3) and comments which, the FA contended, were directed at and/or implicitly and inappropriately critical of the Match Officials and their performance in the Match (which the FA contended did breach FA Rule E3);
- c) As regards the First Interview, the FA's case was that:
 - i) the opening Other Words related to the decision to allow the Goal following the VAR review;
 - ii) MA's comments had then shifted from the decision to allow the Goal towards the Match Officials:
 - (1) The Highlighted Words '*I'm wasting my time, we are wasting our time*' were implicitly critical of the Match Officials by suggesting that the quality of their decision making had been inadequate and incompetent;
 - (2) The Highlighted Words '*I don't want to be in the hands of people. It's difficult enough to compete against this team*' implied that players 'were not just

⁷ which the FA subsequently confirmed was intended to mean (1) the Match Officials at the Match, including the VAR, and (2) match officials officiating in the Premier League more generally.

competing with the opposition but also to have to contend with the Match Officials themselves'. Once again, that was implicitly critical of the performance of the Match Officials rather than of the VAR decision itself;

(3) The Highlighted Words '***It cannot continue like that. It's embarrassing***' repeated and compounded the implicit criticism of the Match Officials;

iii) the Highlighted Words were insulting towards Match Officials and/or brought the game into disrepute;

d) As regards the Second Interview the FA's case was that:

i) each of the passages of Highlighted Words was directed at the Match Officials (and not the VAR decision itself) and went '*way beyond a discussion as to the standard of officiating in the game*'; the Highlighted Words were '*highly insulting to those officiating*' in the Premier League;

ii) the Highlighted Words were '*highly inflammatory and plainly [brought] the game into disrepute*';

e) As regards the Third Interview, the FA's case was that the Highlighted Words went '*way beyond the expectations of a manager commenting in post-match interviews*' and did not accord with, and were detrimental to, acting in the best interests of the game.

22) The FA's Case Summary also referred not only to the Highlighted Words but also to the manner in which MA had delivered the Highlighted Words during the Interviews to support its case that the Highlighted Words were unacceptable and insulting towards Match Officials. That delivery was described as '*vitriolic*' (in the FA's Case Summary) and '*incensed, enraged and infuriated*' (in the FA's oral submissions).

23) MA's Response to the Charge summarised the basis for MA's denial of the Charge. At this stage it suffices to set out the summary of MA's position appearing at paragraph 4 of that document:

‘[In the Interviews] [MA] expressed his frustration at the VAR Decision and the standard of refereeing and VAR decision-making in the Premier League. He did not descend into language which insulted or cast aspersions about particular officials, nor to language which reflected anything other than his reasonably held view, supported by others, that VAR decision-making and officiating standards require improvement.’

24) It is important to note the reference in that paragraph to *‘the standard of refereeing and VAR decision-making in the Premier League’* as being one of the two matters (the other being the VAR Decision itself) about which MA was expressing frustration in the Interviews. As set out below, that ultimately formed the central plank of MA’s response to the Charge.

25) On behalf of the FA Mr Laidlaw KC chose to make only a very short opening statement on behalf of the FA. The Regulatory Commission (*‘the Commission’*) then heard:

- a) A detailed oral opening from Mr Mill KC;
- b) Oral evidence from MA; and
- c) Detailed oral closing submissions from Mr Laidlaw KC and Mr Mill KC.

26) We record at the outset of these Written Reasons:

- a) That we found MA to be an impressive witness. Despite on occasion failing to address directly the subject matter of questions asked of him – a trait frequently seen in witnesses – we considered that he gave his evidence carefully and honestly, and we accepted the evidence that he gave before us. While of (at most) marginal relevance to the principal task before us (i.e. interpreting objectively the Highlighted Words and considering whether the use of the Highlighted Words breached FA Rule E3) we accepted his evidence that it was certainly not his intention to insult any match official or to act other than in the interests of the game when making the comments that he did during the Interviews. He plainly had a good understanding not only of the need for respect to be shown to match officials, but also of the reasons why such respect is essential at every level of the game, and particularly why respect must be shown by individuals who are role models to others in the game.
- b) That we were greatly assisted by the written and oral submissions that we received from Mr Laidlaw KC and Mr Mill KC.

27) Following our deliberations at the end of the hearing we found the Charge not proven and so dismissed the Charge. We informed the parties of our decision and that our Written Reasons would follow. These are now those Written Reasons.

(B) The starting point: the test to be applied to determine the Charge

28) It was common ground between the parties that the test to be applied by a Regulatory Commission when considering and determining: (1) the meaning of the words used by MA; and (2) whether such words were insulting or detrimental to the game (and so in breach of FA Rule E3) is an objective one, often described as the ‘*reasonable bystander*’ test:

- a) In *The FA v Mourinho* (18 November 2018) the Appeal Board concluded that, when a Regulatory Commission is assessing how the ‘reasonable bystander’ might perceive the words or conduct under scrutiny:
 - i) it would treat the reasonable bystander as being ‘*a typical follower of English Premier League football (if there is such a thing)*’; and
 - ii) it would proceed on the basis that the reasonable bystander is ‘*appraised of all relevant facts and circumstances relating to the conduct/utterance, including the context of the conduct/utterance*’. In other words, the words or conduct under scrutiny should not be considered in a vacuum; they should be considered in the factual context in which the words were delivered and/or the conduct occurred;
- b) In *The FA v Lampard* (30 May 2022) the Regulatory Commission concluded that the ‘reasonable bystander’ should also be assumed to have some general knowledge of the sport of football.

29) In reaching our conclusions:

- a) We adopted the ‘reasonable bystander’ test; and
- b) We approached matters on the basis that the ‘reasonable bystander’ had the attributes and knowledge summarised above.

(C) Is it permissible for a participant to disagree with a decision?

30) As we have said above, the FA’s Case Summary:

- a) Acknowledged that certain of MA's comments in the Interviews were properly to be categorised as expressions of disagreement with, and criticisms of:
 - i) the on-field decision to allow the Goal; and
 - ii) the VAR decision not to overturn the on-field decisions and to allow the Goal to stand; and
- b) Made no criticism of those comments.

The FA's Case Summary thus implicitly acknowledged that there was nothing *per se* objectionable in a Participant expressing disagreement about the decision of a match official or saying that a decision was wrong, even if expressed in strong terms. The FA's position of course was that that was not however what MA was doing by the Highlighted Words; by those Highlighted Words MA had directed his criticism not at the decision, but at the Match Officials themselves.

31) Mr Mill KC directed our attention to two decisions which (he submitted) demonstrated that disciplinary bodies had accepted that refereeing decisions and standards could legitimately be criticised:

- a) *The FA v Mourinho* (Regulatory Commission 9 June 2014) – '*the question in this and every case where the issue falls to be decided is: has the line been crossed between the accepted right to express a fair and honestly held opinion and unacceptable comments that lower the game in the estimation of right-minded members of the public?*';
- b) *PSG and Neymar v UEFA* (CAS 2019/A/6397, 17 February 2020) – '*[it] must be admissible for [disputed] decisions to be discussed controversially even more so if they are match deciding. If one wants football to stir emotions, people must also have the freedom – of course within certain limits – to discuss match-deciding decisions, even with emotions riding high. In particular, it must be possible for a player to state that he thinks the decision in question to be wrong*'.

32) The FA did not take issue with the correctness of the statements of principle in either of those cases. In his closing submissions Mr Laidlaw KC expressly confirmed the FA's position. In summary:

- a) Provided that it is expressed and delivered in a reasonable and appropriate manner, disagreement with or criticism of the correctness of a decision (whether an on-field decision or a VAR decision) is not conduct of a Participant that is prohibited by FA Rule E3. However, disagreement with or criticism of the correctness of a decision that (whether because of the words used or the manner in which the words used are delivered) ‘crosses the line’:
 - i) could be conduct which is not in the best interests of the game or which brings the game into disrepute,; and so
 - ii) could be conduct which could breach FA Rule E3;

 - b) Similarly, provided that it is expressed and delivered in a reasonable and appropriate manner, criticism of the correctness of a system or process by which decisions are made (such as the VAR review process) is not prohibited by FA Rule E3. Once again though, disagreement with or criticism of the correctness of a system or process by which decisions are made that (whether because of the words used or the manner in which the words used are delivered) ‘crosses the line’:
 - i) could be conduct which is not in the best interests of the game or which brings the game into disrepute; and so
 - ii) could be conduct which could breach FA Rule E3;

 - c) Criticism – whether of a decision or of a system or otherwise – or other words which go further than expressing legitimate disagreement in reasonable terms and which (explicitly or implicitly) involve personal criticism of Match Officials (whether of their competence, their integrity, their behaviour or otherwise) will in all probability be conduct which ‘crosses the line’ and breaches FA Rule E3.
- 33) We considered that to be an appropriate starting point for our consideration of the Highlighted Words in this case. While there may well be exceptions on the particular facts of particular cases, the FA’s position appeared to us to reflect a realistic and sensible approach to where ‘the line’ will frequently lie in a case such as this where the words or conduct of a Participant are said to have breached FA Rule E3.
- 34) And we would add one further observation. It was suggested on behalf of MA that in a case such as this words could be detrimental to the interests of the game and/or bring the game

into disrepute only if they were also insulting to a match official. We disagree:

- a) Words or conduct that bring the game into disrepute and/or are detrimental to the interests of the game potentially go wider than that;
- b) The FA had asserted in paragraph 5 of the Case Summary that the Highlighted Words breached FA Rule E3 by being insulting towards match officials, by being detrimental to the game and/or by bringing the game into disrepute;
- c) There was nothing inappropriate about that. It was not necessary for the FA to prove in this case that the Highlighted Words were insulting to Match Officials as a pre-condition to demonstrating that they had brought the game into disrepute and/or were detrimental to the interests of the game. The Highlighted Words could potentially still breach FA Rule E3 even if not insulting to a Match Official.

(D) Certain preliminary matters relevant to the Charge

i) The manner in which MA delivered the Highlighted Words during the Interviews

35) As we have said above, the FA's case was that:

- a) The tone or manner in which words are delivered can amount to, or certainly compound, a breach of FA Rule E3; and
- b) The manner in which MA delivered the Highlighted Words during the Interviews in this case (described variously as 'vitriolic', 'incensed', 'enraged' and 'infuriated') was thus relevant to our consideration of the substance of the Charge.

36) Whether or not the manner in which words are delivered, rather than the words themselves, can amount to a breach of FA Rule E3 is an interesting question. However, we concluded that it was not a question that we needed to determine for the purpose of this case, and so we decline to do so. That is because, contrary to the FA's submission, we did not consider that the manner in which MA delivered the Highlighted Words during the Interviews was in any way improper or inappropriate. While MA plainly spoke during the Interviews with passion and from the heart, the manner in which he delivered his words was not in our view in any way inappropriate. He spoke carefully and in a considered manner. We did not therefore consider that the way in which MA delivered the Highlighted Words could have the relevance contended for by the PL in any event.

ii) MA's status in the game

37) MA has a very high profile in English football. He played at the highest level in England for over a decade. He then became an Assistant Coach at Manchester City FC for 3 years before moving to Arsenal as Manager in 2019, where he has enjoyed considerable success. He is – as the FA asserted and MA accepted – a role model in the game whose words and actions are widely reported around the world and who sets an example to Participants up and down the football pyramid.

38) The FA contended that MA's status was relevant to the substance of the Charge – in other words, that words spoken or conduct committed by an individual such as MA could breach FA Rule E3 even though the same words or conduct, committed by a lower profile individual, might not amount to a breach of FA Rule E3.

39) On behalf of MA, Mr Mill KC sought to persuade us that MA's status in the game was an irrelevance for the purpose of determining the merits of the Charge – his position, in a nutshell, was that words or conduct either do or do not breach FA Rule E3, regardless of the status of the individual whose words or conduct are under scrutiny.

40) As regards a charge that asserts the use of words said to be insulting to a match official, we agree with Mr Mill KC. Words are either insulting to a match official or they are not; it matters not by whom they are delivered.

41) As regards a charge that asserts that:

a) words were used or conduct occurred that were detrimental to the best interests of the game; or

b) words were used or conduct occurred that brought the game into disrepute, we considered the position to be less clear cut. We can see how, in principle, a situation could arise where the actions of a high-profile individual might have (or be perceived as being likely to have) a sufficiently widespread negative impact on the image of the game or the wider interests of football (to use the words appearing in the FA's '*Essential Information for Managers, Owners and Directors*') so as to bring the game of football into disrepute or to amount to conduct that is detrimental to the best interests of the game, while the same actions committed by another individual might not reach that threshold. However,

given the findings that we reached on the meaning of the Highlighted Words used by MA, it was not a question that we ultimately needed to answer, and so once again we decline to do so.

iii) Where Highlighted Words are identical to Other Words and where Highlighted Words have been used by other managers without prompting an FA charge

42) During his submissions Mr Mill KC highlighted the fact that:

- a) A number of the Highlighted Words which the FA contended justified a finding that MA had breached FA Rule E3 – such as ‘*It’s embarrassing*’, ‘*I don’t want to be in the hands of people*’ ‘*It’s a disgrace/absolute disgrace*’ – also appeared as Other Words about which the FA made no complaint and which the FA did not contend amounted to a breach of FA Rule E3. Similarly, certain phrases appearing as Highlighted Words bore very marked similarities to phrases appearing as Other Words;
- b) A number of the Highlighted Words which the FA contended justified a finding that MA had breached FA Rule E3 had been used by other managers in post-match interviews without those individuals subsequently being charged with a breach of FA Rule E3;
- c) The FA’s position in charging MA as it had therefore lacked consistency, both internally across the Interviews and more widely when compared with other post-match interviews.

43) While we accept that the fact that a number of the same/very similar words and phrases appear:

- a) as Highlighted Words (and so are the subject of the Charge); and also
- b) as Other Words (which are not the subject of the Charge) and in post-match interviews conducted by other managers who were not charged with a breach of FA Rule E3, is potentially of relevance when it comes to considering whether the Highlighted Words used by MA in the Interviews ‘crossed the line’, that is in our view as far as that point goes.

The same word or phrase can carry with it very different connotations depending on the purpose for which it is used and/or the context in which it is used. It is not therefore necessarily right to say that, merely because the FA concluded that the use of a word was unobjectionable and did not breach FA Rule E3 when used for one purpose and in a particular context, its use for other purposes and/or in other contexts will necessarily also be unobjectionable. A simple example illustrates the position. To refer to a decision as ‘*a disgrace*’ might well be unobjectionable – that was the conclusion reached in UEFA v Neymar and that position is consistent with the approach taken by the FA in this case (in not including within the scope of the Charge instances when MA used that word to describe the VAR Decision itself) and in other cases where managers have used that word in post-match interviews to describe decisions. But to refer to the performance or behaviour of a match official – either expressly or implicitly – as ‘*a disgrace*’ – might well be viewed very differently. Context will be everything.

iv) Considering the Highlighted Words individually and as a whole

44) Although the Charge relates to particular Highlighted Words across three Interviews, the FA chose (understandably) to charge MA with a single breach of FA Rule E3 in relation to the words and conduct at the Interviews as a whole. In light of that, the FA submitted in its Case Summary that ‘*the comments should be viewed in their totality as one breach*’.

45) We certainly did have regard to the meaning of the Highlighted Words as a whole. However, our starting point was not ‘*the totality*’ of the Highlighted Words; it was each individual element in the Highlighted Words relied on the FA. While it is always possible that an individual element might appear unobjectionable but:

a) When viewed in the context of other elements; and so

b) When the material is viewed as a whole,

an objectionable meaning is found to be the correct one, it was in our view first necessary to take a ‘step by step’ approach to consider each of the Highlighted Words relied on by the FA before turning to consider the meaning of the Highlighted Words as a whole. That is therefore what we did.

46) And in order to ascertain the meaning of the Highlighted Words as they would have been understood by a reasonable bystander (particularly when considered in their totality), it was necessary for us to consider:

- a) What the ‘reasonable bystander’ would have known about relevant aspects of the Premier League at the time of the Interviews;
- b) What issues MA was addressing in the Interviews before he uttered Highlighted Words;
- c) What questions MA was asked in the Interviews before he uttered Highlighted Words;
- d) What issues MA addressed after he uttered Highlighted Words.

47) Such matters provide context for the Highlighted Words:

- a) As regards those matters that pre-date or precede the Highlighted Words, how such matters provide context is obvious;
- b) As regards matters that come after the Highlighted Words, such matters provide potentially relevant context:
 - i) by possibly throwing light on/clarifying what was said previously; and
 - ii) enabling the Interviews to be considered in their totality.

(E) Weaknesses in and issues with the VAR process

48) On 30 September 2023 Tottenham Hotspur FC played Liverpool FC. What should have been a goal by Liverpool FC was disallowed by the on-field match officials for offside. That on-field decision was wrong; the goal ought not to have been disallowed. However, as a result of miscommunications during the VAR process the incorrect on-field decision was not overturned by the VAR. That high-profile failure was the latest in what many Participants perceived to be a lengthy list of failings with the VAR process and systems in place in the Premier League.

49) Following that match the Premier League released a press statement. In that press statement the Premier League acknowledged:

- a) That there were ‘*systemic weaknesses in the VAR processes*’;
- b) That it would be accepting recommendations made by the PGMOL to prevent such failures from recurring the future; and
- c) That a wider review would be conducted by the Premier League and the PGMOL, supported by other stakeholders, ‘*to seek consistently higher standards of VAR performance*’.

50) The Premier League's acknowledgement of:

a) The existence of weaknesses in the VAR processes; and

b) The need for improvement in the general standard of VAR performance,

accorded with the view that MA held at that time (and continues to hold) of VAR processes and the VAR system. In his evidence before us he explained: (1) his firmly held view that VAR processes remain deficient; and (2) the work that he (and others) have tried to do – with the PGMOL and by other means – over a long period of time to encourage and bring about improvement in the standard of those processes as well as in officiating standards generally. The fact that the VAR processes and system remain, at least in MA's view, far below the necessary standard, and that improvement in those processes, if any, is occurring at far too slow a pace, is plainly a source of immense frustration to MA, as (we accept) it was at the time of the Match. Indeed, MA's frustrations about the inadequacies that he perceived in the VAR processes were particularly acute at the time of the Match following what he viewed as a wholly unproductive meeting with the PGMOL, representatives of the Premier League and the majority of the Premier League Managers on (amongst other things) that very subject which he had attended only 2 days before the Match (*'the 2 November meeting'*). As he explained repeatedly during his cross-examination, the majority of his comments during the Interviews were intended by him to be directed at those perceived inadequacies in the VAR processes and system – he viewed the Interviews as an appropriate opportunity to express those views publicly given his frustration at the lack of progress that was (in his view) being made in improving the VAR processes and system.⁸

51) What MA may have subjectively intended his comments in Interview to mean and communicate is of course irrelevant to our interpretation of those words; the meaning of the Highlighted Words (and the Other Words) is to be ascertained by an objective interpretation. The matters that we have set out above are however in our view relevant in three ways:

a) First, they provide context for MA's comments during the Interviews. The very

⁸ MA was cross-examined about other routes by which he could have raised his concerns about the VAR system and processes following the Match. Whilst we acknowledge that there were other routes potentially available to MA (and Arsenal, at least some of which appear to have been pursued by Arsenal) the fact that there were other routes available which MA did not take or specifically request Arsenal to take was in our view ultimately of little relevance. We asked ourselves whether, in light of such 'failures' on MA's part, we should doubt the veracity of his claims to have been so concerned about the adequacy of the VAR system and processes as at the date of the Match. However, his strength of feeling on the issue, backed up by the efforts that he had been making for a long period prior to the Match to improve VAR standards and processes, including his attendance at and participation in the 2 November meeting only 2 days before the Match, left us in no doubt that MA's evidence on this topic was genuine and to be believed.

weaknesses in the VAR system and processes which he had been campaigning to be addressed and improved in the weeks and months prior to the Match manifested themselves (in MA's view) in the manner in which the decision to allow the Goal was reviewed by VAR during the Match;

- b) Secondly, they are matters of which the reasonable bystander (*'a typical follower of English Premier League football'* and someone with *'some knowledge of the sport'*) is likely to have had some awareness and familiarity. While the reasonable bystander would have had no particular reason to know of MA's own strong views on the weaknesses in the VAR system and processes and on the need for improvement of the VAR system and processes, he/she would in our view have been aware:
- i) that VAR processes were (or were perceived by many Participants as being) still less than perfect and so in need of further improvement; and
 - ii) that following a high-profile Premier League match earlier in the season, the PL had acknowledged the same.

Those matters are thus ones to be borne in mind when construing how the reasonable bystander would have understood the Highlighted Words (and the Other Words) used by MA in the Interviews;

- c) Thirdly, when we come to ask ourselves whether Highlighted Words or the 'message' conveyed by those Highlighted Words 'crosses the line' and so amount to conduct detrimental to the best interests of the game and/or bring the game into disrepute, the extent to which those words or that message reflect the message conveyed in the press statement issued by the Premier League after the match between Tottenham Hotspur and Liverpool match will likely be relevant to that exercise.

(F) The meaning of the Highlighted Words

52) We set out below our analysis of how in our view, construed objectively and in context, the Highlighted Words would be understood by the reasonable bystander. In doing so we have obviously considered the Highlighted Words far more carefully and at far greater length than we suspect the typical reasonable bystander would have done when listening to or watching the Interviews. However, in doing so we have taken as much care as we can not to 'over-analyse' the meaning of the Highlighted Words or to construe words with the

benefit of knowledge and understanding that we have (because of the evidence and submissions before us) but that the reasonable bystander would not have had. As well as considering individual Highlighted Words, we also considered the overall impression given by the Interviews.

i) The First Interview

53) The First Interview does not appear to have begun with a question. Instead, it began with an observation by MA about his players' performance and the Goal. MA stated:

- a) That Arsenal did not deserve to have lost the Match; and
- b) That Arsenal had only lost the Match because of '*the clear and obvious decisions*', which he described as '*embarrassing*' and '*a disgrace*'.

54) None of the words used by MA in his opening observations formed part of the Charge i.e. none of those words were Highlighted Words. The FA:

- a) Accepted that MA's words in that opening observation were directed at the Goal and the decision to allow it, not personally at any Match Official; and
- b) Did not consider that MA's use of the words '*embarrassing*' and '*disgrace*' in that context 'crossed the line' into conduct which breached FA Rule E3.

55) The question was then asked of MA in the First Interview '*Will you be taking this up with PGMOL?*' Whether the interviewer had known that MA had met with the PGMOL, representatives of the Premier League and the Premier League Managers at the 2 November meeting 2 days prior to the Match to discuss the VAR system and processes is doubtful, but regardless of that, the question plainly touched a raw nerve with MA. The answer that followed (still all Other Words), expressed by MA in strong terms, explained:

- a) That '*we*' – which we interpreted as MA and Arsenal, amongst others – had been liaising with the PGMOL for many months over the inadequacies and failings with the VAR system and processes generally;
- b) That the inadequacies and failings with the VAR system and processes were significant, and thus the need for improvement was crucial, when '*margins*' (which we interpreted as meaning both margins on individual decisions and margins between winning and losing matches) were so small, with the result that failings of the VAR system and processes could make pivotal differences to the outcome of matches (or as MA put it, when '*there's too much at stake*');

- c) That MA's view was that it was '*a disgrace, embarrassing, not acceptable*' that as at the 2023/2024 season systematic inadequacies and failings in VAR and its processes continued to exist and that improvements were not being made – as he put it '*this cannot continue*';
- d) That MA was not alone in that view – he had received messages of support for that view.

56) Once again, none of the words used by MA in the answer that we have summarised above formed part of the Charge i.e. none of those words were Highlighted Words. The FA:

- a) Accepted that MA's words were directed at the VAR system and process, not personally at any Match Official; and
- b) Did not consider that MA's use of the words '*embarrassing*' or '*disgrace*' in that context 'crossed the line' into conduct which breached FA Rule E3.

57) The interviewer then sought to move the focus onto the Goal itself and asked '*On the pitch, with the decisions and off the pitch, VAR taking so long. Three checks before deciding that Anthony Gordon's goal could stand*'.

58) MA's first words in response - '*You will look at the images*' – plainly concerned the Goal and the VAR decision not to disallow the Goal. However, it is the words that follow that comprise the first Highlighted Words. After saying '*And I feel, honestly I don't know how to feel*' MA went on:

'I'm wasting my time, we are wasting our time. I don't want to be in the hands of people. It's difficult enough to compete against this team. They are a really good team. They way we play, the way we competed. It cannot continue like that. It's embarrassing. There's too much at stake. Again I repeat myself.'

59) The FA's case was that that represented a 'shift' by MA away from criticism of the Goal and VAR processes onto the Match Officials themselves. Considered in isolation, that may be one interpretation of those words, although even then we did not agree with the FA's suggestion that those words could reasonably be interpreted as an attack on the integrity or impartiality of the Match Officials. But when considered in the context:

- a) Of what had gone before in the First Interview; and
- b) Of MA's final words in that passage ('*Again I repeat myself*'),

in our view those words are properly construed as MA returning to the theme of expressing his views about the inadequacies of the VAR system and processes more generally, the importance of the VAR system being as good as it can possibly be given the thin lines between winning and losing (particularly as between top teams), the consequent need for improvement in the VAR system and processes and his frustration that, despite the efforts he was making in that regard, improvements were not being made to the VAR system, resulting in ‘the people’ in whose hands VAR decisions lay having to take VAR decisions using inadequate and deficient systems and processes.⁹

60) Thus in our view the criticisms implicit in those Highlighted Words were not directed at the Match Officials (or at the decision of the Match Officials to allow/not to disallow the Goal) or at Premier League match officials generally, still less were they insulting towards any such individuals. MA was not implying incompetence or a poor standard of officiating on their part, or that such poor standards could not be allowed to continue. MA’s words were directed at the VAR system and processes which such individuals had to use to make their decisions and the deficiencies in the VAR processes and system.

61) Those are the only Highlighted Words relied on by the FA to support the Charge in relation to the First Interview. It follows therefore that we did not find that any words used by MA during the First Interview amounted to a breach of FA Rule E3.

62) However, given that the FA’s case was that the Interviews should be considered as a whole, it is important to note (as potentially providing context for what followed in the Second and Third Interviews) that MA appeared once again to return to the theme of inadequacies in the VAR system in his penultimate answer in the First Interview. His references to ‘*all the things that we cannot control*’ and to such matters ‘*affect[ing] results, affect[ing] momentum, affect[ing] confidence*’ and to ‘*the consequences*’ being ‘*too big*’ are all consistent with the central theme advocated by MA throughout that First Interview being his frustration at the ongoing inadequacies with the VAR system and processes, the impact that those inadequacies have and the need for improvement in those systems and processes.

⁹ ‘*in the hands of people*’ was also a phrase that MA used in the Second and Third Interviews. Those words are not however Highlighted Words in either the Second Interview or the Third Interview. While in no way determinative, the fact that the FA did not include those words as Highlighted Words in relation to the Second or Third Interviews is consistent with the phrase ‘*in the hands of people*’ being capable of having a meaning other than ‘*in the hands of the Match Officials*’. Of course, what meaning those words in fact bear in each case will depend on the context in which they were used.

ii) The Second Interview

63) The Second Interview began by referencing the result of the Match and the Goal. And as with the First Interview:

- a) MA responded with strong criticism that the Goal had not been disallowed, using words such as ‘incredible’, ‘embarrassed’ and ‘disgrace/absolute disgrace’;
- b) None of the words used by MA in that answer form part of the Charge i.e. none of those words were Highlighted Words. The FA:
 - i) Accepted that MA’s words were directed at the Goal, not personally at any Match Official; and
 - ii) Did not consider that MA’s use of the words ‘embarrassing’ and ‘disgrace’ in that context ‘crossed the line’ into conduct which breached FA Rule E3.

64) MA was then asked ‘Why do you think it’s a disgrace?’. MA’s answer to that question contains Highlighted Words as follows:

*‘Because it’s not a goal. For many reasons it’s not a goal. For more than one reason, at least, it’s not a goal. And it’s too much at stake here. We put so much effort, it’s difficult to compete at this level. **And it’s an absolute disgrace. Again I feel embarrassed. I’ve been more than twenty years in this country and this is nowhere near the level to describe this as the best league in the world.** I am sorry ...’*

65) Such language, the FA submitted:

- a) Was directed at the Match Officials and was insulting towards the Match Officials; and/or
- b) Was so inflammatory as to bring the game into disrepute.

66) We disagree in both respects:

- a) When read in context the words used by MA are a return to the theme that dominated the First Interview, namely the existence of deficiencies in the VAR system and processes and the importance of an effective and efficient VAR system to the smooth

and professional operation of matches in the Premier League. MA's criticisms were not directed at the performance or competence of the Match Officials (or at Premier League match officials in general), nor at their decision to allow the Goal/not to disallow the Goal; they were directed far more widely at the state of the VAR system and processes and the lack of improvement in the VAR system and processes;

- b) Although MA used strong language to express his feelings about the deficiencies in the VAR system, the words that he used were not such as to 'cross the line'. Just as (as the FA tacitly accepted) it is not objectionable to use words such as '*disgrace*' or '*embarrassing*' to communicate a strongly held belief about a decision that a goal should be allowed so in our view it is not objectionable for such or similar words to be used in the context of genuine, strongly held beliefs about long-standing failings or inadequacies in systems and processes (such as the VAR system and processes);
- c) And we do not agree that for a Participant (or a high profile Participant) to suggest that those who play and compete in what is widely perceived to be the best domestic football league in the world deserve better than a VAR system and processes that is deficient and contains systematic weaknesses is something that could properly be described as bringing the game into disrepute or something that is not in the best interests of the game. While certainly more strongly worded, the sentiment expressed by MA in that regard is in reality little different than the acknowledgement by the Premier League in early October 2023 that improvement in the VAR system and processes operated by the Premier League is required.

67) The Second Interview contained two further passages of Highlighted Words:

- a) First, a repetition of '***It's embarrassing***':
 - i) As already set out above, it is clear from the FA's decision to charge MA in relation to the Highlighted Words but not the Other Words that the word '*embarrassing*' is one that can be unobjectionable; its use is not objectionable *per se*. Context is therefore crucial;
 - ii) Both the First and Second Interview as a whole, and the Other Words that immediately precede those words in the Second Interview ('*It's too much at stake*'), provide relevant context;

- iii) And that context shows that MA's words are not directed at the Match Officials (or Premier League match officials generally) or their competence. They are directed – as they had been before – at the current state of the VAR system and processes and the inadequacies and deficiencies in the same;
- b) Secondly, MA's concluding words '**So to get the game out like this, it's just honestly, it feels, I feel sick. That's how I feel. I feel sick to be part of this**':
- i) Those words are not directed at the Match Officials (or Premier League match officials generally) or the competence of their performance in the Match or their more competence more generally;
 - ii) Those words once again reflect MA's strongly held views on the current state of the VAR system and processes;
 - iii) Those words are not so '*inflammatory*' (to use the FA's term) as to 'cross the line'. While they are indicative of a strongly held view, their use by MA does not bring the game into disrepute nor are they detrimental to the best interests of the game. To adopt the test set out in the FA's '*Essential Information for Managers, Owners and Directors*', there is no real prospect of such comments being perceived as damaging the wider interests of football or the image of the game; they are simply personalising a state of affairs that the Premier League had already acknowledged was deficient and needs addressing.

68) And so it follows that we did not find that the Highlighted Words used by MA during the Second Interview (or any of them) amounted to a breach of FA Rule E3.

iii) The Third Interview

69) The Third Interview began with a question about Arsenal's performance in the Match, and MA's early responses addressed the question so asked of him. The third question from the interviewer was then '*And what was the case for not winning it today? Where did, where did the things need to be that little bit better?*' And MA's response to that was as follows:

'Well because it's embarrassing what happens and how this goal stands, in the Premier League, in what we say is the best league in the world. We really have to think about that deeply. Because I have been 20 years in this country and now I feel ashamed. It's an absolute disgrace. You look at it on the TV and it's an absolute disgrace. And it's too much at stake. We are trying to do incredible things to be at the highest level every single week when we are not good enough, I am the first one to put my hands up and

say it's my fault and my responsibility. This is unacceptable. I don't want to be in people's hands, if that's the outcome. For sure it's not. It's too difficult.'

70) The fact that so many of the words and phrases used in that passage in the Third Interview mirror words and phrases already used by MA in the First and Second Interviews is notable:

- a) The fact that those words and phrases had already been used by MA provides context and assists us in interpreting them. While of course the same words and phrases can have different meanings when used on different occasions, a reasonable bystander who has already heard those words and phrases used by MA, and who has already formed an understanding as to how those words and phrases are being used and are to be interpreted, will likely start from the premise that their subsequent repeated use should be understood in the same way as before unless context requires otherwise;
- b) None of those words are Highlighted Words. We thus proceed on the basis that the FA did not regard any of those words:
 - i) As being directed at the Match Officials (or at Premier League match officials generally) or their competence. The FA thus tacitly accepted that the Other Words used above in the Third Interview were permissibly directed at the decision not to disallow the Goal and/or at the deficiencies in the VAR system and processes generally;
 - ii) As 'crossing the line' into language that brings the game into disrepute and/or is not in the best interests of the game;
 - iii) As justifying inclusion in the Charge.

71) While of limited significance for our purposes (given that it is for us, not any third party, to interpret MA's words), it does appear that the interviewer interpreted MA's Other Words that we have set out above as being a criticism of the VAR system and processes. That is evident from the question that follows MA's Other Words: '*Is it the process that's at fault or the people in charge of the process?*', to which MA responds:

*'It's the outcome. The outcome is nowhere near the level that this league needs to have. And the way this league is getting competed each and every single day, and in every single ball is not good enough. **It's just honestly, I feel embarrassed to be part of this. Embarrassed, these are my words**'.*

72) Before turning to the Highlighted Words themselves, we make two observations:

- a) First, the Other Words in that answer can be seen to reflect the views that MA had previously expressed in the Second Interview about VAR processes and systems needing to be improved if they were to become fit for purpose in the best domestic league in the world. When the Interviews are considered as a whole, that provides relevant context;
- b) Secondly, Mr Mill KC urged us to note that, if MA was looking for an opportunity to make his comments ‘personal’ about the Match Officials (or even about match officials in the Premier League generally) that final question asked by the interviewer was the perfect set up for him to do so – yet MA very obviously does not do so and instead identifies ‘*the outcome*’ as being what is at fault. While it was suggested to MA on occasion in cross-examination that he had deliberately and carefully sought not to make express criticism of the Match Officials but only to do so in disguised or veiled terms, we did not find that to be the case. And as Mr Mill KC submitted, the fact that MA did not make criticism of the Match Officials (or Premier League match officials) in answer to this pointed question does provide a degree of assistance when we are interpreting the Highlighted Words used in the three Interviews and asking ourselves whether those Highlighted Words are in fact to be construed:
 - i) as being directed at Match Officials or Premier League match officials more generally; or
 - ii) as MA contends.

73) Turning to the Highlighted Words:

- a) The FA’s Charge again centres on the use of the word ‘*embarrassing*’. As we have said above, given that (as the FA accepts) that word is not objectionable *per se* and that consequently context is everything, it is necessary to determine exactly what MA was contending was ‘*embarrassing*’;
- b) In our view MA was once again describing the current deficient state of the VAR system and processes and the lack of improvement in that respect. That is apparent not only from the words that immediately precede the Highlighted Words but also from the

sentiments expressed in the Other Words that comprised MA's previous answer in the Third Interview;

- c) The Highlighted Words do not bring the game into disrepute and are not detrimental to the best interests of the game. Once again, MA's expression of strongly held views about the deficient state of the VAR system and processes, the need for improvement and the inadequate pace at which any improvement is occurring:
 - i) Does not create any real prospect of such comments being perceived as damaging the wider interests of football or the image of the game;
 - ii) Represents a personal opinion about a state of affairs that the Premier League had already acknowledged was deficient and needs addressing.

74) And so it follows that we did not find that the Highlighted Words used by MA during the Third Interview (or any of them) amounted to a breach of FA Rule E3.

iv) The Interviews in their totality

75) In light of the way that the FA put its case, we did take a step back and ask ourselves whether the Highlighted Words in the Interviews, when viewed as a whole, amounted to a breach of FA Rule E3 – to put it colloquially, whether even though none of the individual pieces of the jigsaw amounted individually to a breach of FA Rule E3, such a breach was however committed when those pieces were considered together and thus the jigsaw could be viewed as a whole.

76) We did not find any breach of FA Rule E3 on that basis either. Indeed, when viewed as whole and in the appropriate context it was in our view clear:

- a) That MA was not at any time expressing a view about the behaviour of the Match Officials (or about Premier League match officials generally) or making any implicit criticisms of their performances, integrity or impartiality;
- b) That MA's focus during the Interviews had in part been on the Goal but had in far larger part been on the deficient state of the VAR system and processes as at that time operated at Premier League matches, a matter about which he felt passionately and a state of affairs about which he was frustrated given the efforts that he (and others) had been

making to have the VAR system and processes improved to operate at a level deserved by Participants in what he considers to be the best domestic league in the world;

- c) That while the words used by MA were on occasion strong, they did not when viewed as a whole ‘cross the line’ so as to become words:
 - i) that might damage the wider interests of football;
 - ii) that might damage the image of the game; or
 - iii) that in some other way bring the game into disrepute or otherwise not be in the best interests of the game;

- d) That there was nothing in the manner in which MA had delivered the Highlighted Words that either amounted to a breach of FA Rule E3 in its own right or that turned an ‘innocent’ delivery of words into a breach of FA Rule E3. Indeed, as we have said above, we do not consider that MA’s delivery during the Interviews was improper in any way.

(G) Conclusion

77) MA’s use of the Highlighted Words did not, whether viewed individually or in their totality, breach FA Rule E3. The Highlighted Words:

- a) Did not insult the Match Officials (or Premier League match officials generally). Nothing was said by MA in any of the Interviews that implies incompetence on their part, whether in relation to the Goal or more generally;

- b) Did not bring the game into disrepute;

- c) Were not detrimental to the best interests of the game.

78) We therefore found the Charge not proven and dismissed the Charge.

Graeme McPherson KC (Chairperson)
Stuart Ripley
Ken Brown

Signed by the Chairperson on behalf of the Regulatory Commission
11 December 2023

Annex 1

1 - Transcripts from Mr Arteta's post-match interviews

Sky Sports Interview (File 1 from The FA)

MA: Praising my players for their performance and the way we played. And we didn't deserve to lose the match. Playing (inaudible @ 00:00:07) and then we then lose the match because of the clear and obvious decisions. It's embarrassing. It's a disgrace; that's what it is, a disgrace.

Interviewer: Will you be taking this up with PGMOL?

MA: Yeah, we've been taking it for many months. There is so much at stake. We put so many hours. I'm here to represent the football club and to get my team to compete at the highest level. The margins are so small. It's a disgrace, it's embarrassing. That's how I feel and that's how everyone feels in that room. You cannot imagine the amount of messages that we got that say this cannot continue. It's embarrassing. I'm sorry, embarrassing. I defend my players when I have to (inaudible @ 00:00:44). I defend my job when I have to. It's not good enough, it's not good enough. But I have to be here to say it now. It's not acceptable. There's too much at stake.

Interviewer: On the pitch, with the decisions and off the pitch, VAR taking so long. Three checks before deciding that Anthony Gordon's goal could stand.

MA: You will look at the images. And I feel honestly, I don't know how to feel. I'm wasting my time, we are wasting our time. I don't want to be in the hands of people. It's difficult enough to compete against this team. They are a really good team. The way we play, the way we competed. It cannot continue like that. It's embarrassing. There's too much at stake. Again, I repeat myself.

Interviewer: You were very patient. We could see what you were trying to do. You were desperately trying to get that equaliser as well. When you say you've been talking to your players already. After the game, what kind of things have they been saying to you?

MA: To praise them for what they do on the pitch and all the things that we cannot control. But that obviously affects results, affects momentum, affects confidence. And the consequences are too big. Too, too, too big.

Interviewer: Just finally, Martin Ødegaard. I know we spoke about him before the match and he's unavailable. Where are you, where are we with him? How long could he be absent for?

MA: We don't know, we have to assess that but that's not the topic for now. I already said that he wasn't fit enough to play and that's another issue.

Interviewer: I know it's been a frustrating time for you but thank you for your time.

MA: Thank you very much. Thank you.

[ENDS]

Annex 2

Press Conference (starts at 00:02:21 in File 1 from The FA)

Member of press: Mikel, I think the big talking point from that game, apart from the result, obviously, is going to be the goal. What are your views on Newcastle?

MA: Yeah we have to talk about the result because we have to talk about how the hell this goal stand up. And it's incredible, I feel embarrassed. But I have to be the one now coming here to try to defend the club and please ask for help. Because it's an absolute disgrace that this goal is allowed. It's an absolute disgrace.

Member of press: Why do you think it's a disgrace?

MA: Because it's not a goal. For many reasons it's not a goal. For more than one reason, at least, it's not a goal. And it's too much at stake here. We put so much effort, it's so difficult to compete at this level. And it's an absolute disgrace. Again, I feel embarrassed, I've been more than twenty years in this country and this is nowhere near the level to describe this as the best league in the world, I am sorry.

Member of press: Playing devil's advocate, there were three checks and the information back from... [interrupted]

MA: That makes it even worse. Even worse. It makes it even worse. You just need to see one image et c'est fini. And if you have any doubt, you look at the second one. And if this is a goal, okay, that's fine then.

Member of press: They're saying that they've got camera angles to prove one way or the other... [interrupted]

MA: I don't care. Honestly, I don't care what they say. It's the outcome. It's too late, whatever they say it's too late. I don't want to be in the hands of people.

Member of press: Two refereeing decisions from the first half (**inaudible @ 00:03:49**) came into focus once the challenge with Kai Havertz which saw three Newcastle players booked and also the elbow on Jorginho from Bruno in the first half... [interrupted]

MA: And the penalty on Eddie and there is, there is a lot of things, we can continue. Yeah.

Member of press: Sorry, did you think the ball was out for the goal. Was it a foul, offside, or?

MA: This is really the question guys. The question is it's not a goal. It's simple. It's not a goal. Simple.

Member of press: For which one of the reasons?

MA: Sorry?

Member of press: For which one of the three reasons do you think it's not a goal?

MA: Because, for a goal to be allowed, there are certain things prior to that. [**That the ball hitting one metre from the goal**] (**somewhat unclear @ 00:04:25**), that are not allowed in football. In football, in here, in China, in Japan, in Spain, in Italy and in Portugal they are not allowed. That's what happens.

Member of press: Mikel, we've seen lots of VAR mistakes and the clubs get an apology afterwards. And it's a point that an apology is no use to you.

MA: I have to stand here now and explain. We lost three points today guys. You know what that means? It's too hard, this league. It's too hard. It's too much at stake. It's embarrassing.

Member of press: How do you now pick the players up? Because obviously they're going to be as frustrated as you are. How do you now... [interrupted]

MA: I have to praise them. It's not in their hands. It's not in their control. I have to praise the players, the way they play here. And what they did, how much they limit Newcastle do what they did. And how much we tried. It's incredible, honestly.

Member of press: There was some good performances. William Saliba was really strong and impressive. You know, we saw Kai Havertz. I think probably his strongest performance this season. What did you make of it?

MA: There's so much. It's incredible the way these guys play with twenty years, twenty-one years old. They way they play here, the way they competed against this team, because they are a top team. Incredible. So to get the game out of that like this, it's just, honestly, it feels, I feel sick. That's how I feel. I feel sick to be part of this.

[ENDS]

Annex 3

BBC Interview (File 2 from The FA)

Interviewer: Mikel. Tough game. Hard game. What's your verdict on the performance and how it all panned out today?

MA: Praise my players one hundred percent for the way they played, the way they competed in this stadium, against this team. And yeah the results should never be what it stands for. And, obviously there are many reasons for that.

Interviewer: Did you think you had a, a grip of the game, first half hour in particular?

MA: Hundred percent. I think if there was a team that was looking to win the game and was better on that field, it was Arsenal.

Interviewer: And what was the case for not winning it today? Where did, where did the things need to be that little bit better?

MA: Well, because it's embarrassing what happened and how this goal stands. In the Premier League, in the best league, that we say is the best league in the world. We really have to think about this deeply. Because I have been twenty years in this country and now I feel ashamed. It's an absolute disgrace. You look at it on the TV and it's an absolute disgrace. And it's too much at stake. We are trying to do incredible things, to be at the highest level every single week when we are not good enough, I am the first one to put my hand up and say it's my fault and my responsibility. This is unacceptable. I don't want be in people's hands, if that's the outcome. For sure it's not. It's too difficult.

Interviewer: Is it the process that's at fault or the people in charge of the process?

MA: It's the outcome. The outcome is nowhere near the level that this league needs to have. And the way this league is getting competed each, every single day and in every single ball is not good enough. It's just honestly, I feel embarrassed to be part of this. Embarrassed, these are my words.

[ENDS]