IN THE MATTER OF A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

Applicant

- and -

(1) QUEENS PARK RANGERS FOOTBALL CLUB
(2) GIANNI PALADINI

Participants

WRITTEN REASONS FOR THE DECISION
OF THE REGULATORY COMMISSION
FOLLOWING THE HEARING
HELD BETWEEN 3RD AND 7TH MAY 2011

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1. BACKGROUND

1. On 4th March 2011, the Football Association ("The FA") brought seven charges against Queens Park Rangers Football Club ("the Club") alleging breaches of various FA Rules and Regulations. All of the charges concern dealings in connection with Alejandro Faurlin ("the Player"). The charges against the Club were contained in an Appendix to the letter of the above date. Four charges allege breaches of Rules and Regulations prohibiting third party investment in players ("TPI"). The remaining three charges against the Club concern its dealings with a football agent in connection with two playing contracts. Also on 4th March 2011, The FA brought a single charge of alleged misconduct against Mr. Gianni Paladini, the Club's Chairman. All of the charges, as amended, are attached as Appendix 1 to this document.

2. An independent Regulatory Commission of The FA sat from Tuesday 3rd May until Saturday 7th May 2011 when it heard evidence and submissions from The FA and the Participants relating to the various charges, followed by submissions in relation to sanctions.

3. The FA was represented by Mr. Adam Lewis QC and Mr. James Segan of Counsel. The Participants were represented by Mr. Ian Mill QC and Mr. Nick de Marco of Counsel.

2. THE BURDEN AND STANDARD OF PROOF

2.1 The burden of proving the charges rested throughout with The FA. The Commission was referred to authorities and heard submissions as to the standard of proof to be applied, but in cases of alleged misconduct before a Regulatory Commission this is expressly provided for in Regulation 7.3 of the Regulations for Football Association Disciplinary Action:

> *"The applicable standard of proof shall be the flexible civil standard of the balance of probabilities. The more serious the allegation, taking into account the nature of the Misconduct alleged and the context of the case, the greater the burden of evidence required to prove the matter."*

That test is particularly relevant in relation to Charges 1 to 4 against the Club, having regard to the serious nature of both the allegations themselves and the potential consequences of our findings, as well as those Charges that do, or may, require evidence of dishonest intention.

2.2 The one aspect of the case against the Club upon which it bore an evidential burden was to show that the Oral Agreement between the Club and TYP Sports Agency LLC was different, in a material respect, to the one contended for by The FA (as to which, see below).

3. EVIDENCE

3.1 During the course of the hearing Commission heard and received evidence as follows:

(a) On behalf of The FA

(i) David Newton - witness statements, dated 4th March 2011, 15th April 2011, 21st April 2011 and 28th April 2011, and oral evidence.

(ii) Graham Noakes - witness statement, dated 25th February 2011; taken as read;

(iii) Jamie Bradbury - witness statement, dated 22nd February 2011; taken as read; and

(iv) Matthew Johnson - witness statement, dated 2nd May 2011 (in relation to an application during the course of the hearing).

(b) On behalf of the Participants

(i) Gianni Paladini - witness statement, dated 15th April 2011, and oral evidence;

(ii) Franco Tasco - witness statement, dated 15th April 2011, and oral evidence;

(iii) Lucas Cominelli - witness statement, dated 15th April 2011, and oral evidence;

(iv) Federico Simonian – witness statement, dated 15th April 2011, and oral evidence;

(v) Ariel Reck - witness statement, dated 15th April 2011, and oral evidence;

(vi) Alejandro Faurlin - witness statement, dated 15th April 2011, and oral evidence;

(vii) Rebecca Caplehorn - witness statement, dated 15th April 2011, and oral evidence;

(viii) Terry Springett – witness statement, dated 15th April 2011, and oral evidence; and

(ix) David Pleat - Expert Report, dated 22nd April 2011; taken as read.

(x) Additionally, the Participants had served two witness statements of Maria Fernanda Perez, the first dated 15th April 2011 and the second undated, upon which they wished to rely. Ms. Perez was on holiday during the hearing and was not contactable. The FA would have required her to attend the hearing (by whatever means) for the purposes of cross-examination. How the Commission approached her evidence is addressed below.

3.2 The Commission was also referred to various other documents during the hearing which, for economies of scale, are not particularised here. Insofar as they were material to the decision, they are referred to. The principal additional documents were transcripts of interviews of various witnesses which were conducted in January and February 2011 by Solicitors instructed by the FA.

4. UNDIPSUTED FACTS

4.1 The following facts were either uncontroversial, or not the subject of serious dispute:

4.1.1 By a written agreement, dated 15th August 2007, the entire economic, federative (*i.e.* player registration), intellectual and image rights in Alejandro Faurlin ("the Player") were vested in TYP Sports Agency LLC, a US-

registered company owned and operated by Mr. Franco Tasco. Mr. Tasco resides and runs his business from Argentina. TYP had paid the sum of US $250,000 to a club in the second tier of Argentine national league football, Insituto Cordoba, in order to cancel the Player's playing contract with that club and to acquire his economic and other rights. The TYP/Player contract was entered into at or around the same time.

4.1.2 The TYP/Player contract entitled TYP to a 70% commission on the matters set out at clause 2 of that agreement.

4.1.3 FA Rule C1(b)(iii) was introduced during the summer of 2007. Also in 2007, a comprehensive set of Regulations governing Agency Activity were introduced.

4.1.4 In or around April/May 2009, the Club was interested in acquiring a midfield player. In or around May 2009, a FIFA-registered football agent, Peppino Tirri, alerted the Club to the Player. The same month, Mr. Paladini travelled to Argentina to watch the Player play.

4.1.5 Negotiations to bring the Player to the Club then followed between Mr. Paladini and the Player's agent, Federico Simonian. At some point in May/June 2009, Mr. Paladini also became aware that TYP owned the Player's economic and other rights.

4.1.6 In late June 2009, discussions took place between Mr. Paladini and Mr. Tasco regarding the interest of TYP in the Player's economic and other rights.

4.1.7 On 4th July 2009, following an FA Council summer meeting held on the same day, The FA introduced specific Regulations controlling Third Party Investment in Players ("the TPIPR").

4.1.8 Also on 4th July 2009, TYP provided a letter to the Club in connection with TYP's interest in the economic rights of the Player. The letter is said to partly evidence an oral agreement between Mr. Tasco on behalf of TYP and Mr. Paladini on behalf of the Club ("the Oral Agreement") as to the terms upon which TYP's third party interest in the Player would be suspended, or transferred. The disputed issues surrounding this aspect of the case are pivotal to the Charges against the Club that allege non-compliance with certain provisions of the TPIPR (Charges 1 to 4 against the Club).

4.1.9 On 5th July 2009, the Player, accompanied by Mr. Simonian and Mr. Lucas Cominelli, came to England for the first time and met Mr. Paladini.

4.1.10 On 9th July 2009, an announcement was made on the Club's website stating that the Player had *"penned a three-year deal"* with the Club worth £3.5 million. In fact, no fee had been paid for the Player at that stage.

4.1.11 On 10th July 2009, the TPIPR appeared on The FA's website.

4.1.12 On 14th July 2009, the Player signed a 3-year playing contract with the Club ("the First Playing Contract"), until 30th June 2012, unless previously terminated by substitution of a revised agreement.

4.1.13 The following documents were submitted by the Club to The FA upon the initial registration of the Player in July 2009:

(i) Form G2 – Registration Document;

(ii) Playing contract with bonus schedule attached:

(iii) Form AG1/NR – Agent's Declaration Form; and

(iv) Nil return international clearance certificate.

4.1.14 The registration documents filed by the Club with The FA on 14th July 2009 gave no indication that the Player was subject to any third party ownership arrangements, and did not disclose the Oral Agreement between the Club and TYP, or the involvement of Mr. Tirri.

4.1.15 At or around the time when the Player was awarded the First Playing Contact, the Club also agreed, in principle, to pay Mr. Tirri what effectively amounted to a 'finder's fee' for introducing the Player to the Club. Payment of any such fee was conditional upon the Player proving himself in the Football League Championship, settling in England and being awarded a renegotiated contract.

4.1.16 At all material times prior to the execution of the First Playing Contract, Mr. Tirri was registered with football's world governing body, FIFA, and licensed to operate as an agent in Italy, but he was not registered as an overseas Agent with the FA. Consequently, he was not authorised at the time to conduct agency activity in England in accordance with the FA's Football Agents Regulations.

4.1.17 On 28th July 2009, The FA sent a circular to all clubs, by e-mail, drawing their attention to the TPIPR.

4.1.18 In or around May 2010, the Club entered into negotiations with the Player and his Agent with a view to entering into an improved playing contract with him.

4.1.19 In or around 9th August 2010, Mr. Paladini requested the sum of US $1,000,000 (£615,000) from the Club's Finance Director, Rebecca Caplehorn, having agreed a fee with TYP in order to buy out its interest in the economic rights of the Player.

4.1.20 Ms. Caplehorn inquired of the Club's Solicitor, Chris Farnell, how to proceed, whereupon he advised that the third party investment issue should be referred to the Football League ("FL").

4.1.21 On 23rd August 2010, Mr. Farnell approached the Football League and supplied a copy of the letter from TYP to the Club of 4th July 2009, together

with a draft agreement under the terms of which the Club proposed to buy-out the third party interest of TYP in the Player.

4.1.22 On 16th September 2010, The FA was first notified of the proposed buy-out by the Club of TYP's interest in the Player.

4.1.23 Mr. Tirri became registered with The FA as an Authorised Overseas Agent on 28th September 2010.

4.1.24 Correspondence continued to be exchanged between the Club and The FA during September and October 2010 in connection with the TPI.

4.1.25 On 4th October 2010, the Club formally entered into a renegotiated playing contract with the Player until 30th June 2014 ("the Second Playing Contract").

4.1.26 On 6th October 2010, the Club submitted the Second Playing Contract, together with accompanying documents, to The FA's Registrations Department and also to the FL. The documentation included a pro-forma Form AG1, which stated that the Club had used the services of a Registered Overseas Agent, namely Mr. Tirri, in negotiating an extension to the First Playing Contract with the Player and that the Club had agreed to pay Mr. Tirri the sum of £200,000 for those services.

4.1.27 The FA subsequently approved the new Registration Document relating to the Second Playing Contract, but its approval was withdrawn on 5th November 2010 due to ongoing concerns about the nature and effect of the third party arrangements surrounding the Player.

4.1.28 On 22nd December 2010, The FA commenced a formal inquiry pursuant to its Powers of Inquiry in Rule F1, to cover, but not limited to, the events concerning the non-disclosure of the third party interest and the Player's continued employment. An indication was given to the Club that its proposed buy-out of the third party interest would be considered, subject to confirmation that both it, and TYP, would fully co-operate with the Inquiry, and that TYP had not, did not, and would not hold the ability to materially influence the Club's policies or performance in matches.

4.1.29 On 27th January 2011, a buy-out of the third party interest in the Player by the Club was sanctioned by The FA. This followed the submission of a Deed of Agreement dated 24th January 2011 between the Club and the Player, together with an Economic Rights Purchase Agreement between the Club and TYP, dated 27th January 2011.

4.1.30 On or around 27th January 2011, the Club paid the sum of £615,000 to TYP in order to acquire the economic and other rights in the Player.

5. THE ORAL AGREEMENT

5.1 This factual issue is crucial because the Club's case is that Charges 1 to 4 are based on a fundamental misunderstanding of what the terms of the Oral Agreement were. If, the Club argues, the agreement was that TYP's interest in the economic rights of the Player were suspended for the entire 3-year period of the First Playing Contract, then the Oral Agreement did not enable, or give, TYP the ability materially to influence the Club's policies or the performance of its teams in matches. The key, and sole document relating to this issue, is the letter of 4th July 2009, from Mr. Tasco on behalf of TYP, addressed to Mr. Paladini on behalf of the Club ("the Comfort Letter"). The Comfort Letter is printed on TYP-headed notepaper and the full text of it reads as follows:

> *"Dear Gianni,*
>
> *Following on from the discussions regarding Alejandro Faurlin, we can confirm that TYP Sports Agency LLC own 100% of the player's economic and federative rights.*
>
> *We understand that you will not enter into an agreement with TYP Sports Agency LLC or make payment to TYP Sports Agency LLC for the rights on this contract valid thru* (sic) *30.06.2010. Therefore, we wish to confirm that we are willing to allow to use, for no fee, all of the economic and federative rights that TYP Sports Agency LLC currently ouns* (sic) *for the period of his contract.*

However, the matters autlined (sic) *above are conditional upon when Alejandro Faurlin susequently* (sic) *enter into* (sic) *a new contract with the Club that you directly enter into an agreement with TYP Sports Agency LLC to purchase 100% of the economic and federative rights.*

Yours sincerely,

Franco Tasco"

5.2 The FA's case against the Club, as formally charged, rests very heavily on the date reference of 30th June 2010 in the Comfort Letter and the inference that TYP's interest in the Player's economic and other rights was only suspended for the first twelve months of the Player's three-year First Playing Contract. Indeed, the inference that was drawn was the prime mover in the decision to pursue the Charges involving TPI against the Club.

5.3 The Club's case is that the date referred to in the Comfort Letter is simply an error, and should have read *"30.06.2012"* so as to coincide with the 3-year period of the First Playing Contract. It is argued that the second sentence of the second paragraph provides clear support for that proposition and, in particular, the use of the words *"Therefore"* to first place the date in context, and secondly the words *"… for the period of his contract"*, which can only be a reference to the Playing Contract, or so it is said.

5.4 The positive case advanced by The FA consisted of the particular interpretation of the date in the Comfort Letter, together with the transcripts of interviews of various

witnesses conducted in January and February 2011, including Mr. Paladini and Mr. Tasco. As to what the terms of the Oral Agreement were, and how the Comfort Letter should be interpreted, the Club called a number of witnesses. In addition to Mr. Paladini and Mr. Tasco, the Commission heard evidence from Mr. Ariel Reck, a lawyer in Argentina who acts for TYP/Mr. Tasco and who assisted in the preparation of the Comfort Letter, which was drafted by Mr. Tasco's secretary, Ms. Maria Fernanda Perez. Although two witness statements were submitted on behalf of Ms. Perez which she had signed, but not dated, attempts to contact her during the hearing were unsuccessful. Mr. Lewis, on behalf of The FA, indicated that he would have wished to test her evidence closely. The Commission admitted the statements as an exception of the hearsay rule, but could attach little, if any, weight to them.

5.5 As all of the oral evidence that we heard was from witnesses called in support of the Club's case, the impression that each of them made on the Commission is the essential starting point in attempting to resolve this critical factual issue.

5.5.1 In closing submissions, Mr. Mill was driven to conceding that Mr. Paladini was very unclear in his oral evidence and was confused on a number of occasions. No such concession was necessary for the Commission to form that conclusion. Mr. Paladini repeatedly answered questions by making the points that he wanted to get across, and at some length, rather than answer the question that had been asked of him. The contradictory nature of his evidence was not limited to matters that were central to the Oral Agreement. At the same time, though, we did not form the impression at any time that Mr. Paladini was being deliberately evasive or untruthful. He prevaricated, unnecessarily we felt, over whether he

was the source of the Club's web-site report regarding the value of the deal to bring the Player to the Club, but otherwise we accept that he was doing his best, albeit imperfectly, to assist us when giving his evidence.

5.5.2 As far as the Club's web-page is concerned, the report of a £3.5 million deal was clearly false. Mr. Paladini appeared to accept in interview that he was the source of the report. It was characterised by Mr. Mill as a 'puff'; something that was done in order to show the Club's supporters, and others, that the Club was going places and willing to invest heavily in order to do so. That was essentially the motivation according to Mr. Paladini in interview. Whether one regards the report as mere 'puff', or a 'lie', depends on one's moral compass, with some necessary re-calibration to take into account *"the ways of football"*, a phrase that was used more than once during the hearing. That Mr. Paladini was at least involved in some way in the report finding its way onto the Club's web-site, we have little doubt, but while the value of the deal was significantly exaggerated, and objectively untrue, the motivation for it colours how it should reflect upon Mr. Paladini as a witness.

5.5.3 For economies of scale, a detailed analysis will not be undertaken here of the five other aspects of Mr. Paladini's evidence, which were cited by Mr. Lewis in his closing submission to show just how unreliable Mr. Paladini's evidence was. Suffice to say that we did not conclude that either individually, or cumulatively, they altered our impression of him as an essentially truthful person.

5.5.4 When he gave evidence to the Commission, over the course of an entire afternoon and a significant proportion of the following morning, Mr. Paladini was self-evidently under enormous pressure. He had struggled for some ten years to get the Club to a position of success, only to be confronted with the prospect of it all unravelling because of something that he may have done. The burden of responsibility for this was his, and his alone. His deep distress at the conclusion of his evidence demonstrated the pressure and responsibility that he clearly felt. Nevertheless, the task of the Commission was to judge the accuracy and reliability of his evidence dispassionately. Although we found that Mr. Paladini always intended to tell us the truth, the inconsistencies and confusion in his evidence meant that on matters that were material to our findings we should look for corroboration of what he told us before we were able to accept it as evidence that we could safely rely upon.

5.5.5 Of the other witnesses who were called by the Club, and whose evidence was material to the existence and terms of the Oral Agreement, the Commission was impressed by both Mr. Tasco and Mr. Reck. Apart, perhaps, from a desire to retain good relations with the Club for commercial reasons, Mr. Tasco was an independent witness, and Mr. Reck was entirely independent. During cross-examination, neither of them were ‘caught out’ by any questioning of them, and neither were there any material inconsistencies in their evidence. They gave evidence via video-link from the same office in Buenos Aires, albeit on consecutive days, but there was no sense that they had rehearsed their evidence. As he did in interview, Mr. Tasco concluded his evidence by offering further assistance, if required.

5.5.6 What immediately struck the Commission about Mr. Simonian was the care that he took to correct certain matters in his witness statement when he was first called to confirm its truth and accuracy. This showed an attention to detail on his part. Both he and Mr. Cominelli may have had a desire to assist the Club, but apart from one answer relating to whether Mr. Tasco was, or was not, physically present at a meeting on 5th July 2009, which suggested that Mr. Cominelli may have been aware of the significance of his response, we found both of them to be reliable witnesses. The Player, who has had the innocent misfortune to be at the eye of a storm surrounding him, was entirely straightforward and honest, we found.

5.5.7 Although their evidence was not concerned with the Oral Agreement, the Commission also found both Ms. Caplehorn and Ms. Springett to be impressive and truthful witnesses. Likewise, Mr. Farnell.

5.5.8 Overall, there was potentially significant scope, given the number of witnesses, for cracks, if not schisms, to appear in their evidence. The fact that that did not happen indicates that their evidence was truthful and reliable. The other possibility, namely one of contamination of the witnesses, was quite properly never pursued by Mr. Lewis and we have no hesitation in discounting it as a theory.

5.6 Turning to the existence and terms of the Oral Agreement itself, it is not possible to summarise, in any meaningful way, the significant body of evidence that was placed

before the Commission. Of necessity, therefore, what follows are the main points that we regarded as being most materially relevant in weighing the competing evidence that was presented to us.

5.7 In connection with the preparation of the Comfort Letter, Mr. Reck did not prepare an attendance note of what his instructions were from Mr. Tasco, or of what he told Ms. Perez to put in the letter. The reason for that omission was because he (Mr. Reck) considered the letter to be unimportant, if not an irrelevance, as far as his client (TYP/Tasco) was concerned. His evidence was therefore based on his recollections alone but, despite this, we found them to be good. In his oral evidence, Mr. Reck said that he just told Ms. Perez to write a letter [to the Club] that TYP were not going to enforce their economic rights during the *"first contract"*. He went on to explain in cross-examination that after three years the Player would become a free agent and TYP would recover its interest in his economic rights. If the Club wanted to renegotiate an extended contract with the Player, then they would have to negotiate with TYP. When it was put to him, Mr. Reck denied that the significance of the date of 30th June 2010 in the Comfort Letter was that an agreement existed which enabled the Club to try the Player out to see if he was any good, and that if, after a year, he had proved himself, the Club would give him a new contract and buy TYP out.

5.8 Consistent with the evidence of Mr. Reck, Mr. Tasco confirmed his understanding of what Mr. Paladini had requested of him:

> *"Mr. Paladini asked me for a letter, so the economic rights of the Player would be suspended during the contract of the player."*

Mr. Tasco was asked about the nature and extent of the instructions that he then gave to Mr. Reck. The former was concerned whether the proposed Comfort Letter would prejudice him in any way, to which the latter responded that it would not. Mr. Tasco did not tell Mr. Reck everything that needed to go into the Comfort Letter, save that:

> *"… it had to be mentioned or had to be written that I was surrendering all the economic rights during the contract to QPR."*

5.9 During the lengthy cross-examination of him, Mr. Paladini confirmed that, for so long as the First Playing Contract was in force, TYP's third party rights were suspended. Indeed, this was his central message that he was so keen to repeat. There was corroboration for it in the form of Mr. Tasco's evidence and that of Mr. Reck - albeit that the latter's understanding of what was agreed/understood between his Client and Mr. Paladini was based on the instructions of Mr. Tasco.

5.10 For reasons that only she could really have explained, Ms. Perez incorporated a date in the Comfort Letter that did not coincide with the period of the First Playing Contract. The explanation advanced by the Club for the date inserted by Ms. Perez in the Comfort Letter is that Mr. Tasco/TYP typically negotiated contracts of one or two years' duration, because that was common in South America. The length of the contract would depend on the player and the level of league. In this instance, Mr. Reck was aware that the Club had insisted upon a three-year playing contract for the Player and although he was not *"comfortable"* with TYP suspending its rights for a like period of time, he had to accept it as those were his instructions from Mr. Tasco.

This does not explain why Ms. Perez made the error, but it does lend some support for the case that an error is what it was.

5.11 The significance of the length of the First Playing Contract is this. Mr. Paladini insisted upon a three-year contract with the Player because it would provide the Club with greater security in the transfer market. With six months to go before the end of his Contract, the Player (any player) could commence negotiations with another club with a view to securing a transfer. A contract of only one year's duration would therefore give the Club hardly any time before it had to secure an improved deal with the Player, or risk losing him, and even a two-year contract would allow him to start negotiating with other clubs within eighteen months. In the absence of a consensual termination, the risk that the Club would have to keep paying him for three years, even if he did not play well, was a commercial one worth taking, Mr. Paladini judged, particularly as the wage deal that was initially negotiated with the Player placed him at the bottom end of the Club's pay-scale.

5.12 However, the mistakes that were made in the various dealings with the Comfort Letter were not limited to the error made by Ms. Perez as to the date which she inserted of 30th June 2010. When the Letter went to Mr. Tasco for signature, he did not identify the mistake. Neither did Mr. Paladini when he received it. It is conceivable that Mr. Tasco overlooked that particular detail because, as we were told, the Comfort Letter was of no real importance to him, or his Company. It was simply something that Mr. Paladini had requested in order to protect the Club against any issue that might be raised regarding third party influence. At the same time, though, the period for which TYP was proposing to suspend a valuable right was something that it would be

reasonable to expect Mr. Tasco to take an interest in, and to see that it was accurately recorded in a document.

5.13 Mr. Paladini's subsequent failure to notice the error was put down to a manifestation of what we find to be Mr. Farnell's apposite observation of him in interview, namely that Mr. Paladini *"…tends not to be a finer-detail person."* The impression that we formed was that Mr. Paladini wanted the Comfort Letter before he was prepared to commit the Club to the First Playing Contract. He was alive to, and did not wish the Club to fall foul of, any TPI difficulties. He was therefore concerned to order things in a particular way. However, once he had received the Comfort Letter, he appears to have simply filed it, without reading the document carefully, and then turned his attention to concluding matters with the Player and his Agent. Although highly unsatisfactory in terms of the care - or, rather, the lack of it - taken by him to check to see that the terms of the Letter coincided with what had been agreed or understood by him following his discussions with Mr. Tasco, our assessment of what is likely to have happened is broadly consistent with the explanation given for this aspect of the mistakes that were made.

5.14 Additionally, there was also, at first blush, an apparent implausibility in the commercial arrangement which TYP committed itself to with the Club. By the time Mr. Tasco placed the Player with the Club, he had not seen any return on an investment of $250,000 that he had made some two years earlier. It also emerged that he had spent an additional sum of approximately $35,000 on various other expenses in connection with the Player. The terms of the Oral Agreement contended for by him and the Club meant, potentially, that he might not see any return for a further three

years. In other words, five years in total. This leant weight to the theory that there was a firm agreement in place that, at the conclusion of the first twelve months of the First Playing Contract, if the Player had played well and proved himself, the Club would offer him an improved contract and, from Mr. Tasco's perspective, buy out TYP's interest in the Player's economic rights.

5.15 The suggestion that the arrangement contended for by the Club lacked commercial sense for him and his Company did not seem to trouble Mr. Tasco in any way when he answered questions. He said that he took a risk that was probably greater than he normally would, but he was confident in the Player's ability, that he would prove himself in England, and that TYP would therefore see a return on its investment at some point during the First Playing Contract. In the event, it is a matter of established fact that within a period of just over three years, TYP turned its initial $250,000 investment into a four-fold return of $1,000,000. Even when one takes into account 'sundry expenses', TYP's return on its overall outlay was an extremely healthy one and Mr. Tasco's judgment in both the Player, and the commercial risk that he took, was entirely vindicated. This astute piece of business, may well explain how TYP was able to finance its initial outlay in the Player's economic rights from cash resources, as opposed to having to finance the acquisition.

5.16 For the FA, Mr Lewis points to Mr. Tasco's evidence at page 4 of his second interview to show that Mr. Paladini had asked him for a document confirming that TYP was suspending its rights for the *"year of the first contract"*, although that implies that the First Playing Contract was for one year only, when it was clearly for three years. In those circumstances, the reference to *"year"* could simply have been

Mr. Paladini's inappropriate use of that word, when what he really meant to say was *"period"*, thereby conveying a quite different sense. The FA further contends that the arrangements with Mr. Tirri corroborate the theory that the Club had taken the Player on for a trial period of one year, and that, if they offered him an improved playing contract, he would get his commission. Again, though, this is not necessarily inconsistent with what the Club says happened. Accordingly, we did not find either of those arguments to be persuasive.

5.17 Furthermore, from the Club's perspective, if one were to take the date in the Comfort Letter at face value, it would give the Club no control over the Player beyond the first year of his contract, irrespective of how well he had performed. Even if he had performed well, the Club would have been bound to release him for no fee if terms could not be agreed with either the Player or TYP. The Club would have had just six months in order to assess the Player and to tie him down to an improved contract.

5.18 Ultimately, the Commission accepts the evidence of Mr. Tasco that he intended that TYP would suspend its rights for the three-year period of the First Playing Contract. We also consider it more likely than not that he discussed this key aspect of the arrangement with Mr. Paladini during their discussions prior to 2nd July 2009. The trilogy of errors that were made in connection with the date referred to in the Comfort Letter troubled us, but, after hearing from the various witnesses who gave oral evidence, and having regard to the terms of the Letter itself, the Commission is satisfied, on a balance of probabilities, that the reference to 30th June 2010 was a mistake, and ought to have read *"30th June 2012"*. It follows that we find that the Club has discharged the evidential burden which it bore on this particular issue and

that the evidence and inferences to the contrary which The FA urges upon us have insufficient cumulative weight to maintain its primary case that the date in the letter was correct, and that TYP's rights were only suspended for one year.

5.19 The other significant issue arising out of the Oral Agreement is whether it was a term of the same that if, after one year, the Player had performed well, the Club would offer him an improved playing contract whereupon the Club would purchase TYP's interest in the Player. Alternatively, was there simply an understanding, but one falling short of a contractually binding commitment, that the Club would *"try him out"* (for want of a better expression), but not tied to any particular period, and that the same consequences would follow if he proved himself, namely an improved playing contract for the Player and the purchase of TYP's interest by the Club? Although significant in terms of their respective effects on the ability of TYP to bring any influence to bear on the Player and/or the Club, this issue involves more subtle nuancing than the factual issue relating to the period for which TYP's interest was suspended.

5.20 Firstly, in the context of the First Playing Contract, Mr. Paladini said that he had *"promised"* the Player that he would offer him an improved contract if he did well. He subsequently honoured that promise. This was characterised as a so-called *"president's promise"*, falling short of a binding contractual commitment, but intended to motivate the Player to play well, with the reward being an improved playing contract.

5.21 In cross-examination of him, and in the context of an agreed 12-month *"try out"* period, Mr. Reck said that the Player could prove himself after a year, two years, or *"in the third match"* if he scored five goals. The point being made here was that there was no specific period of time in which the Player might prove himself.

5.22 Moreover, Mr. Simonian, the Player's agent, told us that the period for which a club will wait to see if a player adapts could be one season or more. He said that it depends on the player and the particular case. Tellingly, when asked by Mr. Mill whether it was agreed, when the Player came to the Club, that he would be offered a new playing contract if he played well in the first season, Mr. Simonian replied: *"It was nothing official, nothing was put on paper …"* Although that description is not inconsistent with a binding agreement, the sense that it conveyed in the context of Mr. Simonian's evidence, and that of the other witnesses, is that there was an understanding between the Player and the Club that there would be an assessment of his performance over the first season, but that that timeframe was not necessarily set in stone. The promise made by Mr. Paldini to the Player was, according to Mr. Simonian, the sort of thing that club presidents say in order to incentivise a player.

5.23 Mr. Tasco, in cross-examination, was asked whether, if the Player performed well after a year, the Club would grant him a new contract and [TYP] would be bought out, to which he responded: *"exactly"*. Taken in isolation, this answer suggests that even if TYP had agreed to suspend its interest in the Player's economic rights for three years, after twelve months the Club would decide whether it was going to offer the Player an improved contract and, if it did, then TYP's interest would be bought out. But the context in which this particular question and answer appeared is important.

Immediately before it, Mr. Tasco confirmed that he had agreed to suspend his Company's third party rights for so long as the Player was on his original contract. He also stated that he did not know how long it would take the Club to work out whether the Player was any good. He understood that there was an *"understanding"* between the Player and the Club that if he performed well after a year he would be offered a new contract, but Mr. Tasco said that he was not a party to those negotiations.

5.24 In response to questions from the Commission, Mr. Tasco said that he accepted the risk of not having any money from the Player for three years. The clear impression that we formed is that if he had been asked the question at the beginning of the previous paragraph, but with *"eighteen months"*, or *"two years"*, substituted for *"one year"*, Mr. Tasco's answer would have been the same - *"exactly"*. Such an interpretation is consistent with what Mr. Reck told us. In the event, it took less than a year for the Player to prove himself and to settle in England because by May 2010 the terms of an improved playing contract had been agreed.

5.25 Finally, although there was no evidence that any of the witnesses turned their mind to it, the enforceability of any binding agreement of the kind that is suggested here by The FA's case is doubtful. It would be very difficult, if not impossible, for the criteria by which the Player's performance should be judged to withstand any kind of objective analysis.

5.26 The Commission therefore makes the following findings of fact in relation to the Oral Agreement:

5.26.1 In or around late June 2009, oral discussions took place between Mr. Tasco and Mr. Paladini concerning TYP's interest in the economic rights of the Player.

5.26.2 During the oral discussions, which were concluded by 2nd July 2009, it was verbally agreed between Mr. Tasco and Mr. Paladini that TYP would suspend its interest in the Player's economic rights for the duration of the First Playing Contract, namely three years.

5.26.3 If we had not been satisfied that a binding agreement was concluded orally between Mr. Tasco and Mr. Paladini, we would have found that such an agreement was capable of being inferred from the conduct of the Parties to the Oral Agreement; firstly by TYP consenting to the First Playing Contract, and, secondly, by the absence of any intervention and/or interference on the part of TYP when the first twelve months of the First Playing Contract had expired and an improved playing contract was not in place.

5.26.4 The Oral Agreement is partly evidenced by the Comfort Letter, which contains an error in that the date referred to in the first sentence of the second paragraph was intended by the Parties to read *"30th June 2012"*.

5.26.5 It was <u>not</u> an express or implied term of the Oral Agreement that if the Player proved himself and settled in England within twelve months from the commencement of the First Playing Contract, he would be offered an improved playing contract and the Club would buy out TYP's third party

interest. In other words, there was no binding contractual commitment, conditional or otherwise, for the Club to offer the Player an improved playing contract, or to buy out TYP's rights, after one year of the First Playing Contract. Instead, we find that an understanding existed, both as between the Club/Player and the Club/TYP, that if the Player proved himself at any time during the three-year period of the First Playing Contract, he would be offered an improved contract, but that there was no obligation on the part of the Club (other than a moral one on Mr. Paladini's part) to do so.

5.27 There is one further point arising out of the terms of the Oral Agreement. The words *"suspension"* and *"transfer"* have been used interchangeably in the context of TYP's interest in the Player's economic rights. The point was only raised by the Commission after evidence had been given. Consequently, it was not explored in cross-examination and was only briefly by Counsel in closing submissions. In interview, Mr. Tasco had indicated his understanding of the arrangement was that the economic rights of his Company were not only suspended, but were vested in the Club, despite the absence of any fee, compensation or other form of consideration being paid by the Club (at least immediately). Later on in interview, he indicated that the image rights in the Player remained vested in TYP, as if they were separate in some way to the economic and federative rights.

5.28 The question as to whether TYP's interest in some, or all, of the economic and other rights in the Player were transferred, or merely suspended, may be relevant in the context of specific Charges and will be returned to in due course. It is difficult for the Commission to make positive findings as the evidence was not tested. The words

"allow to use" in the Comfort Letter, and in the context of the economic and federative rights owned by TYP, suggests a movement, or transfer of them from TYP to the Club. This is consistent with what Mr. Tasco said in interview, but he was not asked to confirm whether that was an accurate statement of his position. Nevertheless, it is probably the best evidence before us. Mr. Mill's submission was that if there was a transfer of TYP's rights to the Club, then the third party owner no longer owned either the legal or beneficial interest in the rights for the duration of the First Playing Contract.

THE CHARGES AGAINST THE CLUB

6. CHARGE 1

6.1 FA Rule C1(b)(iii) provides as follows:

> *"No Club shall enter into a contract which enables any party to that contract to acquire the ability to materially influence the Club's policies or the performance of its teams in Matches and/or Competitions. This Rule shall be applied in conjunction with any regulations governing Third Party Investment in Players as may be adopted by the Association from time to time."*

The fundamental principle that underpins the Rule is that, in a competitive sport, a club should not be placed in a position, because of an agreement it has entered into with a third party, which enables the third party to acquire the ability to influence the way in which the Club operates, or how it performs in matches and competitions. If it were otherwise, the integrity of the sport would be threatened.

6.2 The first paragraph of Charge 1 (as amended) alleges that the Oral Agreement enabled TYP to acquire the ability to materially influence the Club's policies or the performance of its teams in Matches and Competitions. The second paragraph alleges that TYP was so enabled *"from 1st July 2010 onwards"* and then goes on to particularise, in sub-paragraphs (a) to (d), what it is that TYP was allegedly able to do. The date reference in the Charge is clearly based on the inference drawn from the date of 30th June 2010 contained in the Comfort Letter. Further, the implication which the words *"from 1st July 2010 onwards"* gives rise to in this context is that, prior to that date, the Oral Agreement did not enable TYP to acquire the ability to materially influence the Club's policies *etc*, do any of things set out in sub-paragraphs (a) to (d).

6.3 Having regard to the findings of fact that we have made in relation to the Oral Agreement, the factual case upon which Charge 1 is based is materially different to the agreement that we have found was reached. We accept the submission made on behalf of the Club that an essential ingredient of the alleged offence, based on an inference drawn from the date of 30th June 2010 in the Comfort Letter, is that the Oral Agreement only suspended TYP's third party rights for one year. We have rejected The FA's primary case by finding that those rights were at least suspended, if not transferred, for the full three years of the First Playing Contract. It follows that the essential ingredients of the offence upon which Charge 1 is predicated are fundamentally different to those which we have found, as a fact, to exist. Accordingly, the Charge, as framed, cannot be pursued.

6.4 Further, in the judgment of the Commission, it is not open to the FA to maintain a finding of guilt under Charge 1 by alleging that liability is capable of attaching on the

Club's own case. The reference to *"from 1st July 2010 onwards"* in the body of the Charge cannot properly be characterised as being merely part of the particulars of the offence (see *R -v- Hancock* [1996] 2 Cr. App. R. 554; *R v K (Patrick Joseph & Others* [2004] EWCA Crim 2685). It is the date upon which the very influence contemplated by Rule C1(b)(iii), as set out in the Charge, is said to have arisen which renders it an essential ingredient of the offence. If The FA's alternative submission is correct, then the ability to influence would be present throughout the entire three-year period of the First Playing Contract, not just in years two and three. That would also be to advance a wholly different case to the one that is pleaded, and significantly prejudice the Club.

6.5 The Club is entitled to understand fully the nature of the case that it has to meet. That is especially so in circumstances where, as here: (a) the period between charge and trial is so short; (ii) there has been no substantive amendment to the Charge; and (c) the consequences to the Club of a finding of guilt are so serious as to include a possible points' deduction.

6.6 For all of those reasons, Charge 1 must fail.

6.7 The Commission further finds that the Oral Agreement, as a matter of contract, did not enable TYP to acquire the ability to influence in any way during the First Playing Contract. Had the Oral Agreement run its course, TYP would simply have re-acquired its rights at the end of the three-year period, simply by effluxion of time. As a matter of practical and commercial reality, the power to influence the Player and, in turn, the Club, in any of the ways set out in sub-paragraphs (a) to (d) of Charge 1 was lost by TYP during the three-year period of the First Playing Contract. In particular, when the

Club offered the Player a new contract at some point in 2010, which extended his existing Playing Contract beyond three years, the Club was required at that point in time to buy out TYP's third party interest in order to conform with FA Rules and Regulations. The requirement to do so arose as a matter of regulation, rather than as a matter of agreement.

6.8 For the sake of completeness, we also find that at no time prior to the conclusion of the buy-out agreement, did Mr. Tasco/TYP influence, or seek to influence, the Player or, in turn, the Club's performance or policies. We had no difficulty accepting Mr. Tasco's evidence on the point in preference to the suggestion, based on things that were said by Mr. Paldini in interview, to the effect that the Player was being unsettled by unnamed third parties with talk of a lucrative transfer to another Club. Mr. Cominelli and Mr. Simonian also denied the implication that they may have been responsible, and the Player himself said that he was *"100% committed"* in every match. If there was a time when he became unsettled, we consider it more likely than not that it was in response to the controversy that ensued after 4th October 2010 in finalising the Second Playing Contract.

6.9 Finally, the Player's image rights were, as has been shown, a matter of some confusion. There was evidence from Mr. Tasco that they were reserved, although it would seems peculiar if that had been his intention. Mr. Paladini does not appear to have considered image rights, as a discrete issue, at all. The evidence that we did hear was that the Club did not exploit the image rights of its players, and there was no evidence of any influence having been brought to bear on the Player himself by TYP in connection with his image rights. It is also not uncommon for image rights to be owned by someone other than a player himself, although typically it would be a company in which he had

an interest. We have dismissed this Charge on other grounds, and so this rather narrow, although not unimportant, issue is not determinative of the outcome.

7. CHARGE 2

7.1 Regulation A1 of the TPIPR provides:

> *"No Club may enter into an agreement with a Third Party whereby that Club makes or receives a payment to or from, assigns any rights to, or incurs any liability in relation to, that Third Party as a result of, or in connection with, the proposed or actual registration (whether permanent or temporary), transfer or registration or employment by it of a Player, unless:*
>
> *(i) it is permitted under Regulation B below: or*
>
> *(ii) The Association has approved the arrangement in accordance with Regulation A2 below."*

7.1 In broad terms, the underlying purpose of the TPIPR is that a Club should not enter into, and should give disclosure of, any agreement or arrangement that enables a third party to acquire the economic and/or registration rights of a player. By clear implication, the Regulations prohibit clubs from self-regulating such agreements or arrangements without the scrutiny of The FA.

7.2 Save for the specific references to Regulation A1 itself, Charge 2 is framed in a very similar way to Charge 1 in terms of its factual matrix. In particular, the two ways in which the offence is said to have been committed are based on the assertion that the Club incurred a liability or liabilities to TYP as a result of, or in connection with the

proposed and/or actual registration and/or transfer of registration and/or employment of the Player by the Club *"from 1st July 2010 onwards."* All of the points set out at paragraphs 6.1 to 6.5 above apply equally here. This Charge must therefore fail for the same reasons.

7.3. Further, and for the sake of completeness, the Club submitted that, irrespective of the period for which TYP may have agreed to suspend its third party interest in the Player, Charge 2 is incapable of being made out since it is based on a Regulation that did not come into effect until after the Club had entered into the Oral Agreement with TYP. The common law rule of non-retroactivity has given rise to a principle of statutory interpretation which provides that a statute shall be assumed not to have retrospective effect, unless the language of the statute renders that effect unavoidable (see *The Boucraa* [1994] 1 AC 486). That point of principle applies to regulatory and disciplinary rules and proceedings: a person should not be disciplined for conduct that was not in breach of a particular rule or regulation when it was allegedly committed.

7.4. Based on the findings that we have made in this regard, the Oral Agreement was concluded before 4th July 2009, the date when Regulation A1 came into effect. Its wording is clear and unambiguous: it does not have retrospective effect.

7.5 The FA made an alternative submission, namely that the material date for the purposes of Regulation A1 is the date of registration of the First Playing Contract, on the ground that that was a condition precedent for the suspension of TYP's rights under the Oral Agreement to become effective. In other words, 14th July 2009 at the earliest. We also reject that argument. Whilst the suspension of the third party interest

of TYP contemplated by the Comfort Letter did not crystallise until the First Playing Contract was entered into, the wording of the Regulation itself envisages that the agreement which clubs are prohibited from entering into can pre-date a proposed or actual registration. There is also nothing in the Comfort Letter to support the theory that the Agreement should not take effect until the date of registration of the First Playing Contract. In the present case, we have found that the Oral Agreement was entered into before the Regulation took effect on 4th July 2009. On a true construction of Regulation A1, it is the date upon which the agreement is made, not the subsequent registration of the First Playing Contract, which is relevant for the purposes of ascertaining whether the Regulation is engaged. Charge 2 therefore fails on that additional ground.

7.6 Finally, under the terms of the Oral Agreement as found by us, the Commission finds that the Club did not incur the liabilities referred to in either of sub-paragraphs (a) and (b) set out in Charge 2.

8. CHARGE 3

8.1 Charge 3 alleges a breach of Regulation A2 of the TPIPR, which provides:

> *"Before registering a Player for a Club, The Association must be satisfied that there exist no agreements between the Club or the Player and a Third Party under which a Third Party will own or continue to own any registration or economic rights or the like in the Player following registration. Consequently, unless otherwise permitted in accordance with the requirements of Regulation B below, a*

Club must submit to The Association any written contract and the details of any oral contract that proposes to enter into which involves a Third Party:

(a) selling, granting, acquiring or otherwise transacting any rights whatsoever in relation to the registration of the Player, the transfer of registration of the Player, or the employment of the Player; and/or

(b) making or receiving any payment whatsoever, either directly or indirectly, in relation to the registration of the Player, the transfer of registration of the Player or the employment of the Player …"

Regulation A2 is drafted in broader terms than Regulation A1. It refers, amongst other things, to any arrangement under which involves a third party *"selling, granting, acquiring or otherwise transacting"* any rights whatsoever in relation to the registration, transfer or employment of a player. There is no reference, in Regulation A2, to a club incurring *"a liability"* to a third party.

8.2 As before, the date of 4th July 2009 is key. The first sentence of Regulation A2, when read in isolation, would be capable of being engaged here as the Player was not registered until after the Regulation took effect. However, the second sentence contemplates a Club giving notice to The FA of any proposed agreement, whether written or oral, to enable the Association to satisfy itself of any third party involvement that there may be. The word *"consequently"*, although somewhat discursive, appears to link the proposition in the second sentence to the first.

8.3 In the present case, there was no *"proposed agreement"* as at 4th July 2009 for the reason that we have found, namely that the Oral Agreement had already been

concluded by that date. The position, therefore, is that the timing of it gives rise, on the particular facts of this case - which are unlikely to be repeated - of a tension between what the first two sentences of Regulation A1 respectively contemplate. That issue we resolve in favour of the Club, on the ground that it should not be penalised except under clear law (see *Bennion on Statutory Interpretation*, 5th Edn). Accordingly, Charge 3 fails for those reasons.

8.4 Alternatively, if, contrary to the finding we have made, the Regulation had been engaged, in principle, we would have found that the Charge, despite being framed again by reference of the date of 30th June 2010, was capable of being sustained on the ground that if, as is alleged, the granting and/or acquiring and/or transacting of the rights set out in sub-paragraphs (a) to (c) of the Charge took place for the year to 30th June 2010 (as opposed to only arising with effect from 1st July 2010 onwards, as in Charges 1 and 2), then the Charge would not have failed on the ground that we have found that TYP's rights were suspended for three years. The year in which Charge 3 is alleged to have been committed is subsumed within, and can be carved out of, the 3-year period during which TYP's interest was suspended.

8.5 Further, if we had not reached the conclusion that we have on the application of Regulation A2 in terms of the timing of the Oral Agreement, we would have concluded that a transfer of TYP's interest in the Player's economic rights to the Club would have represented both a *"granting"* and an *"acquiring"* of those rights, irrespective of whether they were transferred for one year or three years. A transfer would, by clear implication, have involved a passing or movement of property, or a valuable interest in the Player, from TYP to the Club. As has been shown, the

particular reference in the Comfort Letter itself, with Mr. Tasco's concurrence, appears to envisage that the Player's economic rights would not merely be held in suspension, but would pass to the Club to use as they saw fit.

8.6 Alternatively, if TYP's interest in the economic rights had merely been suspended, then there would have been no *"acquiring"* or *"granting"* of them, although whether there would have been a *"transacting"* of the right is debatable. A *"transaction"* involves the buying or selling of something, according to the Oxford English Dictionary. An agreement not to enforce a right, or interest, whether it arises under a contract or in some other way, is probably not what would most people would regard as 'buying or selling'. Nevertheless, there could, as here, be an exchange based on consideration passing from each party which amounted to a transaction, albeit in a less conventional way than buying or selling something. For example, a limitation amnesty in civil litigation where one party (typically a defendant) agrees not to rely, for a specified period of time, upon a limitation defence which might otherwise be available, while settlement negotiations continue with a view to saving costs.

8.7 Ultimately, though, this interesting debate over the meaning of *"transacting"* is not directly material to the outcome of this Charge as we have found that it should be dismissed on another ground, namely that set out in paragraphs 8.2 and 8.3.

9. CHARGE 4

9.1 Insofar as it relates to Charge 4, FA Rule E3(1), *"General Behaviour"*, provides as follows:

"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 …"

9.2 The FA alleges that by failing to disclose its Oral Agreement with TYP to the FA, both initially and at any time thereafter until September 2010, the Club failed to act in the best interests of the game, in breach of Rule E3. Charge 4 is noteworthy for the fact that it is not brought pursuant to any of the specific TPIPR provisions, although the Charge alleges that the failure to notify was in respect of an agreement which *"was or might be"* contrary to FA Rule C1(b)(iii). Rule E3 is not therefore limited in its wording or scope, and is capable of covering the myriad factual circumstances that are said to constitute misconduct in any given case. It is a *"catch all"* Charge.

9.3 The Club submits that the reason why the letter of 4th July 2009 and/or the fact of the Oral Agreement was not disclosed to The FA until the Club had decided to enter into a new playing contract was that the Oral Agreement did not allow for any third party involvement unless and until such a new playing contract was made. There was therefore no duty to disclose it prior to that potential event occurring, according to the Club.

9.4 Mr. Paladini admits that he did not, either at the time when he received the Comfort Letter from TYP, or at any time subsequently until August 2010, refer the matter to his Secretary, Terry Springett, or to the Club's Solicitor, Chris Farnell, let alone The FA. After hearing evidence from her, the Commission finds that if he had informed Ms. Springett of the arrangement at the outset (*i.e.* prior to the First Playing Contract), or at any time thereafter, it is highly likely that she would have referred the matter to

the Club's Solicitors and/or The FA. By whatever route, both the FL and The FA would have been alerted to the presence of a TPI issue. The Commission also finds it highly likely, if not certain, that the only document that would have been disclosed initially was the Comfort Letter, for the simple reason that that it was the only document, initially, that was disclosed. The evidence correcting and qualifying it only came much later.

9.5 In dealing with the matter himself, Mr. Paladini seems to have proceeded on the assumption that the arrangement that he had entered into with TYP did not infringe Rule C1(b)(iii). He did not give any thought to the possibility that the Rule *"might be"* infringed. The reality of the situation seems to have been that once he got the Comfort Letter he simply filed it, without considering whether it accurately reflected what had been agreed, or at least, discussed, and turned his attention to concluding the First Playing Contract. Mr. Paladini's evidence as to the depth of his understanding of relevant FA Rules and Regulations was inconsistent. We find that he gave no consideration to the detailed requirements of Rule C1(b)(iii) at all, save for his very general concern that he did not want to expose the Club to a *Tevez*-type situation.

9.6 On its face, though, the Comfort Letter was clearly capable of being interpreted in such a way as to give rise to at least the possibility of third party influence within the meaning of Rule C1(b)(iii). The drafting was, as Mr. Mill put it, *"inept"*. The very fact of these proceedings and, in particular, the way in which the first three Charges have been framed with specific reference to the date of 30th June 2010 in the Comfort Letter ought to have led a reasonable person to conclude that the agreement, on the face of the terms of the Letter, *"might be"* in breach of Regulation C1(b)(iii), even if

it was subsequently shown not to be, at least, not as charged under Charge 1, by virtue of extensive witness evidence. In the position of responsibility that he was in, Mr. Paladini is deemed to have been sufficiently knowledgeable of the Rule to have known, as his work colleagues and his Solicitors clearly knew, that the TPI should be brought to the attention of the Regulatory Authorities for their consideration. It was self-evident from his repeated apologies during the hearing that Mr. Paladini regrets not having done so.

9.7 The absence of notification of the third party issue to The FA for approximately fifteen months meant that the Club self-policed the arrangement with TYP for that period and deprived The FA the opportunity to consider the arrangement, decide whether it did, or might, contravene Rule C1(b)(iii), and to take action, if necessary, to regularise matters.

9.8 In arriving at that decision, we did not find that there was any bad faith or dishonest intention on the part of the Club, acting through Mr. Paladini, in failing to notify the Regulatory Authorities of the existence of the agreement with TYP. We accept that Mr. Paladini held a genuine and honest belief that he had not committed the Club to entering into any contract which gave TYP any third party interest during the First Playing Contract. It would have been somewhat contradictory for him to go to the trouble of seeking such reassurance if he knew, or suspected, that it did not provide it. He was clearly mindful of the *Tevez* saga and wished to protect the Club's interests. He did not go far enough. At the time when he did so, as we so find, the TPIPR had not been introduced. But Rule C1(b)(iii) was in force, and had been so for some considerable time.

9.9 Unless bad faith or a dishonest intention is specifically pleaded in the context of a particular charge under Rule E3 - as with the Charge against Mr. Paladini - the Commission finds that there is no requirement for The FA to establish dishonesty, or bad faith, on the part of the Club for the purposes of Charge 4. The Commission has no hesitation in finding that the best interests of the game were not served by the Club's failure to notify the Regulator of material information and/or documentation in connection with one of the key aspects of FA Rules and Regulations. Those interests are best served by clubs enabling the Regulator to regulate, and not to self-police themselves.

9.10 It is not therefore necessary for the Commission to decide whether *"improper"* conduct requires evidence of dishonesty or bad faith to be proved (as the Club submitted), or merely negligence (as The FA contended). Likewise, whether the alleged misconduct that is the subject-matter of this Charge could be said to have brought the game into disrepute. The use of the words *"and/or"* between each one, means that only one of the consequences of misconduct referred to in Rule E3 needs to be proved for the offence to be made out.

9.11 Whether the third party interests of TYP were suspended for three years or one year is immaterial for the purposes of this Charge. It is the failure to notify The FA of an agreement which *"might be"* contrary to Rule C1(b)(iii) which gives rise to liability, even on the Club's own case as to the period for which TYP's interest in the Player's economic rights was suspended.

9.12 The Commission therefore finds that this Charge has been proved.

10. CHARGES 5, 6 AND 7 AGAINST THE CLUB

THE CHARGE AGAINST MR. PALADINI

10.1 Charges 5, 6 and 7 all relate to alleged irregularities in connection with the Club's dealing with Mr. Tirri, as does the single charge against Mr. Paladini.

10.2 Regulation A1 of The FA Football Agents Regulations provides as follows:

> *"A Player or Club must not at any time use the services of, or seek to use the services of, or seek to pay, either directly or indirectly, an Unauthorised Agent in relation to any Agency Activity."*

10.3 For those purposes, *"Agency Activity"* is defined in Appendix 1 to the Regulations as:

> *"…acting in any way and at any time in the capacity of agent, representative or adviser to a Club or Player, either directly or indirectly, in the negotiation, arrangement, registration, or execution or any Transaction or Contract Negotiation other than as a Lawyer who is solely and exclusively undertaking or providing Permitted Legal Advice."*

11. CHARGE 5

11.1 This charge alleges that in the context of the First Playing Contract, the Club used the services of and/or subsequently sought to pay Mr. Tirri who was not authorised to provide *"Agency Activity"* by The FA. Mr. Tirri is said to have acted in the capacity

of an agent, representative, or adviser to the Club and/or Player directly or indirectly in the negotiation and/or arrangement and/or execution of a transaction or contract negotiation, by introducing the Player to the Club in 2009.

11.2 There is no dispute that Mr. Tirri was not registered as an FA Overseas Agent at any time prior to the date of the First Playing Contract (or until 28th September 2010). The FA relied on the unauthorised status of Mr. Tirri when it is said that the relevant agency activity took place, not when the attempt to pay him was made, by which time he had become registered.

11.3 The Club disputed that Mr. Tirri had provided any *"Agency Activity"* within the meaning of the Football Agents Regulations. Because it did not commit to remunerating Mr. Tirri for agency services until the Second Playing Contract was executed in October 2010, by which point in time Mr. Tirri had become registered with The FA. The payment that was subsequently made to him was not in breach of The FA Football Agents Regulations, or so it was argued. Before the Club committed to paying Mr. Tirri and had agreed with him the amount of such payment, there was no agreement whereby Mr. Tirri supplied agency services to the Club and so there was no breach of Regulation A1 of the Regulations. In any event, the Club contended that it took reasonable steps at the material time to ensure that Mr. Tirri was registered with The FA.

11.4 The first and foremost factual question, therefore, is what did Mr. Tirri do in the context of the First Playing Contract?

11.5 Mr. Tirri was not called to give evidence by either Party, apparently, because he was unwilling to do so due to his fee having been withheld by The FA. This meant that the Commission had only the untested transcripts of the answers that he gave to questions asked during interviews that formed part of The FA investigation. Nevertheless, it seems that Mr. Tirri may well have been aware of the Club's desire to sign a midfield player in or around May or June 2009, because he sent to Mr. Paladini DVD footage of the Player. There seems little doubt, therefore, that Mr. Tirri was directly responsible for alerting Mr. Paladini's attention to the existence of the Player. That knowledge was not said to have been acquired from any other source, on the evidence. The direct and operative cause of the introduction of the Player to the Club was Mr. Tirri, we find.

11.6 Mr. Paladini told us that he received a great number of DVD's from football agents showing players in action, the implication being that most of them were not even worth considering. However, what he initially saw of the Player aroused Mr. Paladini's attention sufficiently for him to travel all the way to Argentina to watch the Player play, again in May/June 2009. In cross-examination, Mr. Tasco told the Commission that Mr. Tirri had introduced him to Mr. Paladini and that Mr. Tirri had accompanied Mr. Paladini to Argentina.

11.7 Mr. Tirri was also present on or around 5th July 2009 when the Player, together with Mr. Simonian and Mr. Cominelli, met Mr. Paladini for the first time (in England). Mr. Paladini told the Commission in oral evidence that Mr. Tirri was involved *"… to bring the Player over…"* and that he (Mr. Tirri) was *"influential"*. Mr. Cominelli confirmed that when he first came with the Player to England he met Mr. Tirri who

was *"a person to open doors in QPR for us."* The Player also confirmed Mr. Tirri's presence at that meeting. All of this demonstrates that his involvement in facilitating the First Playing Contract was not limited to drawing the Player to Mr. Paladini's attention.

11.8 In this context, the word *"introduction"* has a particular meaning and significance that goes beyond mere matters of social etiquette, albeit that *"introduction"* does not appear in Regulation A1 itself, or in the definition of *"Agency Activity"*.

11.9 Moreover, strong support for the proposition that Mr. Tirri did undertake Agency Activity in connection with the First Playing Contract is provided in the form of a conditional promise of payment for services provided. Mr. Tirri's contribution was clearly regarded by Mr. Paladini to have been so materially significant in the recruitment of the Player, for them (Paladini/Tirri) to have reached a clear understanding, if not a binding agreement, to the effect that the latter would receive a substantial fee if the Player was later offered an improved contract. Although not precisely articulated, a fee would become payable by the Club to Mr. Tirri if the Player proved himself in the Championship and was considered worthy of an improved and extended deal from the Club.

11.10 There was a conflict in the evidence as to how much Mr. Tirri would receive: either 5% of the value of the Second Playing Contract, or £200,000. Whichever one it was, the Club clearly regarded itself as being under a conditional obligation, contractual or

otherwise, to pay Mr. Tirri a significant sum of money for his contribution in bringing the Player to the Club.

11.11 In the light of all of the evidence, the Commission is satisfied that Mr. Tirri undertook *"Agency Activity"* on behalf of the Club in connection with the *"negotiation"* of the First Playing Contract. In doing so, he provided *"services"* to the Club for the purposes of Regulation A1. The fact that Mr. Tirri did not receive any remuneration at the time he provided the services is immaterial, as is the fact that he was registered with The FA by the time the condition for the payment of the commission crystallised and/or when payment to him was made, or was due to be made. On a true and proper construction of the Regulation, the various activities of an Unauthorised Agent that are prohibited are disjunctive. Accordingly, services that are provided by an Unauthorised Agent for no fee whatsoever would be caught.

11.12. In the circumstances, the Commission finds Charge 5 to be proved.

11.13 By way of mitigation, when he dealt with Mr. Tirri in July 2009, Mr. Paladini said that he was unaware that a FIFA-licensed agent had to be registered with The FA. He did not appreciate that requirement until it was explained to him during the course of these proceedings. For that reason, and also because in July 2009 he had not agreed to pay Mr. Tirri a fee that was immediately payable, he did not notify Ms. Springett about the need to complete the necessary paperwork and check that the Club's dealings with Mr. Tirri were acceptable to the Regulatory Authorities.

11.14 The Commission was told that this explains why, when the Club submitted its documentation for registration in connection with the First Playing Contract, it failed to disclose the involvement of Mr. Tirri, who had provided services to the Club, and who was not, at the material time, Authorised as an overseas agent by The FA.

12. CHARGE 6

12.1 The FA's case, pursuant to Charge 6, is founded upon the proposition that Mr. Tirri did not provide any services in the negotiations that led to the Second Playing Contract. Instead, the fee of £200,000 which he was to be paid according to the Representation Contract was, in reality, the commission to which he was entitled for work done in 2009. In other words, payment for services provided in connection with the First Playing Contract and that agreement alone. Therefore, the four documents, dated 4th October 2010, that were submitted to The FA at or around the time that the Second Playing Contract was entered into, concealed and/or misrepresented the reality and/or substance of the role that Mr. Tirri played in the contract negotiations for the latter Contract, or so it is alleged.

12.2 The case advanced by the Club and Mr. Paladini in connection with this Charge, Charge 7, and the Charge against Mr. Paladini, was that:

(i) Mr. Tirri was involved in a process in April and May 2010 when the essential terms of the Second Playing Contract were agreed in principle, including his remuneration. The documents completed by or under the instruction of Mr. Paladini and submitted by the Club to The FA in relation to this were not misleading or false; and

(ii) To the extent that the documents had the effect of misleading The FA, there was no intention on the part of the Club, or Mr. Paladini, that this should be so.

12.3 Accordingly, the first and foremost question that arises in connection with this Charge (as well as Charge 7 and the Charge against Mr. Paladini) is a factual one, namely whether Mr. Tirri's entitlement to the payment of a commission from the Club arose entirely out of his introduction of the Player to the Club in 2009, and which led to the First Playing Contract between the Player and Club, or whether he undertook any Agency Activity in connection with the Second Playing Contract? To that end, the evidence was contradictory:

(a) On the one hand:

(i) In interview, Mr. Tirri clearly denied having been involved in the Second Playing Contract in 2010. However, he had been assisted by an interpreter at the time and what he said in interview was not capable of being tested at the hearing.

(ii) Again in interview, Mr. Paladini stated that Mr. Tirri *"…wasn't even here when we negotiated [the Second Playing Contract]"* and that the compensation that had been agreed to be paid to him was in respect of the work that he had performed 15 months previously. In his witness statement and in his oral evidence, Mr. Paladini sought to clarify what he said in interview by saying that he meant that Mr. Tirri was out of the country (England), in the sense of not being physically present, when the Second Playing Contract was concluded in

October 2010. He had not intended to say, or infer, that Mr. Tirri had played no part in negotiations on behalf of the Club.

(iii) In cross-examination, Mr. Simonian did not refer to the involvement of Mr. Tirri in connection with the Second Playing Contract (although he was asked generally who he could recall being involved and not to specifically confirm or deny whether Mr. Tirri was involved).

(iv) The representation contract appointing Mr. Tirri to negotiate on behalf of the Club a new playing contract is dated 4th October 2010, the same date as the Second Playing Contract was concluded, and some 4 to 5 months after the e-mails referred to above. However, Ms. Springett told us that it was common practice for an agent's representation contract to be prepared after the work had been done. It was also the experience of the Specialist Panel Member who sat on the Commission.

(b) On the other hand:

(i) Both Mr. Cominelli and Mr. Paladini gave oral evidence to the effect that Mr. Tirri did take part in the negotiations that culminated in the Second Playing Contract. Apart from a response that he gave to a particular question, we could see no reason to doubt what Mr. Cominelli told us about Mr. Tirri's participation in the negotiations and his evidence in this regard provides corroboration for what Mr. Paladini said during the hearing.

(c) Evidence that is ambiguous:

(i) On 12th May 2010, two e-mails were sent to Mr. Tirri by the Club, setting out draft terms of the proposed Second Playing Contract. This suggests that Mr. Tirri may have been involved in the renegotiation process, although the proposed revised terms set out in the e-mails were the same as the final terms of the Second Playing Contract itself, dated 4th October 2010. It seems that a deal may had been concluded, in principle, by as early as May 2010.

(ii) At the same time, the possibility exists that the e-mails may have been sent to either keep Mr. Tirri informed of developments and/or to enable him to calculate the commission to which he was entitled for the services that he had provided in 2009. Ms. Springett said that she was asked by Mr. Paladini to send the details of the proposed contract to Mr. Tirri, but that she never received a response. The e-mails in question were not referred to during the investigative process, or in any of the Participants' witness statements, although there was no suggestion that they were anything other than genuine.

12.5 The Commission found this factual issue to be finely-balanced in terms of the competing evidence. What cannot be gainsaid is that Mr. Tirri clearly had a strong vested financial interest in the Second Playing Contract being concluded. It would not be at all surprising, therefore, if he had been acting as some kind of intermediary between the Club and the Player's 'team', despite Mr. Simonian's suggestion to the contrary, and what Mr. Tirri said in interview. Mr. Cominelli was in little doubt that Mr. Tirri did play an active role. Since agency services can be provided for the purposes of Regulation A1 without the need to also show that the agent received remuneration, it is conceivable that Mr. Tirri did provide such services to the Club for

no additional commission over and above the fee that had been agreed for his role in bringing the Player to the Club in 2009. Who would not do some additional work for nothing if the reward was a fee of £200,000?

12.6 The execution of the Second Playing Contract crystallised Mr. Tirri's entitlement to a commission for his initial introduction of the Player to the Club and any other services that he may have provided in 2009 that led to the First Playing Contract. If a conditional fee of £200,000 had previously been agreed between the Club and Mr. Tirri for the initial introduction that he had effected in 2009, then the reference to an identical sum in the Club/Agent Representation Contract, dated 4th October 2010, gives the clear impression that Mr. Tirri had received a payment of £200,000 for work done exclusively in connection with the Second Playing Contract, when it in fact related to work done entirely in connection with the First Playing Contract. That is, in essence, The FA's case.

12.7 Ultimately, the Commission felt that there was sufficient evidence upon which we could properly find that Mr. Tirri did provide some further services to the Club during the negotiations that led to the Second Playing Contract. It is not necessary for us to find that he received any additional payment for such services, over and above the conditional fee that had previously been agreed that he would receive, in principle, in or around July 2009, whether the agreement was for £200,000, or 5% of the value of the Second Playing Contract.

12.8 After weighing all of the competing evidence relating to this factual issue, and not without some hesitation, the Commission was not satisfied, on a balance of

probabilities, that the FA had established that Mr. Tirri did not provide some qualifying agency activity on behalf of the Club in the negotiations leading to the Second Playing Contract. In the discharge of our duty as a tribunal to make a positive finding, we find, on balance, that he did undertake such Agency Activity.

12.9 It follows from the primary finding of fact that we have made in this context that the narrow ground upon which all, or any, of the four documents referred to in Charge 6 were capable of giving rise to a false or misleading impression is that the services that we find Mr. Tirri did undertake in connection with the Second Playing Contract pre-dated 4th October 2010. In particular, as the Representation Contract between Mr. Tirri and the Club bore the same date as the Second Playing Contract itself, it follows that the work that Mr. Tirri did in connection with the negotiations was done before the Representation Contract was entered into. Apparently, this is common practice for the reason that to enter into such arrangements with every single agent at the outset of an attempted player-deal would be administratively burdensome for clubs. What seems tolerably clear is that the Club completed all of the necessary paperwork at the same time. Nevertheless, it is clearly of some significance for The FA to ascertain when an agent provided services and/or received payment to ascertain whether the agent in question was Authorised, at the material time, for regulatory compliance purposes.

12.10 Subject to what follows, the Commission asked itself the question: based on our primary factual finding, should we find this Charge against the Club proved on the narrow ground referred to in the preceding paragraph? In answering that question, the other documents referred to are informative. In particular, the Second Playing

Contract is said to have falsely stated that the Club had used the services of Mr. Tirri in relation to that Contract. In other words, that he had not provided any such service at any time prior to 4th October 2010. Secondly, it is self-evident that an agreement which purports to appoint an agent to renegotiate a player's contract, but which is dated the very same day as the new contract itself, is not intended to mislead. It would have been obvious to anyone considering the documents that if Mr. Tirri had done any work, it must have been done before the Representation Agreement was entered into between him and the Club. The real thrust of The FA's case on this particular charge, Charge 7, and the Charge against Mr. Paladini, is that Mr. Tirri did nothing in connection with the Second Playing Contract, at any time, and that the documentation which the Club submitted falsely gave the impression that he did.

12.11 In those circumstances, and having regard to the primary finding of fact that we made on this issue, the Commission declined to find that this Charge had been proved on the narrow ground referred to above. If we are wrong about that, then we would have regarded it as a minor, technical breach and reflected it accordingly in any sanction that we may have imposed.

12.12 By way of fallback position, Mr Newton, for the FA, stated that the services which the Club - and, it must follow, Mr. Paladini - claimed that Mr. Pirri did perform would have placed the Club in further breach of the Agents' Regulations on the grounds that:

(i) In breach of Regulation A1, Mr. Tirri was still not registered as an Authorised Agent with the FA at a time when, on the Participants' case, he provided services in connection with the renegotiated contract; and

(ii) In breach of Regulation B2, Mr. Tirri had not entered into a representation contract with the Club to undertake Agency Activity on its behalf by April/May 2010.

12.13 This further case can be answered shortly. Although it seems most unlikely that Mr. Tirri was registered with The FA as an Authorised Overseas Agent at any time when he may have undertaken Agency Activity on behalf of the Club in connection with the Second Playing Contract, neither of the further alleged breaches of Agents' Regulations contemplated by Mr. Newton is the subject of a charge.

12.14 Further, in relation to Charge 6, it is specifically alleged that the Club:

> *"… in the context of [the Second Playing Contract]…* ***arranged matters so as to conceal or misrepresent*** *the reality and/or substance of the role undertaken by Peppino Tirri in a Contract Negotiation and/or Transaction …"*

12.15 The word *"so"* appears in a slightly different position in Regulation C2 itself, but it probably makes little, if any, material difference to the sense conveyed. Giving them their ordinary, normal meaning, and placing them in their particular context, the words *"arrange matters … so as to conceal"* in Charge 6 are capable of being read in a way that implies a deliberate course of conduct on the part of the Club with a view to concealing or misrepresenting Mr. Tirri's true role in the Second Playing Contract. The words *"arrange matters"* imply placing things in a particular order and when

immediately followed by *"so as to"*, a meaning, which the latter words are capable of assuming, is that of *"in order to"*.

12.16 A more neutral interpretation of the wording of the Regulation C1 and, hence, Charge 6, is also possible, albeit with the same outcome in terms of the consequences of what is alleged to have been done. A misrepresentation may be made innocently or negligently, as well as fraudulently. There may also be a concealment of something by someone without any intention to mislead another. The words *"so as to"* may then be read and understood in such a way as to convey the sense of *"with the effect of"*, or *"with the result that."*

12.17 However, since Regulation C1, and the allegation upon which Charge 6 is based, is/are capable of two interpretations, the Commission finds that the task of the prosecutor is to establish the more serious one.

12.18 If proof of dishonesty is what Charge 6 requires, then, having regard to our primary factual finding, the Commission has no hesitation in finding that that neither the Club, nor Mr. Paladini, intentionally concealed or misrepresented the true substance of Mr. Tirri's role in the Second Playing Contract. Indeed, a conclusion to the contrary would be perverse following the findings made by us.

12.19 Furthermore, even if we had preferred the factual case advanced by The FA in support of Charges 6 and 7, and the Charge against Mr. Paladini, we would not have found any dishonest intention on the part of either the Club, or Mr. Paladini, in relation to the four documents that were prepared and submitted to The FA on 4th October 2010.

In addition to the points that have already been referred to, the following are also of relevance:

(i) By 4th October 2010, and having voluntarily disclosed the TPI issue some two months earlier with a view to regularising matters, both the FL and The FA were clearly showing a keen interest in the Club's affairs. For Mr. Paladini, or anyone else at the Club, to have then submitted documents to the FA, knowing that they contained false statements as to Mr. Tirri's involvement in connection with the Second Playing Contract, is not a credible proposition, in our view;

(ii) A more plausible, realistic and benign, explanation on The FA's factual case would have been that the Second Playing Contract was the 'triggering event' that entitled Mr. Tirri to his commission. In other words, that the documentation submitted by the Club on or around 4th October 2010 was forensically inaccurate for giving the impression that it related entirely to the Second Playing Contract, but was not intentionally misleading.

(iii) In addition, the documentation of 4th October 2010 gave notice to The FA of the fact that a fee was due and owing to Mr. Tirri, even if his entitlement to it had arisen exclusively out of a different playing contract than the one specified in the documents. In other words, the Club did not seek to suppress its liability to pay commission to Mr. Tirri altogether, even on The FA's primary factual case, which we have rejected.

12.20 For all of those reasons, the Commission finds that Charge 6 has not been proved, irrespective of whether proof of intention to conceal or misrepresent the reality and true substance of Mr. Tirri's involvement in the Second Playing Contact is required or not.

13. CHARGE 7

13.1 This Amended Charge is brought under the general misconduct provisions of FA Rule E3 and is in the further or alternative to Amended Charge 6. The documents referred to in Amended Charge 7 are identical to those set out under Amended Charge 6. Amended Charge 7 alleges that the Club failed to act in the best interests of the game and/or acted in a manner which was improper and/or brought the game into disrepute when it submitted to The FA The four documents in question. As with the E3 misconduct charge brought under Charge 4, the Commission finds that no evidence of dishonest intention is required in order to prove that particular conduct was not in the best interests of the game.

13.2 The key factual findings that we made for the purposes of deciding Charge 6 apply equally to Charge 7. It follows that, save for the narrow way in which a breach could theoretically arise in connection with the information contained in the Representation Contract, in particular, we are satisfied that Mr. Tirri did undertake some agency activity in connection with the Second Playing Contract. Accordingly, the factual basis for the FA's case that underpins this charge, and the previous one, as well as the Charge against Mr. Paladini, falls away.

13.3 The Commission therefore dismisses Charge 7 against the Club.

14. THE CHARGE AGAINST MR. PALADINI

14.1 The single Charge against Mr. Paladini is brought pursuant to FA Rule E3. It is couched in very similar terms to Charge 6 against the Club, except for one highly material difference, namely an allegation that the four documents submitted to The FA in connection with the Second Playing Contract contained statements that he knew to be untrue. No issue of construction or interpretation of the relevant Regulation arises here. The FA accepted that it had to prove dishonesty on the part of Mr. Paladini for the Charge against him to succeed.

14.2 For the reasons that have already been given in connection with Charges 6 and 7 against the Club, the Commission had no hesitation in dismissing the Charge against Mr. Paladini.

15. SANCTIONS

15.1 Having found Charge 4 to be proved, the Commission invited the Parties to make submissions as to whether, as a result of the Club's failure to notify the FA of the Oral Agreement, a sporting advantage could be reasonably be considered to have occurred.

15.2 The Commission finds that such an advantage did arise in the present case. The evidence that we heard from The FA (per Mr. Newton and Mr. Noakes) was that if the presence of the Oral Agreement had been brought to its attention before the registration of the First Playing Contract, it would have required the Club to remove the TPI issue. At that point in time, Mr. Paladini's evidence was clear; he was not prepared to pay a significant amount of money for a young player who was untried

and untested. Instead, his search for a midfield player would have continued with a view to acquiring one who was sufficiently established to justify a transfer fee, or a loan player. Whether an equivalent player could have been found, how long it would have taken to find him, and how much it would have cost are all matters of pure conjecture.

15.3 The failure to notify The FA meant that the Club was able to acquire the Player, for no immediate financial outlay, in circumstances where another team, in an identical position to the Club would not have been able to do so if they had notified The FA of the TPI issue. There was no evidence before us that any other team was, in fact, disadvantaged in that way, but the Commission finds that a sporting advantage did accrue to Club in being able to sign and field a Player whose initial registration is likely to have been refused, or at least delayed, until such times as the FL and/or The FA (and particularly the latter) either satisfied themselves that the arrangement between the Club and TYP did not contravene any TPI, or other, Rules and Regulations, or until the TPI issue was removed by a buy-out.

15.4 The Commission further found that the ongoing failure to notify meant that the Sporting Advantage continued throughout the 2009/10 FL Championship season when the Club finished in 13th position.

15.5 Acting on behalf of the Club, Mr. Farnell first notified the FL of the TPI issue on 13th August 2010. The FA first became aware on or around 16th September 2010. By then, Mr. Farnell had prepared a draft buy-out agreement. The Commission finds that it ought reasonably to have taken approximately 7/8 weeks to resolve the TPI issue, one

way or the other, either by acceptance of the Club's case, or, we find more likely, by ordering a buy-out of the TPI (as per Mr. Newton and Mr. Noakes). In other words, by approximately mid-November 2010, counting from the date when the TPI issue was first brought to the attention of The FA. The delay until 27th January 2011, when The FA approved the buy-out was, in our view, unreasonably long and unnecessary. Having brought the matter to the attention of the Authorities by August/September 2010, the matter ought reasonably to have been resolved within the above timeframe. The Commission therefore considers that the sporting advantage should be deemed to have continued until approximately mid-November 2010, a period of some 15 months.

15.6 In the light of those preliminary findings, the Commission then went on to determine whether a points' deduction was one of the range of sanctions that we may consider in the present case. The Commission was unanimous in its decision that a points' deduction would not be an appropriate sanction having regard to all of the circumstances of this case. Our reasons for arriving at that decision are as follows:

(i) The stated policy of The FA, following consultation with the FL and Premier League, is that although a points' deduction may be a relevant consideration where a sporting advantage can reasonably be considered to have occurred, it remains preferable for sporting outcomes to be decided on the field of play wherever possible.

(ii) The hitherto unblemished disciplinary record of the Club in relation to Regulatory matters.

(iii) We have found there to be no evidence of bad faith, or dishonesty, on the part of the Club or any of its officials, in particular Mr. Paladini, in any of its dealings in relation to TPI. We find, instead, that he was negligent (in contrast to the findings that were made in this regard in *FAPL -v- West Ham United FC*, unreported 27th April 2007). Further, during his evidence, Mr. Paladini repeatedly apologised for any mistake that he may have made.

(iv) The FA's investigation that led to the Charges being brought was instigated by the Club's voluntary disclosure of the TPI and its wish to regularise matters. It is speculative whether the matter would otherwise have come to light.

(v) The Club and its officials co-operated fully throughout the FA investigation. This was arguably no more and no less than what was required of them anyway, but it is noteworthy that third parties, most notably Mr. Tasco and Mr. Tirri, freely made themselves available for interview, and were clearly prepared to co-operate further if required.

(vi) The Commission has found the Club guilty of a general misconduct charge relating to third party investment. We have dismissed the three Charges that relate to specific provisions of the TPIPR, including, as charged, Charge 1 which directly alleges a breach of Rule C1(b)(iii).

(vii) The absence of any influence, actual or attempted, over the Player by TYP/Tasco at any time before the TPI was bought out. The Club's policies and

performances were unaffected by the presence of the third party in the background, we find.

(viii) The sporting advantage that we have found to have been gained related predominantly to the 2009/10 playing season, at the conclusion of which the Club finished in mid-table obscurity, 11 points clear of the last-placed side to be relegated to League 1. It seems highly unlikely, therefore, that the sporting advantage materially affected the outcome of that season. Indeed, based on the evidence of Mr. Pleat, such a conclusion is impossible to reach (as to which see below).

(ix) To the extent that we have found that the sporting advantage continued into the current playing season of 2010/11, its effect was limited by:

(a) The period of time for which we have found that it continued, or should be deemed to have continued (some 3 months' into the season); and

(b) The fact that the Player missed five league matches between 18th September and 16th October 2010 due to injury. In those five matches, the Club won three and drew two, further limiting any contribution that he may have made to the Club during this period and, hence, any impact on its performance/results; and

(c) The fact that the Player's registration was neither revoked, nor suspended, by the FL, or The FA, at any time after the Club first notified the Regulatory Authorities of the existence of the third party issue.

(x) The Commission received evidence from the respected former manager, David Pleat, whose witness statement addressed the question whether, and if so, to what extent, how the absence of the Player throughout the 2009/10 season might have affected the Club's position at the end of the season. Mr. Pleat was also asked to perform a similar analysis for the first part of the 2010/11 season, up to the point when disclosure of the TPI took place, and then up to the point when the Club bought out the interest of the Third Party in the Player. In short, Mr. Pleat's conclusion is that the Player, as an individual, has not been able to change the outcome of a game. Without him, the team would have been less effective, but the same can be said of any player who makes a contribution. According to Mr. Pleat, it is only in exceptional cases, and usually a goal-scoring forward such as Lionel Messi, Christiano Ronaldo (two names he cites from the modern game) that an individual player can be said to have had a major effect on a team. It would be crude and inaccurate to look solely at the contribution of one player (whether through assessing goals scored, assists or otherwise) in the context of the Player because he cannot be likened to one of the great players of world football. Mr. Pleat therefore concludes that it is not possible to state how the absence of the Player would have affected the Club's final position at the end of the 2009/10 season, or to provide any such analysis for all or part of the 2010/11 season.

(xi) The Commission accepts Mr. Pleat's uncontradicted evidence. Where a direct correlation between a player's contribution and his team's results is capable of being identified, it may be possible to conclude that he has made a difference in terms of the number of points attained. But even then, how can such a link be

firmly established when, in any particular match in which the player in question scored an apparently decisive goal, his team's goalkeeper made one, or more, vital saves, or a defender made a last-ditch tackle to save an almost certain goal?

(xii) On Mr. Pleat's analysis, a direct correlation between a particular player's contribution to a team and the points attained by it is restricted to those cases involving exceptional, world-class strikers. The contribution of a midfield player, still less a defender, could never be translated into league points, or cup wins, that would not otherwise have been secured. As Mr. Pleat says, and we accept, such an analysis is not possible. It follows that if that was the only test, a sporting advantage could never be reflected in a points' deduction when one is dealing with a midfield player of defender, even one of world-class ability.

(xiii) In our judgment, the answer, in any case other than the exceptional one contemplated by Mr. Pleat, is for a disciplinary tribunal to step back and to ask itself the question: having regard to all of the relevant circumstances, was the offence that has been found to have been committed so serious that it can only properly be reflected by a points' deduction? Such a test is consistent with a points' deduction being the sanction of last resort. For all of the reasons set out above, the Commission had no hesitation in answering 'no' to that question on the facts of the present case. Instead, we conclude that the offence could and should properly be reflected by a substantial financial penalty.

(xiv) Even if we had concluded that a points deduction should be considered, in principle, it would have been unfair and disproportionate to have imposed a

points' deduction in the current playing season, taking into account all of the relevant facts.

16. MITIGATION GENERALLY

16.1 All of the points referred to in the preceding section were reiterated and urged upon us by way of mitigation as to financial, or other, penalty.

16.2 Mr. Paladini, who was clearly mindful of the issue of third party investment by the very existence of the subject-matter of the Oral Agreement and insistence upon the 'Comfort Letter', did not consider it necessary to consult with The FA and seek its approval for the course he was taking. He did not consult with the Club's Solicitors. He did not refer the matter to Ms. Springett. Instead, he took it upon himself to undertake what was a lawyer's task of negotiating a suspension of a third party's interest in the economic rights over a Player he was proposing to sign on behalf of the Club. Having taken the initial step of insisting upon the protection which he thought the Comfort Letter would provide, he then failed to take the essential further precautionary step of having the arrangement considered and approved by the Club's lawyers and the FA. In the light of the *Tevez* saga, the course that he took was inadvisable and fraught with risks. With hindsight, Mr. Paladini clearly appreciated that that was the case.

17. CHARGE 4

17.1 The Commission considered that a significant financial penalty should be imposed, in principle, for this offence. On the facts, we considered that a proper basis for assessing the level of the fine would be the likely increase in the market value of the

Player over the course of approximately 15 months, the period for which we have found that a sporting advantage was obtained by the failure of the Club to notify The FA of the presence of the TPI. We undertook this assessment summarily, drawing on our collective experience and, in particular, that of the Specialist Panel Member. Having regard to the history of the matter, and the media attention that it has attracted, finality to the proceedings was highly desirable. If the Commission had adjourned the question of sanctions for consideration of comparables it would only have served to increase costs.

17.2 Ultimately, the Commission concluded that if the Club had had to go into the open transfer market in or around July 2009, in order to acquire a midfield player with similar playing credentials to the Player, but who was similarly untried and untested in the Championship, a fee in the region of £200,000 would have been required. After just over a season, and having proved himself at Championship level - so much so, that he was named the Club's player of the year - and adjusted to life in England, the Commission considered that his likely market value would have increased to approximately £1,000,000. On that basis, the added value in the Player, or accrued benefit, was £800,000.

17.3 There is a respectable argument for saying that the actual benefit to the Club was simply £1,000,000, on our analysis, for the reason that the Club paid nothing for the Player when they acquired him. However, in making the calculation, we cannot ignore the fact that the Club did eventually pay the equivalent of £615,000 in order to buy-out the third party interest. Further, since we have undertaken a summary assessment, we have endeavoured to err on the side of caution. These are not matters

of precise arithmetical science, but a way of arriving at an appropriate, proportionate, and fair penalty.

17.4 Player values are something upon which opinions can reasonably differ. The parameters that we have adopted for the purpose of assessing the accrued benefit may therefore be debated. Ultimately, though, we judge that the net increase in the market value of the Player over the 15-month period in question that we have arrived at is likely to be within the range of reasonable opinion. The task that the Commission set itself was to arrive at a reasoned basis for assessing the appropriate level of financial penalty, albeit on a summary assessment. That course is clearly preferable than simply plucking a figure out of the air. At the same time, to have imposed a fine of, say, £3.5 million for no other reason than that was the figure placed on the value of the *"deal"* which brought the Player to the Club, and which was false, would be arbitrary, capricious and grossly punitive.

17.5 Accordingly, for this offence, the Commission imposes a fine of £800,000.

18. CHARGE 5

18.1 Mr. Tirri's subsequent registration with The FA as an Authorised Overseas Agent appears to have proceeded in a straightforward and timely manner. It suggests that if Mr. Paladini, on behalf of the Club, had been aware of the requirements of the FA Agents Regulation A1 in July 2009, then Mr Tirri's registration would probably have been procured quickly and without difficulty, as subsequently proved to be the case. It seems reasonable to assume that his FIFA accreditation added weight and credibility to his application to become registered with the FA when it was eventually made.

18.2 However, although Mr. Tirri was FIFA-registered during the period of time leading up to the First Playing Contract, the absence of FA accreditation meant that he was not subject to its Rules and Regulations governing agency activity. Mr. Mill, on behalf of the Club, apologised unreservedly for this breach. In deciding what the level of fine should be, we drew assistance from a previous decision of a Regulatory Commission, which found the agent's fee to be informative of the level of fine. In that case, a fine of £25,000 was imposed in the context of an agent's fee of £100,000. In other words the fine represented 25% of the fee. The club in question had a previous unblemished record and had admitted the charge It is reasonable to assume that a discount was given for the guilty plea.

18.3 In the present case, we were told that the Club also had a previously unblemished record with regard to regulatory matters. Making appropriate adjustments to reflect the fee of £200,000 and the absence of a guilty plea, the Commission imposes a fine of £75,000 for this offence.

19. SUMMARY

19.1 Therefore, the fines imposed against the Club total £875,000.

19.2 In addition to the financial penalties referred to above, the Commission warned the Club as to its future conduct with particular reference to regulatory compliance.

20. COSTS

20.1 In accordance with Regulation 8.8 of the FA's Disciplinary Procedures, each Party shall bear its own costs of the proceedings. After hearing submissions from both Parties, and having regard to the history of the proceedings, the Commission makes an order that the Club should make a contribution of 50% towards the costs of the Commission.

21. APPLICATION BY THE PARTICIPANTS

21.1 On the first day of the hearing, an application was made by the Participants for the two FA Council Members to recuse themselves from sitting on the Commission. The facts and matters upon which the application was based, together with the reasons for its refusal, are set out in the ruling attached at Appendix 2.

22. Finally, the Commission wishes to thank Counsel and their Instructing Solicitors for all their assistance and efficiency during the course of the proceedings, which enabled them to be concluded when they were.

20th May 2011

Craig Moore, Barrister, Independent Chairman of the Regulatory Commission

Peter Hough, FA Council Member.

Brian Jones, FA Council Member

Colin Murdock, FA Specialist Panel Member

IN THE MATTER OF A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

Applicant

- and -

(1) QUEENS PARK RANGERS FOOTBALL CLUB
(2) GIANNI PALADINI

Participants

APPENDIX 1

Appendix 1 – as amended 25.3.2011

1. Breach of FA Rule C 1 (b) (iii)

In breach of Rule C 1 (b) (iii) of the FA Rules, Queen's Park Rangers ('the Club') on or about 4 July 2009 entered into an oral contract ('the Club/TYP Agreement') with TYP Sports Agency LLC ('TYP') regarding Alejandro Faurlin ('the Player'), evidenced in part by a letter dated 4 July 2009 from Franco Tasco of TYP to Gianni Paladini of the Club, which enabled TYP to acquire the ability materially to influence the Club's policies or the performance of its teams in Matches and / or Competitions.

It so enabled TYP in that, notwithstanding that the Player was registered with The Football Association to play for the Club from 14 July 2009, and notwithstanding the existence of a playing contract dated 14 July 2009 between the Player and the Club lasting for the three years to 30 June 2012 ('the 2009 Playing Contract'), from 1 July 2010 onwards:

(a) TYP could require the Club to release the Player and/or to transfer the Player's registration to another club, if the Club did not buy out all TYP's rights ('TYP's Third Party Interests') under a written contract between TYP and the Player dated 15 August 2007 ('the Player/TYP Agreement') and/or if the Club did not re-negotiate the 2009 Playing Contract; and / or

(b) The Club could not execute a new Playing Contract with the Player unless agreement were reached to buy out TYP's Third Party Interests; and / or

(c) The Club could not transfer the Player's registration to another club unless agreement were reached to buy out TYP's Third Party Interests; and / or

(d) Pending the Club reaching agreement to buy out TYP's Third Party Interests and/or re-negotiating the 2009 Playing Contract, the Club could not effectively require the Player to play and was at risk of the Player making himself unavailable for selection to play for, or leaving, the Club.

2. Breach of Regulation A1 of the FA Third Party Investment in Players Regulations

In breach of Regulation A1 of the FA Third Party Investment in Players Regulations, Queen's Park Rangers ('the Club') on or about 4 July 2009 entered into an oral agreement ('the Club/TYP Agreement') with TYP Sports Agency LLC ('TYP') regarding Alejandro Faurlin ('the Player'), evidenced in part by a letter dated 4 July 2009 from Franco Tasco of TYP to Gianni Paladini of the Club, whereby the Club incurred a liability or liabilities to TYP as a result of or in connection with the proposed and/or actual registration, and / or transfer of registration and/or employment of the Player by the Club.

The liability or liabilities were such that, notwithstanding that the Player was registered with The Football Association to play for the Club from 14 July 2009, and notwithstanding the existence of a playing contract dated 14 July 2009 between the Player and the Club lasting for the three years to 30 June 2012 ('the 2009 Playing Contract'), from 1 July 2010 onwards:

(a) If the Club wished to retain the Player the Club was liable to TYP to buy out all TYP's rights ('TYP's Third Party Interests') under a written contract between TYP and the Player dated 15 August 2007 ('the Player/TYP Agreement') and/or to re-negotiate the 2009 Playing Contract; and / or

(b) If the Club were not prepared to buy out TYP's Third Party Interests and/or to re-negotiate the 2009 Playing Contract, the Club was liable to TYP to release the Player and/or to transfer the Player's registration to another club.

All in circumstances where the Club/TYP Agreement was not permitted under Regulation B, and it had not been approved by The Football Association in accordance with Regulation A2, of the FA Third Party Investment in Players Regulations.

3. Breach of Regulation A2 of the FA Third Party Investment in Players Regulations

In breach of Regulation A2 of the FA Third Party Investment in Players Regulations, Queen's Park Rangers ('the Club') when registering the Player in July 2009 failed to submit to The Football Association details in writing of an oral contract or agreement ('the Club/TYP Agreement') that it proposed to enter into with TYP Sports Agency ('TYP') regarding Alejandro Faurlin ('the Player'), which involved TYP, in relation to the registration and/or the transfer of registration and/or the employment of the player by the Club:

(a) Granting and/or transacting the right to the Club for one year until 30 June 2010, to use, or to benefit from the suspension of, all TYP's rights ('TYP's Third Party Interests') under a written contract between TYP and the Player dated 15 August 2007 ('the Player/TYP Agreement'); and /or

(b) Acquiring and/or transacting the right from the Club, upon the expiry of the one year on 30 June 2010, to require the Club to release the Player and/or to transfer the Player's registration to another club, if the Club did not buy out TYP's Third Party Interests and/or if the Club did not re-negotiate the playing contract dated 14 July between the Player and the Club lasting for the three years to 30 June 2012 ('the 2009 Playing Contract"); and / or

(c) Being entitled to receive, and in due course receiving a payment, the amount of which at the time of the Club/TYP Agreement remained to be agreed, for the buy out of TYP's Third Party Interests.

4. Breach of FA Rule E3

In breach of Rule E3 of the FA Rules, Queen's Park Rangers ('the Club') failed to act in the best interests of the game and/or acted in a manner which was improper and/or brought the game into disrepute in that:

(a) The Club failed when registering Alejandro Faurlin ('the Player') in July 2009, to notify The Football Association of its oral agreement ('the Club/TYP Agreement') made on or around 4 July 2009 with TYP Sports Agency ('TYP') in respect of ~~Alejandro Faurlin ('the Player')~~, evidenced in part by a letter dated 4 July 2009 from Franco Tasco of TYP to Gianni Paladini of the Club, when such agreement was or might be contrary to FA Rule C1(b)(iii): and/or

(b) The Club continued to fail to notify The Football Association of such Club/TYP Agreement until in or around September 2010, notwithstanding the Player's participation in the 2009/10 and 2010/11 playing seasons.

5. Breach by the Club of FA Football Agents Regulation A1

In breach of Regulation A1 of the FA Football Agents Regulations, Queen's Park Rangers ('the Club'), in the context of a Playing Contract it entered into with Alejandro Faurlin ('the Player') dated 14 July 2009, used the services of and/or subsequently sought to pay an Unauthorised Agent, Peppino Tirri in relation to Agency Activity, in that Mr Tirri acted in the capacity of an agent, representative or adviser to the Club and/or Player directly or indirectly in the negotiation and / or arrangement and / or execution of a Transaction or Contract Negotiation, by introducing the Player to the Club in summer 2009.

6. Breach by the Club of FA Football Agents Regulation C2

In breach of Regulation C2 of the FA Football Agents Regulations, Queen's Park Rangers ('the Club'), in the context of a playing contract it entered into with Alejandro Faurlin ('the Player') dated 4 October 2010 ('the 2010 Playing Contract'), arranged matters so as to conceal or misrepresent the reality and/ or substance of the role undertaken by Peppino Tirri in a Contract Negotiation and / or Transaction, in that the Club submitted to The Football Association the following documents:

(a) A representation contract dated 4 October 2010 under which the Club purported to appoint Peppino Tirri "To negotiate on behalf of the Club an extension to the existing contract of Alejandro Damian Faurlin ("the Player")" when Mr Tirri performed no such service for the Club; and / or

(b) The 2010 Playing Contract, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to that 2010 Playing Contract; and/or

(c) An Agent Declaration Form AG1 dated 4 October 2010, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to the "Extended Registration" of the Player; and / or

(d) A registration Form G(2) dated 4 October 2010, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to the registration of the Player.

Further or in the alternative to Charge 6 above –

7. Breach by the Club of FA Rule E3

In breach of FA Rule E3, Queen's Park Rangers ('the Club') in the context of a playing contract it entered into with Alejandro Faurlin ('the Player') dated 4 October 2010 ('the 2010 Playing Contract'), failed to act in the best interests of the game and/or acted in a manner which was improper and/or brought the game into disrepute in that the Club submitted to The Football Association the following documents –

(a) A representation contract dated 4 October 2010 under which the Club purported to appoint Peppino Tirri "To negotiate on behalf of the Club an extension to the existing contract of Alejandro Damian Faurlin ("the Player")" when Mr Tirri performed no such service for the Club; and / or

(b) The 2010 Playing Contract, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to that 2010 Playing Contract; and / or

(c) An Agent Declaration Form AG1 dated 4 October 2010, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to the "Extended Registration" of the Player; and / or

(d) A registration Form G(2) dated 4 October 2010, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to the registration of the Player.

Mr Gianni Paladini

Mr Gianni Paladini was charged with misconduct for four breaches of FA Rule E3 in respect of documents submitted to the Association relating to the Player Alejandro Faurlin in October 2010.

It is alleged that, in breach of FA Rule E3, Gianni Paladini, in the context of a playing contract that Queen's Park Rangers ('the Club') entered into with Alejandro Faurlin ('the Player') dated 4 October 2010 ('the 2010 Playing Contract'), failed to act in the best interests of the game and/or acted in a manner which was improper and/or brought the game into disrepute, in that Gianni Paladini signed for submission to The Football Association, the following documents –

(a) A representation contract dated 4 October 2010 under which the Club purported to appoint Peppino Tirri "To negotiate on behalf of the Club an extension to the existing contract of Alejandro Damian Faurlin ("the Player")" when Mr Tirri performed no such service for the Club, knowing that this was untrue; and / or

(b) The 2010 Playing Contract, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to that contract, knowing that this was untrue; and / or

(c) An Agent Declaration Form AG1 dated 4 October 2010, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to the "Extended Registration" of the Player, knowing that this was untrue; and / or

(d) A registration Form G(2) dated 4 October 2010, in which it was falsely stated that the Club had used the services of an agent, Peppino Tirri, in relation to the registration of the Player, knowing that this was untrue.

IN THE MATTER OF A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

Applicant

- and -

(1) QUEENS PARK RANGERS FOOTBALL CLUB
(2) GIANNI PALADINI

Participants

APPENDIX 2

IN THE MATTER OF A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

Applicant

- and -

(1) QUEENS PARK RANGERS FOOTBALL CLUB
(2) GIANNI PALADINI

Participants

WRITTEN REASONS FOR THE DECISION OF THE REGULATORY COMMISSION ON THE APPLICATION MADE ON BEHALF OF THE PARTICPANTS ON 3RD MAY 2011

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1. On 3rd May 2011, the first day of the substantive hearing, but prior to the commencement of the hearing proper, the Participants made an application that the two FA Council Members appointed to sit should recuse themselves from sitting on the Commission. In view of the nature of the application, it was heard by the Chairman of the Commission sitting alone, but was treated as if it were part of the substantive hearing itself, as opposed to a pre-hearing application, in the event of an appeal.

2. The application arose out of the publication by *The Sun* newspaper, and also in *The Sun* online, on Friday 29th April 2011, of an article covering the entire back page of the print edition, under the headline ***"GUILTY"***. The piece, written by Sean Custis, began with the following statement:

*"**QPR's automatic promotion into the Premier League is set to be blocked by the FA.**"*

And was followed by the assertion that:

"… many within the FA are openly discussing the case and reckon QPR, five points clear at the top of the table, are in big trouble. Those who have seen the evidence say Rangers are defending the indefensible."

The passages referred to above do not appear in speech marks in the article.

3. A passage in the article, which does appear in inverted commas, quotes an unidentified *"FA source"* who is said to have told the Reporter that:

"There's no question QPR have broken the rules. They know it as well. The only debate is what to do about it. …If they aren't found guilty you might as well scrap the rules about third party owners."

The use of speech marks in the context of those passages gives rise to a clear inference that the words were a direct quote from the unnamed source.

4. The piece then went on, although not in inverted commas:

"Some within the corridors of power believe QPR should be hit hard because they were well aware they were acting outside the regulations."

5. All of this was in the context of an opening paragraph which read:

> *"Sunsport understands that the runaway Championship leaders are likely to face a big points deduction – possibly up to 15 – if they are found guilty of breaking strict third party ownership rules over the signing of Alejandro Faurlin."*

6. Next to the article appeared a photograph of the Club's Manager, Mr. Neil Warnock, holding his hands to his head, no doubt in response to something that had happened during the course of a match, but conveying the impression that his reaction was linked to the subject-matter of the article.

7. This article was the culmination of a steeply rising curve of media interest in the proceedings against the Club since early March 2011, when the charges alleging breaches of various provisions of the FA's Third Party Investment Regulations were first brought. The article appeared on Friday, which was a bank holiday for the Royal Wedding. There then followed the weekend and a further bank holiday on Monday, 2nd May. The hearing commenced the next day, Tuesday 3rd May. Following the publication of the article in *The Sun*, Solicitors acting for the Participants exchanged e-mails/correspondence with the FA expressing serious concern at the contents of the article and its potentially damaging effect on the Participants' prospects for having a fair trial. The FA conducted internal inquiries, but the Participants remained unsatisfied with the response they had received and indicated their intention to raise the matter at the outset of the hearing.

8. On behalf of the Participants, Mr. Mill argued that the article was calculated to influence the Commission. It was likely that senior members of the FA, including FA Council Members, who had had access to the evidence, had been discussing it amongst themselves and reached certain conclusions regarding the merits of the Club's case. Quite properly, there was no allegation of actual bias against the two FA Council Members who were due to sit on the Commission, but the submission was made that a fair-minded and informed observer would conclude that there was a real possibility of apparent bias if the tribunal contained two FA Council Members (see *Porter v- Magill* [2002] 2 AC 357).

9. It was perhaps inevitable, given the timing of the charges against the Club and of the hearing, the nature of the charges, particularly those relating to third party ownership, and the Club's position at the top of the FL Championship Table, that the case would attract significant media attention, including speculation about the likely outcome. That speculation has ranged from a no-points deduction at one end of the scale, to the possibility of a 15-point deduction adverted to in *The Sun* at the other. All of the print and other media comments were based on speculation which was at best ill-informed and, at worst, wild, for the very simple reason that none of the authors of the various articles could possibly have considered the respective cases, the evidence or the submissions. Nevertheless, from the Participants standpoint, the content and timing of, together with the potential motive for, the article that appeared in *The Sun*, a matter of several days before the hearing was due to commence, were understandably a source of extreme concern.

10. At any time, but particularly the eleventh hour, the potential exists for newspaper articles and media comments to disrupt, and even to seek to influence, the workings of a sports disciplinary tribunal. The motivation in any given case could simply be the telling of a good story that sells papers. Conceivably, though, it might be that of a cynical prosecutor, a calculating respondent, or even a third party with a vested interest in the outcome. At the same time, though, unsubstantiated and unattributed news articles of the type in question are very difficult, if not impossible, to convincingly refute. The quickest, and most direct, way of verifying the veracity and accuracy of the article, as well as establishing the identity of the alleged FA source, would have been for the Journalist in question to divulge the necessary details. He declined to do so, apparently for reasons of confidentiality. This meant that the FA had to prove a negative, namely to show that the source of the article was not one of its Council Members, or a high-ranking official. There are in excess of 120 Council Members. Even if it had been possible to contact them all in the limited time available over the Bank Holiday weekend, and for them all to have responded, it is reasonable to assume that no-one would have acknowledged that they were responsible.

11. In one material respect, the article in question can be shown demonstrably to have been inaccurate. The bundles containing the witness statements, interview transcripts and other documents to be used at the hearing were not served on any of the Members of the Commission until some time on Thursday 28th April. It follows that the only senior FA officials to have seen the evidence were the two Council Members who were due to sit on the Commission. Neither of them had even seen the article in *The Sun* the following day, let alone been the source of the comments and observations attributed to the

unnamed person within the FA. Indeed, such was the volume of evidence in the trial bundles that they were required to read that it would not have been feasible for them to have read the papers and provided the alleged comments in time for publication on Friday, 29th April. Accordingly, there was no basis for that essential assertion in the article, whatever its provenance may have been.

12. I am therefore entirely satisfied, and it is not alleged, that neither of the two FA Council Members appointed to sit on the Commission were the alleged unnamed source within the FA to which the article in *The Sun* refers. Secondly, I am also satisfied that neither of the Council Members have, at any time, either before or after they received the trial bundles, discussed the evidence at all with any other Council Members, or with any other senior FA officials. The practical difficulties that they would have had in doing so have already been rehearsed. Thirdly, I am further satisfied that the two Council Members have not been 'contaminated', in the sense that they have not been adversely influenced against the Participants (or, for that matter, in their favour), by anything that may have been said in *The Sun* article in question, or in any other media piece, or by any discussions which they may have had, relating to these proceedings.

13. The Rules and Regulations of the FA governing the composition of Regulatory Commissions provide that they should comprise of at least two FA Council Members. FA Council Members routinely sit on Regulatory Commissions to hear disciplinary proceedings in which the FA acts as prosecutor. In the present case, if there was a real possibility of apparent bias on the part of the two FA Council Members as a consequence of *The Sun* article, then that particular requirement of the FA's Rules should clearly not prevail over the appearance of a fair trial. There can be no dispute

that the article was both extremely regrettable, and ill-timed - although the timing was no doubt judged to have maximum effect. In this particular instance, though, I find that any appearance of bias that a fair-minded and informed observer may conclude arises in the ordinary course of FA disciplinary proceedings, by reason of its Council Members sitting in judgment on cases prosecuted by the FA, has not materially increased by reason of *The Sun* article insofar as the two particular Council Members appointed to sit on this Regulatory Commission are concerned.

14. In those circumstances, I find that a real possibility does not exist, as a consequence of the article in question, of an appearance of bias on the part of the two FA Council Members who have been appointed to this Commission. It follows that I am satisfied that the Council Members will be able to discharge their duty to act as fair, objective and impartial arbitrators when hearing the evidence and arriving at their decision on the various Charges. The application is therefore dismissed.

Craig Moore

Independent Chairman of the Regulatory Commission