

**FOOTBALL ASSOCIATION REGULATORY COMMISSION**

*In the matter of disciplinary proceedings brought pursuant to the Football Association Rules  
for the season 2013-2014*

**THE FOOTBALL ASSOCIATION**

**- and -**

**NICOLAS ANELKA**

Commission: Christopher Quinlan QC (Chairman)  
Thura KT Win  
Peter Powell

Date: 25 and 26 February 2014

Appearances: *Football Association*

Paul Greaney QC, Leading Counsel  
Dario Giovannelli, Junior Counsel  
Thomas Leblatier

*Player*

Nicolas Anelka  
Pushpinder Saini QC, Leading Counsel  
Tom Mountford, Junior Counsel  
Nicholas Andrew, Adviser

*Others*

Mark Ives, Disciplinary Manager, Football Association  
Robert Marsh, Assistant Disciplinary Manager, Football Association  
Simon Carrington, West Bromwich Albion FC, observing

## REASONS OF THE REGULATORY COMMISSION

### **A. Introduction**

1. Nicolas Anelka ('NA') is a professional footballer. At all the material times he was contracted to play for West Bromwich Albion FC ('WBA').
2. This matter arose out of events during the Barclays Premier League match played between West Ham United FC and WBA at Upton Park on Saturday 28 December 2013.

### **B. The Proceedings**

3. NA is bound by the Rules of the Football Association ('the Rules'). Part E of the Rules is headed "Conduct". By Rule 1 the Football Association ('FA') may act against a participant in respect of any "Misconduct" which includes a breach of "the Rules and Regulations of The Association and in particular Rules E3 to 28" (Rule E1(b)).
4. NA was charged with misconduct by letter dated 20 January 2014 ('the charging letter'). He was charged as follows:
  - a. *In or around the 40<sup>th</sup> minute of the match he made a gesture which was abusive and/or indecent and/or insulting and/or improper, contrary to Rule E3(1) ('Charge 1'); and*
  - b. *It is further alleged that the misconduct was an "Aggravated Breach" as defined by Rule E3(2) as it included a reference to ethnic origin and/or race and/or religion or belief ('Charge 2').*
5. The charging letter directed, *inter alia*,
  - a. That if NA denied the charge and requested a personal hearing such would will take place no later than 11 February 2014; and
  - b. Any documentation or other material he wished to rely upon in support of his case must be provided to the FA's Governance and Regulation Division by 23 January 2014.

6. By email dated 23 January 2014 timed at 11.31 Pushpinder Saini QC, Counsel for NA, informed the FA that NA intended to contest the charges and sought a personal hearing. In addition, he asked that NA be "given a period of 4 weeks (that is, until 4pm on 19 February 2014) to prepare a responsive report and to indicate his specific answer to the charges". On 24 January 2014 the Chairman issued directions which included the following:
  - a. By 17.00 on 7 February 2014 NA must provide to the FA Governance and Regulation Division the following:
    - i. Any documentation, evidence or other material he wishes to rely upon in support of his case including (but not limited to) any witness statements and expert reports; and
    - ii. Written submissions setting out his "specific answers to the charges".
  - c. Any FA response thereto (including any further evidence or material) must be served on those acting for NA and the Regulatory Commission no later than 17.00 on 14 February 2014.
  - d. By 17.00 on 21 February 2014
    - i. The parties must promulgate an agreed time estimate for the hearing; and
    - ii. A hearing bundle agreed between the parties must be prepared and provided to the Regulatory Commission.
7. The substantive hearing was directed to start on 24 February 2014, with an estimate of three days. It was subsequently varied (following submissions from the parties) to two days starting on 25 February 2014.
8. We sat on 25 and 26 February 2014. Following closing submissions from the parties and after our extensive deliberations, on 26 February 2014 we announced our decision to the parties. We found both Charges proved. As to the second charge we informed the parties that we had not found that NA was or is an anti-Semite or that he intended to express or promote anti-Semitism by his use of the quenelle. We heard submissions on sanction and after further deliberations we announced the following penalty: NA would be

suspended for five first team matches, fined £80,000 and ordered to pay in full the costs of the hearing. In consequence of the finding on Charge 2, NA will be subject to an education programme, the details of which will be provided to him by the FA (Rule E3(7)). We stayed the match suspension pending any appeal by NA.

9. This is our full reasoned decision, to which each member of the Commission has contributed.

### **C. The Rules**

10. Rule E3(1) provides:

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

11. Rule E3(2) provides:

“A breach of Rule E3(1) is an ‘Aggravated Breach’ where it includes a reference to any one or more of the following:- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability”.

#### Approach to the charges

##### *Charge 1*

12. The approach to such charges was considered by the Regulatory Commission in *FA v Luis Suarez*, 30 December 2011, paragraphs 50-73. The parties in this matter agreed that Charge 1 required an objective analysis of the gesture used. Therefore the question for us on that Charge was whether NA’s use of the quenelle after scoring a goal during the match was objectively speaking abusive, indecent, insulting and/or improper.

13. In *Suarez* the Commission explained the objective approach thus:

“57. In our judgment, the test for breach of Rule E3(1) is objective. The question is simply whether the words or behaviour are abusive or insulting. This is a matter for the Commission to decide, having regard to all the relevant facts and circumstances of the case. It is not necessary that the alleged offender *intends* his words or behaviour to be abusive or insulting in order for him to breach Rule E3(1). There are a number of reasons which lead us to this conclusion.

58. First, the starting-point is the natural and ordinary meaning of the words of Rule E3(1). Focussing on the words applicable to this case, Rule E3(1) states that a Participant shall not use abusive or insulting words or behaviour. The words are not complicated. The words of the Rule suggest to us that we should ask ourselves: do we consider the words or behaviour to be abusive or insulting? We have been entrusted with the task of answering that question. That the question may be difficult to answer in particular cases does not alter the fact that it is a straightforward question, uncomplicated by legal technicalities.

....

71. We do accept the broad thrust of Mr McCormick's alternative submission however. In applying the objective test and asking ourselves whether, in our assessment, the words or behaviour are abusive or insulting, it is necessary to view the matter in context, taking account of all relevant fact and circumstances...”

14. We agreed with the above, both as to the approach and with the reasons given. That is the basis upon which we considered Charge 1.

#### *Charge 2*

15. As to Charge 2, the parties were not agreed. The FA's primary case was that objectively, as a matter of fact, the Player's use of the *quenelle* included a reference to anti-Semitism. If we were not so satisfied then Mr Greaney QC

contended that the Commission could and should consider NA's state of mind at the time he used the gesture to resolve whether it had a prohibited meaning, namely contained a reference to a protected characteristic. The protected characteristics are ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

16. Mr Saini QC submitted that the approach to Charge 2 was the same as per Charge 1, namely an objective analysis. This, he submitted, was consistent with (a) the express wording of the Rules (b) the carefully reasoned decision in *Suarez* and (c) policy reasons that the FA would seek to regulate not by reference to the subjective intention of players but by reference to an objective test apt to encompass the reaction of the football watching public in general. He pointed to and relied upon the following observation of the Commission in *Suarez*:

"72. Rule E3(2) provides that in the event of any breach of Rule E3(1) including a reference to, amongst other things, a person ethnic origin, colour or race, a Commission shall consider the imposition of an increased sanction. The wording of Rule E3(2) is clear. It is a question of fact whether a breach of Rule E3(1) includes a reference to the protected characteristics. No question of subjective intention raises here."

17. As is clear from our findings hereafter we approached the Charge by considering the objective meaning of the quenelle gesture. In light of our conclusions having done so, it was unnecessary for us to consider the FA's secondary (the 'state of mind') basis.

#### Burden and standard of proof

18. It was common ground between the parties that the burden of proving the allegations rests upon the FA.
19. Further, the standard of proof is the civil standard of the balance of probabilities (General Provisions under the Disciplinary Procedures, 1.4).

That is the “single unvarying standard” (*per* Mitting J in *R. (Independent Police Complaints Commission) v Asst. Commissioner Hayman* [2008] EWHC 2191 Admin) at para.20) we applied, giving appropriately careful consideration to the evidence in this serious matter (as described by Lord Carswell in *R (On application of N) v Medical Health Review Tribunal* [2005] EWCA Civ 1605).

#### **D. The Evidence**

##### Background

20. Nicolas Anelka is a professional footballer of French nationality. He was born on the 14th March 1979. He signed his first professional contract with Paris Saint Germain ('PSG') in 1995 at the age of 16, before transferring to Arsenal in 1997. Thereafter, he played for Real Madrid, returned to PSG, and then signed for Liverpool, Manchester City, Fenerbahçe, Bolton Wanderers, Chelsea, Shanghai Shenhua and Juventus. In July 2013, he signed for WBA.
21. Between 1998 and 2010, he played regularly for France. Accordingly, NA has had a long and successful career in Europe and beyond. He has a high profile within football and is known throughout the world.

##### The incident

22. The match between West Ham and WBA kicked off at lunchtime on the 28 December 2013. It was broadcast live in the United Kingdom on Sky Sports 1 and in France on Canal+. In about the fortieth minute, the WBA midfielder Christopher Brunt played a through ball to NA, who put the ball past the advancing West Ham goalkeeper and into the goal. It was his first league goal for WBA. As he ran away he pointed his right arm to the ground and made it rigid; at the same time he bent his left arm at the elbow, moving his open left hand to his right bicep. He held that pose, whilst still jogging away from the goalmouth, for four or five seconds, until his teammates engulfed him in celebration. That gesture is known in French as a “quenelle”.

23. It was accepted to be a deliberate gesture by NA's part, captured by the television cameras and broadcast live. The FA obtained footage from a number of cameras and we watched it, at full speed and in slow motion.

#### The origins of the quenelle

24. The quenelle was invented in 2005 by the French comedian and political activist Dieudonné M'bala M'bala ('Dieudonné'). Dieudonné became well known within France as a comedian in the early 1990s. At that stage, he formed part of a double act with a Jewish comedian named Elie Semoun; in later years to become a butt of Dieudonné's jokes and their performances were regarded as anti-racist. Dieudonné openly opposed the Front National party of Jean-Marie Le Pen. We were told that Le Pen is now godfather to one of Dieudonné's children.

25. It appeared to be agreed that a turning point in Dieudonné's political attitude and opinion came with his performance in 2003 on a French television shown known as, in translation, "You Can't Please Everyone". Dieudonné appeared dressed as an orthodox Jew and concluded his sketch with a Nazi salute and the word "Isra-heil". Many complaints followed.

26. By 2005, Dieudonné was working with a foil named "Jacky" (a comedian whose full name is Jacky Sigaux). A sketch by Dieudonné in that year entitled "1905" (a reference to the year in which the separation of church and state occurred in France) marked what is believed to have been his first use of the quenelle. We saw a clip of the performance. During the course of the performance, Dieudonné warns Jacky that mammals are watching humans and are in the process of organising themselves. He tells Jacky that dolphins mock men and, given a chance, would shove their fins "up our arse this big", at which point Dieudonné performed the quenelle in order to show Jackie quite how far the dolphin would sodomise a man with his fin if given the chance.

27. He has continued to use it and still does to the present day. Impressions of him performing the quenelle on merchandise such as t-shirts and mugs are available to be purchased after his shows.

Expert evidence on the quenelle

28. Central to the issues in the case is the meaning of the quenelle. To that end we received expert evidence on the quenelle. The FA instructed Professor Seán Hand, Professor of French Studies, University of Warwick whose report is dated 17 January 2014. The Player instructed Professor Philippe Marlière, Professor of French and European Politics at University College London. His report is dated 7 February 2014.

29. In advance of the hearing the experts met and in consequence produced what is entitled a "Joint Statement" dated 13 February 2014. Both gave evidence before us and were cross-examined. Their evidence is important and it is necessary to set it out at some length.

*Professor Hand*

30. Given its derivation and subsequent usage, Professor Hand opined that the quenelle has never ceased to mean less than something akin to "go fuck yourself" or "up yours". He said he has progressively gained "additional and more pointed connotations". The starting point for such progressive and additional meaning is knowledge of its creator:

"The quenelle gesture is intimately associated with the performances and persona of a comedian and sometime political activist named Dieudonné M'Bala M'Bala ... On the day that he used the gesture, M. Anelka subsequently stated that he had made the quenelle as a 'special dedication to my comedian friend', this being clearly a reference to Dieudonné. Dieudonné's persona and reputation are therefore essential components in an understanding of the gesture's significance"<sup>1</sup>.

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<sup>1</sup> Report, paragraph 6 (future paragraph references are to his report)

31. The FA adopted this approach and invited the Commission to do the same. To make good its case the FA, through Professor Hand, and before us, reviewed the development and content of Dieudonné's 'work'. Shortly put, the FA submitted that such a review demonstrates that Dieudonné regularly expresses views that are strongly anti-Semitic and that the use of the quenelle has become interwoven with those views and therefore with anti-Semitism itself.
32. According to Professor Hand<sup>2</sup> in 2004, Dieudonné performed a show entitled "Mes Excuses". This show typically began with Dieudonné sarcastically asking for forgiveness from the Chosen People and includes sections in which he mocks anti-racist vigilance, produces a mock fancy-dress Orthodox Jewish hat and sidelocks which he says he will have to wear to avoid being banned, derides the French Jewish intellectual Bernard-Henri Lévy, who had denounced Dieudonné's shows and pretends that he contracted anti-Semitism as though it were an infectious disease.
33. We were shown a clip of footage of Dieudonné's show called "Zenith de Paris" performed in about 2008. During the course of that show, the audience was encouraged to boo Bernard-Henri Levy and Dieudonné then performed the quenelle. Robert Faurisson (a well-known French Holocaust denier) was then brought onto the stage. Dieudonné encouraged support for Robert Faurisson and the two men embraced. Jacky then appeared and presented Robert Faurisson with a prize. He was wearing a concentration camp uniform emblazoned with a yellow badge. Jews have, of course, been required to wear such badges in certain countries and at certain points in history (including in Nazi Germany) in order to mark them out. The yellow badge was intended by those who forced the Jews to wear it as a badge of shame. We agree with the FA's submission that it is not possible sensibly to interpret this part of the show as anything other than deeply anti-Semitic.

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<sup>2</sup> Paragraph 15

34. Both professors agreed that in the aftermath of this performance, Dieudonné was convicted on anti-Semitic charges, this being one of seven or eight occasions upon which that occurred. He was fined. He placed footage onto his website (called the Dieudosphere) in which he describes his situation in the following terms,

“...the strategy of financial asphyxiation that has been chosen by the court, a strategy that was suggested during deliberations by these very whiny businessmen of the Holocaust, these disgusting merchants ready to sell their dignity for a few bills”.

35. We watched a great deal of the footage. He asks for donations, so that “we can continue to stick it to them this far”, at which he performs the quenelle. He then introduces a song, which featured in subsequent performances. The song is known as “Shoananas”; “Shoah” is the French word used to describe the Holocaust and “ananas” means pineapple. Jacky arrives, dancing and shaking around a pair of pineapples, one in each hand. Again, he is wearing a concentration camp uniform emblazoned with a large yellow star. In short, Dieudonné is blaming the Jews for his predicament, using offensive stereotypes to do so and is mocking the Holocaust. Again we agree with the FA submission that all of this is strongly anti-Semitic.

36. In 2010 Dieudonné performed a show called “Mahmoud”, a reference to Mahmoud Ahmadinejad, the sixth president of Iran. We watched a substantial clip from this show. The FA invited us to consider (and we did) the following features of that performance:

- a. Dieudonné enters the stage and immediately performs the quenelle.
- b. He verbally attacks Bernard-Henri Lévy.
- c. He refers to JSS News (a webzine representing Israeli opinion) as “SS News”.
- d. He mocks the Shoah and sings Shoananas. Audience members produce pineapples. When he notices a person without a pineapple, Dieudonné asks, “are you Jewish by any chance?”

- e. He talks of having converted to Judaism and his business skills having improved and refers to having circumcised himself.
  - f. He refers to a Hollywood cliché of a crying Jew wanting a piece of bread.
  - g. He states (with insincerity) that he believes in the gas chambers. He states that he had once doubted this because of Bernard-Henri Lévy, but has been persuaded of them by Patrick Bruel, a French Jewish actor. He describes him as a “crap singer” and “maybe the German is not as patient as I am”.
37. We saw a trailer for a further film made by Dieudonné in 2011 called “The Anti-Semite”. We agree that the said trailer belittles Auschwitz. When a survivor shows an American soldier (played by Dieudonné) the bones of a child, it is suggested that they are chicken bones. We can see no other sensible conclusion other than the purpose and effect is to express doubt as to the Holocaust.
38. From January 2013, Dieudonné performed a show in Paris entitled “Foxtrot”. NA agreed that he attended a performance of that show in Paris in January 2013. We watched three clips from the Foxtrot show and read transcripts of the whole footage provided to us, totalling almost forty minutes. During the course of the show Dieudonné refers to Patrick Timsit, an Algerian Jewish comedian, as “very, very Jewish”. He says this about him: “... if we were to find ourselves in the situation of the ‘30s ... he [Patrick Timsit] better not come and hide in my cellar ... from annoyance to deportation”. We agree that is a reference the persecution of Jews by Adolf Hitler in the 1930s and a further reference to the practice of Jews seeking to avoid such persecution by hiding in cellars. The reference to deportation is also a reference to the transportation of Jews to concentration camps, at which they were “exterminated”. In short, we agree that this sketch by Dieudonné is obviously and grotesquely anti-Semitic. It is immediately followed by light music, during which Dieudonné performs the quenelle. The FA submitted that no reasonable person viewing this part of the sketch (and NA was there) could regard the quenelle as other than intimately bound up with and an

expression of Dieudonné's anti-Semitism. We accept that during this show (and on other occasions) Dieudonné seeks to find humour in and mocks other races, religions and beliefs.

39. We also note, as the FA invited us to, the following additional matters referred to in Professor Hand's report. A competition on the Dieudosphere which involves those who visit the site voting for their favourite photograph of a person or persons performing the quenelle. Some of the photographs involve the use of the gesture at locations with strong Jewish connections, for example Auschwitz, the Wailing Wall, Holocaust and deportation memorials in Paris and a Jewish school in Toulouse where, in 2012, a Rabbi and three Jewish children were shot dead by Mohammed Merah, a homicidal anti-Semite. Further, Dieudonné has association with those on the far-right and Holocaust deniers, including senior members of the Front National, Robert Faurisson (and Alain Soral), a former radical member of Le Pen's Front National and head of the extreme right wing movement *Egalité et Réconciliation*, who has regularly been accused of anti-Semitism.
40. Further, in his analysis Professor Hand also relied upon the controversy surrounding Dieudonné in the latter part of 2013<sup>3</sup>; Mr Greaney QC described it as a "storm". We summarise the relevant events:
- a. On the 9th September 2013, Alain Jakubowicz (the president of LICRA (International League against Racism and Anti-Semitism) wrote to Defence Minister Jean-Yves Le Drian and Minister of the Interior Manuel Valls. He highlighted the fact that two soldiers had been photographed in uniform making the quenelle gesture in front of a synagogue in Paris. In the letter, Alain Jakubowicz referred to the gesture as an inverted Nazi salute. This letter was widely reported in the following days in the French media (for example, in *Le Monde*).
  - b. On the 13th December 2013, Dieudonné filed a defamation claim against the LICRA and Alain Jakubowicz.
  - c. On the 16th December 2013, President Hollande received a delegation from the *Conseil Représentatif des Institutions Juives de France*

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<sup>3</sup> Paragraphs 25-27

(‘CRIF’) including its president Roger Cukierman and President Hollande stated his government’s intention to guard against anti-Semitism including when delivered as sarcasm and supposed humour. The same day, in a radio broadcast, Roger Cukierman described the quenelle as an inverted Nazi salute and called Dieudonné a professional anti-Semite. These remarks received considerable publicity.

- d. On the 19th December 2013 the investigation of a journalist into Dieudonné was broadcast on the television station France 2. It included covert footage of a Dieudonné show. In the course of the show, Dieudonné said of a prominent Jewish radio presenter Patrick Cohen, “... if the wind changes, I am not sure he has the time to pack his bags ... when I hear Patrick Cohen speak, I say to myself you see gas chambers ... shame”.

41. In summary Professor Hand opined<sup>4</sup>:

“It is clear that since its invention, the gesture has become progressively associated with anti-Zionist politics and anti-Semitic sentiments, and that this is as a result of Dieudonné’s own performances as well as use of the gesture by others...The controversy is such that by 28 December 2013 the majority of people in France would clearly understand the quenelle gesture to exemplify this controversy, meaning that the gesture cannot be reasonably untangled or dissociated from anti-Semite sentiment by this time. ”

42. Mr Saini QC questioned Professor Hand. He agreed that as at 28 December 2013 he thought it reasonable to conclude that the gesture would mean nothing to an English audience; that proposition assumes an English audience without knowledge of the quenelle and/or Dieudonné. He said that there is a body of people in France who would want to say that the gesture is fundamentally anti establishment; he agreed there is “disagreement among people regarding how the gesture is to be fundamentally interpreted”. He

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<sup>4</sup> Paragraph 20

said ambiguity was “a fundamental part of the gesture and its usage”. In that context the following exchange occurred:

"Question - 'The quenelle gesture is not objectively anti-Semitic ... Dieudonné's humour and jokes are indeed anti-Semitic'. Again, that is another view which is a tenable view, isn't it?

Answer - A tenable view? It undoubtedly is."

43. However, he disagreed with the proposition that “the only context in which use of the gesture is unarguably anti-Semitic is when the gesture issued in or near sites of both historic and present relevance to the Jewish community”. Its use would, he said, unarguably be anti-Semitic in that context; we do not understand there to be any real dispute about that. However, the reverse does not follow. By way of explanation and in the context of NA's use of the quenelle he said this:

“...Because the gesture, the particular one we are referring to, was made and broadcast live and to France. So you don't have a localised, as it were, private use of it which is sealing itself off from having a connection to something of Jewish significance; it is a gesture which has been indiscriminately broadcast to people, many of whom -- not just Jews, by the way -- will find it offensive because of the anti-Semitic connotations that have been given to it.”

44. He acknowledged ambiguity in the gesture and that there has not been, to his knowledge, a prosecution or disciplinary proceedings for its use in France. He agreed there were tenable views that it is not an anti-Semitic gesture, but he did not accept such views.

45. When questioned further by Mr Greaney QC there was this exchange:

“[Question]...The question really is, by the end of September 2013, do you accept that the quenelle on any particular occasion -- not looking at Mr Anelka for the moment -- but on any particular occasion could have been used only as a harmless prank?

[Answer] I don't accept that. I think, given the overwhelming associations given to it, the fact that there is by this stage Government intervention, the fact that his shows are going to be closed down by the Government, I think it is frankly disingenuous of anyone to say that, when they are doing it, it should only be regarded as a harmless prank by that stage."

46. He added:

"My conclusion, and I hope it is not merely an opinion because I don't think it is about, ultimately, just opinion, is that, as I tried to say in this particular paragraph, that it is that, used in this way in a public forum, used when it is being broadcast live into France, used when it is being used -- towards the end of 2013 -- it for me is not credible for us to want conclude that the gesture nonetheless can be regarded as being something denuded of, (a) any political context and, (b) the anti-Semitic connotations that have been so provocatively attached to it."

*Professor Marlière*

47. In paragraph 36 of his report he opines, "by and large there is no consensus in France on how the quenelle gesture should be interpreted". In that paragraph through to paragraph 39 of his report he identifies those who say that its meaning is ambiguous; should be assessed by reference to the context in which it is used; or is "not objectively anti-Semitic". In paragraph 68(c) of his conclusions he opined "the evidence shows one cannot describe the gesture as unambiguously promoting any specific belief or referencing any particular menacing". He observes at paragraph 68(e) that Dieudonné has always denied that his quenelle gesture is anti-Semitic; for him it is said only to be anti-establishment.

48. In answer to a question from Mr Saini QC the Professor expanded on his report in this respect:

“It is clearly not proven, demonstrated in my opinion that by the 28 December 2013, as he says, a majority of people in France would clearly understand that the quenelle gesture would be associated with anti-Semitic sentiment. Indeed, I could even say that today it remains to be seen whether a majority of the French people have clearly -- can clearly associate that with anti-Semitism because the interpretation of the quenelle ... There is a pluralitive interpretation of the quenelle gesture and -- so that is the first point. The second point is that, by 28 December 2013, I believe that only a minority of the French population would have heard about the quenelle and that by that time it would have been still a relatively unknown gesture for, I would say, a fraction of the French population. Of course, it would be very well-known by people who should be in the know-how, the media notably, politicians, people in show business, but that remains to be seen and demonstrated by that time, that specific date when the gesture was made in England on the football pitch that there was clearly an understanding and a knowledge of the quenelle gesture in France by the French public at large.”

49. Mr Greaney QC questioned him. Asked whether the quenelle was a lewd gesture because it meant something being stuck up another's bottom, he said:

“There is probably an element of that, but a point I would like to raise and make about this gesture and the way it was invented and performed in the first place in 2005, it was also -- it was a kind of political dimension or social dimension to the gesture. It was in the context of a sketch where, by analogy, the dolphin was there to look down and mock human beings for their behaviour in general and, for that reason, there was an element of politicisation almost. So to say it is simply lewd and like an offensive gesture and nothing else, I think it is just one part of the explanation.”

50. In paragraph 25 of his report he comments that Dieudonné has been “promoting the quenelle gesture in his shows...and on the internet and by way of multiple YouTube videos for the past nine years”. In his report (paragraph 22-24) he said that when used by Dieudonné in his 1905 show, the quenelle “unambiguously meant ‘up yours’ or ‘go fuck yourself’. Asked whether its meaning had ever changed he said:

“In some instances, yes. In others it can mean other things. Again -- and we will come to it, I am sure -- it depends on the context: who does the gesture and in what circumstances. There is an element of that, yes. For some it could be seen as an offensive gesture. The point of that being a lewd or offensive gesture -- I have not -- to my knowledge, I have not come across so far an instance where in, sort of, media reporting, for instance, that the quenelle gesture was used by people, for instance, in a social or public encounter whenever people disagree or have an argument. That is never used, if you like, by -- it would not mean anything in a French context, so that tends probably to downplay a little bit the offensive nature of that gesture.”

51. That reply may have provoked Mr Greaney QC to ask whether the Professor would consider it acceptable for one of his students to make the gesture to him. He would not, because (1) he “could regard it as offensive” and (2) he would assume the student would (like him) know the “multiple meanings of it”. He opined that there were circumstances where it was inoffensive and referred to the images on the Internet, including the Dieudosphere, where friends, families are pictured doing that gesture on ski slopes, weddings and at celebrations and parties. In such circumstances he said it could not “be described or seen as an offensive gesture; it is just a way of having fun.”

52. At the start of closing submissions Mr Saini QC produced still images taken from the Dieudosphere website which showed people making the quenelle in a variety of different locations: smiling children, a person dressed as Santa Claus, at a wedding party, people around the world, fans apparently outside Anfield, with Mickey Mouse, in a church and in front of the ‘quenelles’ freezer section in a supermarket. We note also (from paragraph 59 of

Professor Marlière's report) that other high-profile sportsmen who have been photographed (some with Dieudonné) making the quenelle. Professor Marlière described use of the gesture in such circumstances as part of a "running gag"; he thought it now had a life of its own independent of Dieudonné.

53. He was asked whether he would ever perform the quenelle. He said he would not as he "was a political scientist not Dieudonné". He explained:

"I would not perform the quenelle because I am fully aware of the multiple interpretations, meanings and I would not want to be seen as - I would not want people to mistake my intentions and that is the first answer. The other answer would be that, personally, I don't particularly find it amusing or entertaining. That is not particularly something I relate to."

54. He agreed that possibly one of those multiple meanings was "go fuck yourself". Asked whether he thought NA should have used the gesture on the football pitch he said:

"I do not have an opinion about it -- or a clear-cut one at least. When I saw it, my first reaction was that clearly he wasn't turning himself to the crowd, he was not trying to get close to the camera and I took it as being something very, very private."

55. He was taken to a transcript of an interview he gave to Jeremy Vine which was broadcast live on his show on BBC Radio 2. During the course of that interview he said this:

"...his [Dieudonné] quenelle gesture and the contents of his show is, to say the least, most ambiguous and it has certainly anti-Semitic overtones. But this being said, and there is no doubt that Dieudonné is, with regard to Jews and the Shoah...has gone too far and his actions can be deemed totally anti-Semitic".

On the subject of the Player he said this:

“I think to do that...in a midst of a major controversy and scandal in France regarding this gesture in France is plain silly, stupid and Anelka...is a very silly man indeed...It is more his silliness, his stupidity, sheer stupidity, which led him to do something which he regards as vaguely controversial...”

On the quenelle he added,

“...in no way condoning the gesture, which in France is largely connotated [sic] as anti-Semitic”.

He added that some young people in France were using the gesture as a way to transgress, and did not intend, he said, to be anti-Semitic.

56. Understandably, Mr Greaney QC explored with the Professor his opinion of the quenelle as expressed during that radio interview. Professor Marlière explained that he considered it was stupid to perform the gesture if possessed of the knowledge of what was and been happening in France. Personally he said he would not condone its use on the football pitch but that is because he understands its “multiple meanings”. Asked about his observation that the quenelle largely connotes anti-Semitism, he explained,

“...in the milieu which debate that particular issue, i.e. essentially the political class and the media, so at the time -- again, that interview was given in the aftermath of the ban -- no, it was following the FA decision, but also days after the ban, the decision of banning Dieudonné’s show. Of course, there are lots of talk in the British and French media and political class and most of it would -- yes, the view would be that, yes, it is anti-Semitic, that is what I mean here. So, excuse me, I set aside, of course, the millions of French people who receive, perceive, understand or do not understand the gesture.”

57. He did not accept the proposition that as of 28 December 2013 most people in France would associate the quenelle gesture with anti-Semitism. He distinguished it from the Nazi salute about which he said:

“...A Nazi salute is a Nazi salute. There is an agreement, a consensus and a universal agreement about its meaning. Historically, it is strongly connoted, you just cannot -- you have to distinguish the two gestures. Whereas the quenelle is a totally invented, recently, gesture and it turns out now even that the French public cannot agree on its meaning.”

58. His assertion that there was no consensus in France about its meaning was, he said, supported by the fact that no sportsman in that country has been prosecuted or disciplined for using it.

#### Reaction in France to Nicolas Anelka's quenelle

59. The parties placed before us evidence of something of the reaction in France to NA's use of the quenelle gesture.

60. Professor Hand records in paragraph 32 of his report that on 28 December 2013 the French Sport Minister tweeted that the gesture by “Anelka is a shocking, sickening provocation. No place for anti-Semitism and incitement to hatred on football pitch”. In the same paragraph the Professor (1) records the reactions of and pronouncements from other public figures in France about Dieudonné and the quenelle and (2) also refers to Dieudonné's release of a further YouTube clip on 31 December 2013.

61. On 31 December 2013 the French Interior minister Manuel Valls said of the quenelle, “this gesture is a gesture of hatred, it's an anti-Semitic and all those who perform should know - they can't deny knowledge - that they are performing an anti-Semitic gesture, an inverted Nazi gesture”.

62. We saw and read about the reaction of Roger Cukierman who, on 21 January 2014, said the “gesture has an anti-Semitic connotation, which would be

reprehensible only when performed in front of a synagogue or a Holocaust memorial site". However, as Professor Marlière notes in paragraph 37 of his report, the following day M. Cukierman publically expressed this (different) view: "the quenelle is an inverted Hitler salute, there is no question about it in my mind since that is the intention of the one who crated and popularised it...".

#### FA's case

63. The FA's "basic position" as set out in its written Opening was that objectively assessed (that being the correct test) the quenelle is incapable of meaning anything less offensive than "up yours" or "you should go fuck yourself". That was the meaning of the gesture when invented and it has never meant anything less offensive than that. Consequently, the Player's gesture was plainly abusive and/or indecent and/or insulting and/or improper and so put NA in breach of Rule E3(1).
64. Further, by the 28 December 2013, the quenelle had become so associated with the anti-Semitism of Dieudonné and therefore with anti-Semitism itself that as a matter of fact NA's use of the gesture during the course of the match included a reference to ethnic origin and/or race and/or religion or belief so as to make his breach aggravated within the meaning of Rule E3(2).
65. However, if we did not find that the breach was aggravated on the basis in paragraph 64 above, it invited consideration of NA's state of mind when he performed the quenelle. The FA submitted that the Player must have known and indeed did know that many persons seeing his gesture would regard it as anti-Semitic. If so, whether his purpose in making the gesture was to express or promote anti-Semitism is not determinative. Rather, his foresight would be sufficient to make the breach aggravated. Further, if it were his purpose to express or promote anti-Semitism, the aggravated nature of the breach would *a fortiori* be established.
66. The case against NA was pursued and closed essentially on the same bases.

Nicolas Anelka's case

67. NA denied any breach of the Rules. He always accepted performing the gesture. Obviously, he relied upon the expert evidence of Professor Marlière, but began to explain his use of the quenelle as early as the day of the match. On his Twitter account on the 28 December 2013, he posted this tweet:

“... this gesture was just a special dedication to my comedian friend Dieudonné.”

68. In subsequent tweets he said the quenelle meant “anti-system” and repeated that it was a dedication to Dieudonné. He said he was neither anti-Semite nor racist<sup>5</sup>.

69. In an undated letter written in response to the FA's letter of the 30 December 2013, he stated,

“I accept that the gesture I made after I scored my first goal against West Ham is known as ‘la quenelle’ in France. However, I made the gesture purely to say hello to my friend, Dieudonné M'bala M'bala, as I knew he was watching the game”.

70. In his witness statement dated the 7 February 2014, he stated,

“The reason I made the quenelle gesture after scoring a goal during the Match was simply as a ‘high five’ or ‘hello’ to the comedian Dieudonné. I wanted to dedicate the goal to Dieudonné as a friendly gesture. I know that the quenelle sign is closely associated with Dieudonné (who I believe invented it in the first place) and that he would therefore know (if he was watching, or subsequently saw the footage) by me making the quenelle gesture that I was saying hello to him and dedicating that goal to him.”

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<sup>5</sup> Professor Hand, paragraph 28

71. He gave an account before us, adopting as true and accurate his witness statement. He became aware of Dieudonné in about 2000. He has met him once and attended one show, Foxtrot. He has watched recordings of his shows.
72. Before using the gesture on 28 December he did not know Mamadou Sakho (whom he said was not his “friend”) had been photographed making the quenelle (not during a match). He learned of it after 28 December 2013. He insisted that he did not know on or before 28 December 2013 of the controversy surrounding Dieudonné. He dedicated the goal to him at that time because it was his first opportunity he had; it was his first league goal for WB. He said it was a coincidence that at that time Dieudonné was the subject of such controversy in France; that played no part in his decision to dedicate the quenelle to him for he had no idea of the storm.
73. He liked Dieudonné “a lot” as a comedian. Some of his humour was lost in translation. He did not accept Dieudonné was anti-Semitic. He did not understand, he said, that Jacky was dancing (with pineapples) in a concentration camp uniform. Though he was educated in France (where the Holocaust is part of the curriculum), he knew nothing of “Jewish stories” he said. He denied knowing that the quenelle was (as was put) an anti-Semitic gesture.
74. He told us that after scoring a second goal in the match he again dedicated a quenelle to Dieudonné. If others knew that, we had not been told and it formed no part of the FA’s case against him.
75. Mr Saini QC submitted that Charge 1 should be rejected for the following reasons (in summary):
- a. The Commission was not in a position to conclude, in its own assessment, that the Player’s use of the quenelle was abusive, indecent, insulting or improper.
  - b. In the light of the range of respectable and tenable alternative interpretations of the gesture and its use (for example as demonstrated in

the photographs on the Dieudosphere website) there is no proper basis for concluding the gesture as used by the Player was indecent or improper.

76. As for Charge 2, of course this falls away if the FA fails on Charge 1. But, if we were against him on Charge 1, he submitted that the FA has not on the evidence clearly and unequivocally established that the quenelle is of itself an anti-Semitic gesture:

- a. The established use (as it was put) of the gesture as a “running joke by ordinary French people”;
- b. The respected academic views of persons other than the experts as to the various meanings;
- c. The views Mr. Cukierman expressed about the Player’s use of the quenelle;
- d. The views of Professor Marlière, an expert in French political and cultural affairs;
- e. The acceptance by Professor Hand that there are a range of meanings which are both respectable and tenable; and
- f. In France that no action has been taken against any professional sportsman who has performed the gesture.

#### **E. Determination**

77. We had regard to and considered all of the material put before us. That includes all of the evidence given by the experts and not (of course) just the parts set out herein. We have but summarised some aspects of it and the submissions we received.

78. We (as a professional tribunal) have assessed the evidence and resolved the issues by reference to well-known and established tests. We have, we need hardly say, resolved the issues on the basis of the material and submissions placed before us.

79. We start with the undisputed facts.
- a. The Player made the gesture known as the quenelle.
  - b. The making of the quenelle gesture was deliberate.
  - c. He performed it as a dedication to Dieudonné, whom he considered a friend.
  - d. The Player knew the match would be broadcast in France.

80. The parties invited us to consider the Charges separately and sequentially. However, we note the observation in *Saurez* (paragraph 73):

“In some cases it will be possible to draw a clear dividing line between the conduct which amounts to a breach of Rule E3(1) and the inclusion of a reference to a protected characteristic of the kind listed in Rule E3(2).”

81. We agree the necessary starting point is the quenelle gesture and more particularly its meaning. As paragraph 2 of the joint statement of the experts (signed by both and dated 13 February 2014) makes clear. There was a large measure of agreement between them:

“The reports are in substantive agreement regarding essential aspects of the quenelle phenomenon. These basic details of the gesture’s invention and origins, of its creator Dieudonné, and of controversies connected to both in the eyes of the public, commentators, associates, organisations and authorities.”

82. We accept that the quenelle was lewd at first inception; its purpose was as a physical demonstration of how far up the human rectum a dolphin’s fin had been or would be inserted. At inception the gesture was abusive, insulting and arguably indecent and so to make it on a football pitch (at that time) in the circumstances as this Player did, would have been improper within the meaning of Rule E3(1). Has that meaning changed or developed?

*Dieudonné’s continued use of it*

83. Dieudonné invented the quenelle gesture. He continues to use it habitually in his performances to the present day. Impressions of him performing the quenelle on merchandise such as t-shirts and mugs are available to be purchased after his shows. He has tried (if not succeeded) to trademark it. He runs a competition on the Dieudosphere website in which people post photographs of themselves using the quenelle (some at sensitive Jewish sites). On the evidence before us we find Dieudonné is inextricably linked to the quenelle.
84. Therefore Dieudonné's continued use of the quenelle is relevant and must be considered. The evidence before us demonstrated that he has continued to use it as a lewd, abusive and insulting gesture:
- a. On the 21st December 2013, when he attacked President Hollande in his broadcast and said "Francois can you feel it, slipping up your ass, the quenelle"
  - b. During the same broadcast, this: "when you are in the terminal phase of cancer, a quenelle up the arse of the medical institution! I call that panache."
85. In our judgment the evidence went further than that. From the summary set out above (see paragraphs 31-41) it is clear that Dieudonné has, over a number of years, frequently expressed views which we agree (with the FA) are obviously anti-Semitic. That he also insults other faiths and races is no answer to that point. He has been convicted of anti-Semitic crime seven or eight times.
86. The quenelle is inextricably bound up with Dieudonné. We accepted Professor Hand's opinion that as of 28 December 2013 the majority of people in France would clearly have understood that; would clearly have associated the quenelle with Dieudonné; and with the controversy prevailing at that time. Given the nature of that controversy and of Dieudonné's anti-Semitic views we were satisfied to the appropriate standard that the quenelle is and was at that time strongly associated with anti-Semitism. As the FA submitted

(and we agreed) it simply is not possible to divorce that association from the gesture and when NA performed the quenelle on the 28th December 2013.

*Professor Marlière and other views*

87. The FA accepted the gesture has a number of potential meanings and is, to that extent, ambiguous. As we have set out, in his evidence Professor Hand accepted that there is a respectable body of opinion that the gesture is not necessarily anti-Semitic. He didn't agree with that view. He also identified what is, in our view, an important point. The gesture is deliberately ambiguous, a position which suits Dieudonné. In France, there is a law (Gayssot Act 1990) which makes express anti-Semitism unlawful. Dieudonné has been convicted of that offence seven or eight times. For obvious reasons it suits him to be able to claim ambiguity and deny the quenelle is anti-Semitic.
88. In his report and before us, Professor Marlière expressed his view that the quenelle was not necessarily abusive or insulting or anti-Semitic. We rejected his views and we now explain, shortly, why we did so.
89. Professor Marlière opined that the gesture might not be abusive, indecent, insulting or improper because some people (not him – he said) might be entertained by it. It had also taken on 'a life of its own', he suggested, and its use was part of a 'running gag'.
- a. There is force in the FA's response that such persons might be entertained, not because they do not regard it as abusive or indecent, but for the very reason that it is abusive and indecent.
  - b. In any event, light is shed on the strength of Professor Marlière's point by his own reaction to the quenelle. He would not perform it and would not regard it as acceptable for his students to do so. We find that it is because he considers it offensive. We reached the same conclusion.

90. Mr Saini QC submitted that the photographs from the Dieudosphere website of quenelles being made over the world, by a person in a Santa Claus outfit, by the bride, groom and wedding party at a wedding, by friends at a dinner party and the like, supported the 'running gag' argument. So, also, its use by others, including the Liverpool player Mamadou Sakho. The fact others perform the gesture in such circumstances does not, in our view, deprive it of the abusive, insulting and anti-Semitic meaning we found it has. Perhaps those pictured have no idea of its meaning. It is to be noted, as we were told, that Sakho claimed not to know what it meant and to have been tricked.

91. When a number of Dieudonné's anti-Semitic views (as we find them to be) were put to Professor Marlière, his stance (taken as a whole) was that they (variously) were in "extremely bad taste", "offensive" and "bordering on anti-Semitic"; he was loathed to accept they were, in fact, anti-Semitic. Mr Saini QC reminded us of this exchange during the Professor's evidence:

"[Question] - Moreover, not only has he gone too far, but his statements and actions are properly regarded as being totally anti-Semitic?

[Answer] - They are. Again, there is no universal consensus or agreement in France about that..."

But, we think, when his evidence is read as a whole, is it clear that he repeatedly refused to acknowledge Dieudonné's frequent anti-Semitic expressions. That refusal seriously undermined his opinion.

92. Further, that was compounded by the opinion of the quenelle which he expressed during the Jeremy Vine interview. Looking for support of Professor Hand's conclusions, we need look no further than Professor Marlière's opinion as then expressed. It is worth repeating it at this point: "[the quenelle] certainly has anti-Semitic overtones" and "[it is] largely connotated [sic] as anti-Semitic". We acknowledge that was a live broadcast. We rejected the qualification he advanced before us, namely that he meant it had that connotation within the milieu, the informed political class and media. We have listened to the broadcast, read the transcript, read his report and observed the Professor before us. He is skilled in English and plainly

highly intelligent. If that is what he meant, we are confident it was a qualification he would have expressed during the broadcast. That opinion, as expressed to the (listening) national audience, further supports Professor Hand's view.

93. We recognise Roger Cukierman's view as expressed on 21 January, supportive as it is of the Player's position. But, by the next day his view had changed: "The gesture created and realised by Dieudonné is anti-Semitic and the sympathy of Mr Anelka (for Dieudonné) is clearly suspicious". In any event, one could point to other contrary views. For example the French Sports Minister ("shocking, sickening provocation"). Ultimately it is our assessment that must be and was determinative, based on our assessment of the evidence before us.

#### *Charges*

94. We concluded that the quenelle is strongly associated with Dieudonné. We further concluded that Dieudonné is strongly associated with anti-Semitism and, as a result, we found that the quenelle is strongly associated with anti-Semitism. We agreed with the FA that it is not possible to divorce that association from the gesture. When NA performed the quenelle on the 28 December 2013, it had that association; it was strongly associated with and contained a reference to anti-Semitism.
95. It follows that we were satisfied to the requisite standard that the use of the gesture in the circumstances in which Nicolas Anelka used it (namely during a Premier league match being broadcast widely in the United Kingdom, France and beyond and at a moment in that match when the cameras and therefore all eyes were upon him, namely the scoring of a goal) did contain a reference to anti-Semitism and therefore to religion or belief (at the very least). It was thereby insulting and abusive and it was improper for him to make that gesture. By doing so he acted in breach of Rule E3(1). That breach (of E3(1)) was aggravated within E3(2) because it contained reference to the said protected characteristics. Accordingly we found both Charges proved.

96. Approached in that way the question of whether the quenelle is abusive, insulting etcetera is inextricably linked to the second question of whether it includes a reference to a protected characteristic (per *Saurez* paragraph 73). We hope it's tolerably clear, but for the avoidance of doubt (if there be any) we were quite satisfied, that (properly understood) it has never meant less than "go fuck yourself" or "up yours".

97. As the FA (rightly in our view) submitted the question as to whether objectively the quenelle contained a reference to anti-Semitism is different from the question of whether Nicolas Anelka is an anti-Semite and different from the question of whether he intended to express or promote anti-Semitism by his gesture. Having accepted the FA's analysis, it was not necessary (on the question of whether Charge 2 was proved) for us to consider the Player's state of mind nor (on that issue) were we required to make a finding as to whether NA is an Anti-Semite or whether he intended to express or promote Anti-Semitism by his use of the quenelle. However, as we announced to the parties, on the evidence before us we were not satisfied (to the requisite standard) that NA was or is an anti-Semite or that he intended to express or promote anti-Semitism by his use of the quenelle. We sanctioned on that basis.

## **F. Sanction**

98. Rule E3(3) provides

"(3) Subject to sub-paragraph (4) below -

- (i) Where a Participant commits an Aggravated Breach of Rule E3(1) for the first time, a Regulatory Commission shall impose a suspension of at least five matches on that Participant. The Regulatory Commission may increase this suspension depending on any additional aggravating factors present."
- (ii) ....."

99. Rule E3(4) does not apply to the facts of this matter.

100. This is NA's first such breach. The starting point, therefore, is a mandatory suspension of not less than five matches. We note that the Rule provides that the Commission "may" (not "shall" or "must") increase the suspension depending on "any additional aggravating factors present".

101. The FA submitted that the minimum of five matches applied where the breach was admitted and not contested. Therefore, it submitted, if that was right, then a longer than five-match suspension should be imposed on this Player as he did not admit the breach. It also contended that the following additional aggravating features were present (1) he is a high profile player (2) the FA is heavily involved in the promotion of inclusivity, equality and diversity, and in combating racism in football and society and his conduct undermines those programmes (3) the conduct had brought a negative focus on the image of English football around the world and may therefore have damaged its reputation.

102. In relation to those points, he does have a high profile, in this country and beyond. As for the undermining of the promotion of inclusivity, equality and diversity, and in combating racism in football and society, he at least ought to have known that such conduct undermines those programmes. As for the submission that five matches is the starting point for an *admitted* (as opposed to a breach denied but proved) breach of Rule E3(2), there is no support for that in the Rules. It would have been simple for the FA to state that in the Rules if that is what it intended.

103. On the Player's behalf, Mr Saini submitted that this was a much less serious case than Suarez. Further, he reminded us of NA's clean record and contended that in the circumstances to add to the five-match ban would be to impose a disproportionate penalty.

104. As for mitigating factors, NA had a clean disciplinary record. Second, the gesture was not made to any person in particular. Third, we did not make a finding that the Player is an anti-Semite or that he intended to express or promote anti-Semitism by his use of the *quenelle*.

105. We also considered the FA's decisions in *Luis Suarez* and *FA v John Terry*. Neither bind us but both deserved and received consideration, not least for reasons of parity. The former was decided before the introduction of the minimum five-match sanction; at that time E3(2) directed as an entry point double what would have been the case absent the presence of an aggravating factor (see paragraph 427, *Suarez*). However, an eight-match suspension was imposed for conduct with five identified aggravating factors including the repeated use of the word "negro" or "negros". In our view that was clearly a more serious example of an 'Aggravated Breach' than the instant case.

106. Similarly, when *Terry* was decided there was no mandatory entry point; E3(2) was in the same terms as in *Suarez*. (see paragraph 9.1 of that decision). He was suspended for four matches for insulting (once) an opponent in these terms: "fucking black cunt".

107. There is no penalty tariff for such cases. The FA has assessed and fixed the starting point for an 'Aggravated Breach' at five matches. We have balanced the competing factors and assessed all that we have read and heard. We have to sanction for a single gesture, used in the context we have described. It is aggravated by his profile and the fact that such conduct undermines campaigns to promote inclusivity, equality and diversity. On the other hand, there are the features of mitigation identified above. Balancing those matters and having regard to facts and circumstances of the Player's conduct, we concluded that the appropriate sanction was a suspension of five matches. That is what we imposed.

108. By virtue of Rule E3(6) the Commission may impose a financial penalty or any other sanction that it considers appropriate in respect of an Aggravated Breach of Rule E3(1). We considered it appropriate that he should also be fined. Having regard to information provided to us about his income, we assessed the appropriate sum at £80,000.
109. Given that he denied both Charges and they were proved, we determined that he should pay the full costs of the hearing and so ordered. (Disciplinary Regulation 8.8(b)).
110. In consequence of the finding on Charge 2, the Player will be subject to an education programme, the details of which will be provided to him by the FA (Rule E3(7)).
111. It is customary where misconduct charges are upheld to warn the player as to his future conduct. We note that in paragraph 35 of his witness statement, the Player stated: "*...I have no intention of creating or fuelling any controversy and am happy to confirm that I will not repeat the quenelle gesture again on the pitch during any football match*". Mr Saini QC repeated that during his submissions.
112. We order a stay of the five match suspension pursuant to Disciplinary Regulation 8.11 until:
- c. The expiry of seven-day period from receipt of our written reasons in which NA has right of appeal against this decision, if no appeal is lodged during that period, or
  - d. Written notification to the FA of any decision by NA not to appeal, if served prior to the expiry of period for appealing, or
  - e. The outcome of any appeal lodged by NA against this decision, if an appeal is lodged during the period for appealing.

## **G. Summary**

113. For the reasons adumbrated the Commission found as follows -
- a. Charge1 proved
  - b. Charge 2 proved.
  - c. The appropriate penalty is
    - i. Subject to the stay granted in the terms set out, an immediate playing suspension from all Club football until such time as West Bromwich Albion first team has completed five matches in approved competitions.
    - ii. Fine of £80,000.
  - d. He will pay the costs of the hearing in full.
  - e. He will be subject to an education programme, the details of which will be provided to him by the FA (FA Rule E3(7)).
114. The Player has a right of appeal as provided by the Disciplinary Regulations.

**Christopher Quinlan QC**

**Thura KT Win**

**Peter Powell**

3 March 2014