

IN THE MATTER OF A BREACH OF THE EFL REGULATIONS

B E T W E E N:

THE FOOTBALL LEAGUE LIMITED (trading as the “EFL”)

Claimant

- and -

DERBY COUNTY FOOTBALL CLUB LTD (the “Club”)

Respondent

AGREED DECISION

Introduction and Factual Background

1. This is an Agreed Decision pursuant to EFL Regulation 85.
2. The aim of the Championship Profitability and Sustainability Rules (the “**P&S Rules**”) is to encourage “...*responsible spending for the long-term benefit of football*” (EFL Regulation 18.1.6) and thereby to discourage short-term overspending by football clubs. The ultimate purpose of the P&S Rules includes “...*introducing more discipline and rationality in Club football finances*” and “...*protecting the long-term viability and sustainability of League football*” (EFL Regulations 18.1.4 and 18.1.7).
3. On 16 January 2020, the EFL charged the Club with two breaches of the P&S Rules:
 - 3.1 the first charge arose from the sale by the Club of Pride Park Stadium on 28 June 2018 at a price of £81.1million to Gellaw Newco 202 Limited (the “**First Charge**”); and
 - 3.2 the second charge was that the Club’s amortisation approach did not comply with Financial Reporting Standard 102 (“**FRS 102**”) (the “**Second Charge**”).
4. The First Charge was dismissed by a Disciplinary Commission¹ on 24 August 2020. No appeal was brought by the EFL.
5. The basis of the Second Charge was that the Club’s amortisation approach did not comply with FRS 102; with the result that the Club’s accounts for the relevant years failed to comply with P&S Rule 1.1.3, in particular that Annual Accounts must be prepared and audited in accordance with all legal and regulatory requirements applicable to accounts prepared pursuant to Section 394 of the Companies Act 2006.
6. Specifically, the Second Charge was that the financial statements submitted by the Club in relation to the financial years ending 30 June 2016, 30 June 2017 and 30 June 2018 did not comply with FRS 102 in that they:
 - 6.1 assumed non-zero residual values when amortising registration rights and transfer fee levies where residual values cannot be reliably determined;

¹ Graeme McPherson QC (Chair), Robert Englehart QC, James Stanbury

- 6.2 failed to amortise player registrations on a straight-line basis;
- 6.3 amortised player registrations on a basis which did not reflect the pattern of consumption of future economic benefits;
- 6.4 amortised player registrations in a manner which took into account possible resale values of players; and
- 6.5 failed adequately to disclose the changes to the accounting policies and/or estimates in respect of the amortisation of player registrations.
7. The first particular of the Second Charge, which related to the use of non-zero residual values, fell away as a result of the explanation given by the Club of what its policy actually was shortly before the hearing before the Disciplinary Commission.
8. In its Decision dated 24 August 2020, the Disciplinary Commission dismissed particulars two, three and four. It upheld particular five.
9. The EFL appealed the Decision of the Disciplinary Commission to a League Arbitration Panel². In a Decision dated 7 May 2021, the League Arbitration Panel upheld the EFL's appeal in relation to particular two of the Second Charge, finding that "*it was impermissible in amortising under the cost model in relation to the accounts for 2015/16, 2016/17 and 2017/18 for the Club to take into account possible resale values of players.*"³
10. In relation to the issue of whether the Club's approach to the amortisation of players was "systematic" or "reliable", the League Arbitration Panel concluded that these were matters of fact which could not be interfered with on appeal. However, the League Arbitration Panel noted "*that said we would not wish it to be taken that we would have necessarily reached the same conclusions as the DC on these matter. On the contrary, it seems to us that the EFL had strong grounds for contending that the treatment adopted by the Club was neither systematic nor reliable.*"⁴
11. In relation to particular five of the Second Charge, the League Arbitration Panel noted that the explanations provided by the Club in its Accounts "*were at best confusing and at worst seriously misleading*"⁵. It further noted that "*the erroneous explanation of the treatment in the accounts mirrored that in the Draft Audit Findings Report of the auditors for each of the relevant years, which were also incorrect and misleading.*"⁶
12. Following agreement between the parties, the issue of sanction in respect of particulars two and five of the Second Charge was remitted back to the Disciplinary Commission. In a Decision dated 30 June 2021, the Disciplinary Commission issued a final award which included the following orders:
- 12.1 The Disciplinary Commission made a declaration that "*the Annual Accounts of the Club submitted to the Executive of the Football League pursuant to Rule 2.2 of the P&S Rules for each of the years ended 30 June 2016, 30 June 2017 and 30 June 2018 did not comply with the requirements of the P&S Rules by reason of:*
- i) *The policy adopted for the amortisation of player registration*
 - ii) *The description in the Notes to such Annual Accounts of the policy adopted for the amortisation of player registrations.*"⁷
- 12.2 It ordered that by 18 August 2021, the Club "*shall submit to the Executive of the Football League revised and restated Annual Accounts for each of the years ended 30 June 2016, 30 June 2017 and 30 June 2018 which comply with the requirements of the P&S Rules, and in particular*
- i) *Which have been prepared using a policy for the amortisation of player registrations which complies with the requirements of FRS 102*

² Charles Hollander QC (Chair), Rt. Hon. Lord Dyson, David Phillips QC

³ Para. 108(a) of the League Arbitration Panel Decision dated 7 May 2021

⁴ Para. 84 of the League Arbitration Decision dated 7 May 2021

⁵ Para. 25 of the League Arbitration Panel's Decision dated 7 May 2021

⁶ Para. 25 of the League Arbitration Panel's Decision dated 7 May 2021

⁷ Para. 96 of the Disciplinary Commission's Decision dated 30 June 2021

- ii) *Which fully and accurately describes the policy for the amortisation of player registrations adopted and applied by the Club in each year (and any relevant changes to accounting policies previously used by the Club in such regard in earlier years).⁸*
- 12.3 It further ordered that, if required by the P&S Rules, the Club should submit revised P&S Calculations to the EFL.⁹
- 12.4 The Club was “reprimanded and warned as to its future conduct as regards the preparation of its Annual Accounts.”¹⁰
- 12.5 The Club was ordered to “pay a financial penalty of £100,000 to the Football League by 4.00pm on Wednesday 21 July 2021.”¹¹

Together the “**June Orders**”.

Subsequent Developments

- 13. On 17 September 2021 the Club and associated group companies filed a Notice of Intention to Appoint Administrators with the High Court. The Administrators were subsequently appointed on 22 September 2021.
- 14. As a consequence, the Club has not yet been able to comply with the June Orders. Further, the Club has been unable to file Annual Accounts for the years ending 30 June 2019 or 30 June 2020 that met with the requirements of the June Order.
- 15. However, the Club has filed with the EFL summary information and updated P&S Calculations for all of the relevant Seasons which has enabled the EFL and the Club to assess the Club’s profit / loss across all relevant Reporting Periods.
- 16. In particular, following submission by the Club of:
 - 16.1 a summary of the results that would be shown in the re-stated Annual Accounts for each of the years ending 30 June 2016, 30 June 2017 and 30 June 2018 in accordance with the June Order;
 - 16.2 a summary of the results that would be shown in the Annual Accounts for years ending 30 June 2019 and 30 June 2020 which are compliant for FRS 102 and the principles of the June Order; and
 - 16.3 revised P&S Calculations for the periods ending in seasons 2015/16, 2016/17, 2017/18, 2018/19 and 2020/21 (the “**Revised P&S Calculations**”),

the Club and EFL have acknowledged and agreed that the Club did breach the Upper Loss Threshold (as defined in the P&S Rules) for the three-year period ending in 2016/17, the three year period ending in 2018/19 and now also the four year period ending in season 2020/21.
- 17. The agreement by the Club to this Agreed Decision amounts to an acceptance of a breach of the P&S Rules for the relevant reporting period.

Analysis

- 18. Through the administration of its Regulations, the EFL has proven that the Club’s policy for the amortisation of player registrations since 2015/16 has been in breach of FRS 102, the applicable accounting standard.
- 19. As a direct result of such breach, “*the Club significantly reduced its costs in the years in question compared to other Championship clubs, which had the effect that, because of the FFP restrictions, they were potentially able to increase their spend on player purchases in those years compared to what would have occurred had they adopted the straight-line treatment which other clubs adopt*”.¹²
- 20. The Club has subsequently sought to argue that it would be permitted to restate its P&S Results further

⁸ Para. 113(2) of the Disciplinary Commission’s Decision dated 30 June 2021

⁹ Para. 113(3) of the Disciplinary Commission’s Decision dated 30 June 2021

¹⁰ Para. 113(4) of the Disciplinary Commission’s Decision dated 30 June 2021

¹¹ Para. 113(5) of the Disciplinary Commission’s Decision dated 30 June 2021

¹² Para. 30 of the League Arbitration Panel’s Decision dated 7 May 2021

by including amounts standing to the credit of the Club's Revaluation Reserve (£30.3m) following the sale of Pride Park Stadium. The EFL considers that the Revaluation Reserve amount should not be credited to the Club's Adjusted Earnings Before Tax for the purposes of its P&S Result.

21. The Club has now accepted that as a matter of compliance with relevant accounting standards in the context of the EFL's Regulations, the Revaluation Reserve may not be used to mitigate losses in the Club's profit and loss account and hence may not be used for the purposes of assessing the Club's compliance with the EFL's Championship P&S Rules.
22. The Club has now submitted Revised P&S Calculations which will show that the Club's Adjusted Earnings Before Tax in the relevant Reporting Periods is as follows:
 - 22.1 3 years up to and including financial year 2016/17 - £46.76m loss, i.e. £7.76m in excess of the Upper Loss Threshold;
 - 22.2 3 years up to and including financial year 2017/18 - £28.12m loss i.e. £10.88m under the Upper Loss Threshold;
 - 22.3 3 years up to and including financial year 2018/19 - £50.72m loss i.e. £11.72m in excess of the Upper Loss Threshold; and
 - 22.4 4 years up to and including financial year 2020/21 - £40.96m loss i.e. £1.96m in excess of the Upper Loss Threshold.
23. It is also noted that in exercise of its powers under P&S Rule 2.9 and Regulation 16.20, both as a preliminary measure and to provide a tool for the application of a suspended sanction the EFL required the Club to submit, agree and adhere to a budget a summary of which is set out in Appendix 1 to this Decision (the "**Budget**").

Decision

24. It has been agreed, and I hereby order that the Club is sanctioned for the breaches identified in paragraph 22 as follows:
 - 24.1 The Club is to be immediately deducted 9 points in the 2021/22 Championship season.
 - 24.2 Further, if in the opinion of the EFL Executive, the Club has failed to comply with the Budget, the Club shall (absent any manifest error on the part of the EFL Executive) immediately be deducted a further 3 league points ("**Suspended Points Deduction**").
25. The Suspended Points Deduction is in addition to such other sanction that may be applied by a Disciplinary Commission or League Arbitration Panel following a breach by the Club of the Upper Loss Threshold in the Reporting Period ending with financial year 2021/22, or any other breach of the Championship P&S Rules, and shall not operate to mitigate any sanction that may be imposed for such a breach.
26. I make the following further orders:
 - 26.1 The Club shall:
 - i) in accordance with the June Order, submit to the EFL its re-stated Annual Accounts for each of the years ending 30 June 2016, 30 June 2017, 30 June 2018; and
 - ii) submit to the EFL its Annual Accounts for the years ending 30 June 2019 and 30 June 2020by no later than 4.00pm on 31 January 2022.
 - 26.2 The Club shall:
 - i) File all future (i.e. Season 2020/21 onwards) Annual Accounts on time with the EFL in accordance with the EFL Regulations.
 - ii) Where the Club is, because of the administration, relieved from any obligation to file

Annual Accounts at Companies House, it must instead make arrangements to publish the same itself no later than the statutory filing date.

- iii) Apply a straight-line amortisation policy in respect to player registrations with no revaluation of player registration values part way through any registration in relation to all financial statement provided hereunder and in future seasons.
- iv) Not claim any “exceptional items” in the Club’s P&S Calculation, without the EFL’s consent in advance.
- v) Not make any restatement to carry through the revaluation reserve on its stadium sale into the Club’s P&S Calculation.
- vi) Not apply any player impairments (save as agreed with the EFL).
- vii) Make no changes to reporting entities for P&S purposes or accounting treatments without full prior disclosure and written agreement from the EFL.

27. The June Order shall remain in full force and effect save for the amended date of submission set out in paragraph 26.1 above.

Costs

28. The Club shall pay to the costs of the Commission relating to the approval of this Decision, assessed at £700 plus VAT as applicable.

Publication

29. This Agreed Decision shall be published by the EFL on its website and may be circulated to other member clubs of the EFL.

30. The EFL may answer any questions posed of it by other Championship Clubs in relation to this Agreed Decision and any matters related thereto.

31. Any further public statements are to be agreed between the parties.

Finality

32. This Agreed Decision is not subject to an appeal before the League Arbitration Panel as constituted under EFL Regulations, or indeed to anybody having, or purporting to have, jurisdiction to review this Agreed Decision.

Graeme McPherson QC

Chair of the Disciplinary Commission

15 November 2021

London, England

Appendix 1 – Budget

1. For the purpose of this Appendix, the following terms shall be interpreted as follows:
 - 1.1 **“Permitted Player”** means any Player who:
 - i) has at any point during their career, started in 3 League Matches (as defined in the EFL Regulations) in the same or higher division that the Club is participating in at the time of their registration; or
 - ii) is registered with the Club after the date of this Agreement.
 - 1.2 **“Salary”** means such sums as are required to be disclosed in or annexed to the standard player contract (including but not limited to (i) gross basic salary, (ii) signing on fees, (iii) appearance fees, (iv) individual player bonuses, and (v) accommodation, relocation, travel or motor costs) excluding any payments made in accordance with the squad bonus schedule.
 - 1.3 **“Total Player Salary Costs”** shall mean the figure calculated by adding together the Salary for each Contract Player registered at the Club.
2. The Club has been required to submit, agree and adhere to a Budget in accordance with P&S Rules 2.9 and Regulation 16.20 for the remainder of Season 2021/22.
3. The Club and EFL have agreed an overall amount in respect of Salary costs of not more than £15,775,000, with the following additional conditions:
 - 3.1 the Club will be permitted to have registered at any one time no more than 25 Permitted Players;
 - 3.2 subject to paragraph 4.2, the Club will not be permitted to pay or commit to pay any Transfer Fee, Compensation Fee or Loan Fee or any other form of payment (other than a sell on fee) in respect of the registration of any Player;
 - 3.3 the average Salary of all new Contract Players registered from the date of this Agreement until 30 June 2022 will not exceed an average as agreed with the EFL;
 - 3.4 the Salary of any new Contract Player registered from the date of this Agreement until 30 June 2022 will not exceed a maximum figure as agreed with the EFL;
 - 3.5 any contribution to fees paid to an Intermediary by the Club on the behalf of a Player will be limited to 3% of the Player’s Basic Gross Income (as defined in the FA Regulations on Working with Intermediaries).
4. In line with the existing EFL embargo policy, the Club can:
 - 4.1 continue to register Academy Players, Scholars and non-first team players (Contract Players who are not eligible for first team competitions as a condition of their contract and whose Salary is capped at a level as agreed with the EFL).
 - 4.2 the Club may make a payment of a fee in order to acquire the registration of either a Scholar or Academy Player provided that the fee is not in excess of the level as agreed with the EFL; and
 - 4.3 upgrade Scholars and Academy Players to their first professional contract (subject always to the cost caps set out in paragraph 3).
5. If a Club does not have a Professional Goalkeeper for a fixture (i.e. all other Professional Goalkeepers are suspended, called for international duty or injured (independent medical evidence is required)), then a Club would be permitted to sign a goalkeeper for 7 days as provided for by Regulation 55.
6. The Club may be permitted to extend existing permanent Players’ contracts, for example:
 - 6.1 extend a monthly contract subject to the budget restrictions (such players may be unable to find employment elsewhere due to transfer window restrictions);
 - 6.2 extend a full contract of an Under 24 player to protect compensation rights in each case subject to prior application (subject always to the relevant cost limits); and

6.3 extend an Over 24 Player, in each case subject to prior application (subject always paragraphs the relevant cost limits).