

IN THE MATTER OF A BREACH OF THE EFL REGULATIONS

BETWEEN:

THE FOOTBALL LEAGUE

The EFL

- and -

(1) PAUL RICHARDSON

(2) MAXI LOPEZ

(3) MATTHEW SOUTHALL

The Respondents

AGREED DECISION

Introduction and relevant provisions of the EFL Regulations

1. This is an Agreed Decision pursuant to EFL Regulation 86.
2. Of particular relevance to this Agreed Decision (though the EFL Regulations should be referred to directly for their full force and effect):
 - 2.1 The intention behind the Owners' & Directors' Test (Appendix 3 to the EFL Regulations) (**OADT**) is 'to protect the image and integrity of the League and its competitions, the well-being of the Clubs, and the interests of all of the stakeholders in this Clubs, by preventing anyone who is subject to a 'Disqualifying Condition' being involved in or influencing the management or administration of a Club'.
 - 2.2 'Control' is set out in Regulation 1.1 of the EFL Regulations as follows:

"Control' means the power of a person to exercise, or to be able to exercise or acquire direct or indirect control over the policies, affairs and/or management of a Club, whether that power is constituted by rights or contracts (either separately or in combination) and having regard to the considerations of fact or law involved ...

For the purposes of the above any rights or powers of a Nominee for any person or of an Associate of any Person shall be attributed to that person'.
 - 2.3 'Relevant Person' is defined in the OADT as follows:

"Relevant Person' means in respect of any Club any individual Person (and not any Entity) operating the powers that are usually associated with the powers of a director of a company incorporated under the 2006 Act (as a Company limited by shares or by guarantee). Further, and without prejudice to the generality of the foregoing, the following individuals shall in any event be deemed to qualify as a Relevant Person:

 - (a) a director as defined by Section 250 of the 2006 Act;
 - (b) a shadow director as defined by Section 251 of the 2006 Act;

- (c) a person registered as a director or secretary of the Club with the Registrar of Companies;
- (d) a person for whom a Form AP01 (to be filed with the Registrar of Companies) has been completed in relation to the Club;
- (e) a person who has been elected to become a director of the Club at a meeting of the board of directors of the Club;
- (f) a person who has been elected to become a director of the Club at a meeting of the members of the Club;
- (g) a person in accordance with whose directions or instructions the persons constituting the management of the Club are accustomed to act;
- (h) any Authorised Signatory;
- (i) any duly appointed signatory (as that term is utilised in Regulation 46.1);
- (j) any 'chief executive' officer, 'general manager', 'chief operating officer' or any other person undertaking any duties which would objectively be considered to be equivalent to those roles;
- (k) any person appointed by those with Control over the Club to represent their interests in the management of the Club; and
- (l) a person who has Control over the affairs of the Club,

but the definition of 'Relevant Person' expressly excludes any external legal, financial or other professional advisers where they are acting in a capacity regulated by a professional regulatory body and do not hold any interest (in excess of a 5% shareholding) in the Club'.

2.4 OADT Rule 2.6 provides:

'A Person may not do anything that brings them within the definition of a Relevant Person, and the Club may not permit them to do anything that brings them within that definition, unless and until the Club has received confirmation from The League in accordance with Rule 2.5(c) that as far as The League is aware the person is not subject to any Disqualifying Condition'.

2.5 OADT Rule 3.1 provides:

'If any Person proposes to acquire Control of a Club:

- 3.1.1 the Club and/or the Person shall, as far in advance of the acquisition of Control as reasonably possible and in any event no later than 10 Normal Working Days prior to the date on which it is anticipated that such acquisition of Control will take place:
 - (a) submit to the League a duly completed Declaration in respect of each Person who will become a Relevant person upon the proposed acquisition of Control; and
 - (b) submit to the League up to date Future Financial Information (as defined in Regulation 16) prepared to take into account the consequences of the change of Control on the Club's future financial position ...'

2.6 OADT Rule 3.3 provides:

'No Person may acquire Control of a Club and no Club may permit a Person to acquire Control of it until such time as:

- 3.3.1 The League provides confirmation that all Persons that are required to do so have complied with the process set out in Rule 3.1.1(a) and no such Persons are liable to be disqualified as a Relevant Person;
 - 3.3.2 The League provides confirmation of its satisfaction with the information provided pursuant to Rule 3.1.1 (b); and
 - 3.3.3 The Club and any Person proposing to acquire Control have acceded to any powers and/or accepted any conditions imposed pursuant to Rule 3.2’.
- 2.7 OADT Rule 5.2.2 provides that ‘A person shall be guilty of misconduct if they (whether intentionally or otherwise) ... sign a Declaration that is false’.
- 3. On 20 February 2022, the EFL issued charges against each of the Respondents arising from a proposed takeover of Birmingham City FC (**Club**):
 - 3.1 Each of the Respondents was charged with breaches of OADT Rule 2.6 and Rule 3.3, principally on the basis that he had acquired ‘Control’ of the Club on or after 1 August 2022 (without the necessary approvals having been given by the EFL under OADT Rule 2.6 or Rule 3.3).
 - 3.2 Mr Southall was additionally charged with Misconduct in accordance with OADT Rule 5.2.2, on the basis he signed a false Declaration dated 15 September 2022 stating he had not done anything to bring him within the definition of a Relevant Person.

Background - the proposed takeover of the Club

- 4. On 16 July 2022, Maxco Capital Co Ltd (**Maxco**) (a company owned by Mr Richardson and Mr Lopez) entered into a master sale and purchase agreement (**MSPA**) with the Club’s current owners with a view to ultimately acquiring ownership of the Club. The proposed acquisition was structured in two stages.
- 5. Clause 5.1 (a) of the MSPA stated as follows:
 - ‘(a) The Stage 1 Completion is conditional upon:

the Purchaser having obtained the necessary approval from the English Football League in relation to the purchase by the Purchaser of the Stage 1 Sale Shares under the English Football League Regulations ...’.
- 6. Clause 7.5 of the MSPA stated as follows:
 - ‘If the Condition set out in Clause 5.1(a)(i) is not satisfied on or before 31 July 2022, during the period between 1 August 2022 and the Stage 1 Completion (when English Football League shall have approved the appointment of the Purchaser Nominated Directors) and conditional upon the Purchaser having fulfilled its payment obligation under Clause 4.1(b)(i) in full on the due date, the Sellers undertake to procure that:
 - (a) one (1) person nominated by the Purchaser (the “Purchaser Nominated Consultant”) shall be appointed as the consultant of the Club solely to observe the daily management of the Club;
 - (b) any transfer of player’s registration by the Club from another club for a fee shall be mutually agreed by the chairman of the board of director of the Club and the Purchaser’s Nominated Consultant; and

- (c) the Club shall notify the Purchaser Nominated Consultant in writing before entering into any transaction, agreement or contract which consideration exceeds GBP100,000.'

7. On 14 September 2022, the EFL held a meeting with representatives of the Club as well as the Respondents. Following the meeting, it became apparent to the EFL that the Respondents might have been involved in the Club's decision making, potentially in breach of the OADT.

The EFL's investigation and charges

8. Following the 14 September 2022 meeting, the EFL issued formal notices of investigation to the Club and the Respondents for information relating to decision making at the Club. The responses to those notices supplied the EFL with approximately 1,000 electronic files (of various sizes/number of pages). Each of the Respondents were also interviewed, as were representatives of the Club.

9. Following the conclusion of its investigation, the EFL charged each of the Respondents on 20 February 2022 (as above, paragraph 3). The EFL asserted the following facts in support of the charges (quotes are verbatim):

9.1 The necessary EFL approval had not been granted by 31 July 2022, so Mr Southall was appointed as the 'Purchaser Nominated Consultant' pursuant to clause 7.5(a) of the MSPA (see paragraph 6 above). On 6 August 2022 the Club's Chairman wrote to the Club's senior management team informing them '[w]ith effect from 1 August, we have agreed ... that Matthew Southall be appointed as a Consultant of the Club. Matt will come to Club regularly to observe the daily management of the Club, and to get further familiar to how the business operates.' Accordingly, Mr Southall had a formal role at the Club from 1 August 2022 onwards.

9.2 Clause 7.5(a) of the MSPA provided that, while Mr Southall was to act only as an 'observer', he was to be appointed 'as the consultant of the Club.' Consistent with Mr Southall being appointed 'as the consultant of the Club', Mr Southall was remunerated by the Club (not Maxco) in respect of his monthly 'consultancy expenses'. Moreover, Mr Richardson was the approver of the Club paying these expenses, with the Club's Chairman emailing him on 25 August 2022 to enquire 'Could you please let me know if the expense related to Matthew (consultant) as attached invoice can be payed by the club during this special stage. If yes, I will tell finance department to pay'.

9.3 Clause 7.5(b) of the MSPA required 'any transfer of player's registration by the Club from another club for a fee [to] be mutually agreed by the chairman of the board of director of the Club and the Purchaser's Nominated Consultant'.

9.4 Clause 7.5(b) of the MSPA had practical effect:

9.4.1 On 1 September 2022, the Club's Chairman emailed Mr Southall about the Club's proposed acquisition – ultimately successful - of a player (which required payment of a transfer fee), stating 'The below should be a good news, major terms are as below for your reference and also need your approval. I'm happy with this deal. If you agree, We will do it'. Mr Southall replied to the Club's Chairman to say: 'This is approved. Well done to everyone involved'.

9.4.2 On the same date, the Club's Chairman emailed Mr Southall about the Club's proposed acquisition of another player (which would have required payment of a transfer fee), stating 'It's a busy day. Here below is another player we are going to transfer in need your approval'. The Respondent replied to say: 'Very busy day,

but very successful also. This is a very good prospect and an asset. The transfer is approved’.

- 9.5 Moreover, Mr Southall expressly indicated his agreement in respect of other transfers:
- 9.5.1 On 28 August 2022, the Club’s Chairman emailed Mr Southall about the Club’s proposed loan of a player (no payment of a fee), stating ‘This is a player who we are going to loan in ... I think it’s good for us, Major terms as the email below for your reference’. Mr Southall replied to say ‘Very good signing for us. Transfer approved from the purchasers side’.
- 9.5.2 On 30 August 2022, the Club’s Chairman emailed Mr Southall about a proposed loan in of a player, stating ‘The below is a player we are going to loan in ...’. Mr Southall replied to say ‘This is Agreed’.
- 9.5.3 On 31 August 2022, the Club’s Chairman emailed Mr Southall about the Club’s proposed transfer out of a player, stating ‘We are going to transfer out [player] ... major terms for your reference’. Mr Southall replied, ‘Good deal for the Club’.
- 9.6 Clause 7.5(c) of the MSPA required the Club to ‘notify the Purchaser Nominated Consultant in writing before entering into any transaction, agreement or contract which consideration exceeds GBP100,000’. However, it had a practical effect beyond its wording, as Mr Southall’s approval was sought for such expenditure:
- 9.6.1 On 15 August 2022, the Club’s Chairman emailed Mr Southall about a proposed transfer out of a player (which included a settlement payment in excess of £100,000), stating ‘In the event you agree to the transfer, BCFC will save the following payments...’. Mr Southall replied to say ‘we are happy to proceed with the settlement agreement’.
- 9.6.2 Additionally, Mr Southall’s approval was sought for at least one non-transfer transaction in excess of £100,000, which concerned staff bonuses. On 6 September 2022, the Club’s Chairman emailed Mr Southall, stating ‘I’d like to know your comments about this staff bonus scheme as the below email ... Total amount of this bonus will depend on the final result, which might be over £100k, in this case, need your approval, let me know your thoughts’. Mr Southall replied, ‘I think this is a very good incentive for the staff and will definitely get everyone pulling together to ensure the club is successful both on and off the pitch’.
- 9.7 Mr Southall was heavily involved in transfer activity at the Club – by way of notable examples:
- 9.7.1 Mr Southall directed and conducted negotiations on behalf of the Club with another football club relating to the potential transfer of a player.
- 9.7.2 On 1 September 2022, Mr Southall provided details of a financial offer made by Mr Richardson, which was then relayed by a Club representative as part of a transfer negotiation.
- 9.8 On 25 August 2022, Mr Southall requested a commercial payment in excess of £100,000 and due to be paid by the Club to a third part be withheld, which payment was in fact withheld.
- 9.9 In short, Mr Southall - acting on behalf of Mr Richardson and Mr Lopez - was extensively and closely engaged on a wide range of transfer and commercial dealings in respect of

the Club, and members of the Club's Senior Management Team from time to time sought and followed his instructions.

9.10 Additionally, Mr Richardson:

9.10.1 secured work experience with the Club for a young person; and

9.10.2 gave his approval for the design of the Club's kit for the 2023/2024 season.

10. The EFL asserted in charging each of the Respondents that the matters set out at paragraph 9 above – taken individually and/or collectively – gave the Respondents 'Control' of the Club within the definition of that term as set out in the EFL Regulations on and/or after 1 August 2022, which formed the basis of the charges against each of the Respondents as set out at paragraph 3 above.

11. For completeness, on 2 December 2022 Mr Richardson and Mr Lopez had publicly announced that the proposed takeover of the Club would not proceed.

Admission of breach

12. In response to the charges, the Respondents say that each of them:

12.1 At all times understood and intended that they were acting in accordance with the EFL Regulations and the OADT, in particular.

12.2 Had, since May 2022, as Mr Richardson and Mr Lopez were contemplated to be future owners and the directors of the Club, and Matt Southall its Chief Executive Officer, completed OADT Declarations that they provided to solicitors for the Sellers requesting that they be provided to the Club and to the EFL such that it could approve them as Relevant Persons, albeit they later understood that the solicitors for the Sellers/Club decided not to submit those Declarations at that stage.

12.3 Again, in July 2022, completed OADT Declarations to be submitted by the solicitors for the Sellers/Club to the EFL. On this occasion, solicitors for the Sellers/Club advised that only those OADT Declarations for Mr Richardson and Mr Lopez should be submitted to the EFL.

12.4 Understood that the MSPA was entered into on 16 July 2022 on the primary basis that 'Stage 1 Completion' of the deal would take place on or before 31 July 2022, pending the approval of the EFL of the appointment of the Purchaser Nominated Directors.

12.5 Understood that if by 31 July 2022 Stage 1 Completion had not taken place, Maxco would continue to provide funding for the Club by way of an unsecured loan.

12.6 Understood that Maxco agreed with the Sellers of the Club that during such period from 1 August 2022 until Stage 1 Completion and/or termination of the MSPA, the Sellers would procure that Mr Southall had certain observer and consultative roles on behalf of Maxco with respect to Club spending (as set out in clause 7.5 of the MSPA).

12.7 Did not believe or understand that the matters set out in paragraphs 12.5 and/or 12.6 above constituted activity that would bring any of them into the definition of Relevant Person and/or Control.

12.8 Understood that the MSPA, including the provisions referred to in paragraphs 12.4 and 12.5 above, were disclosed in full to the EFL on or around 28 July 2022, such that the

EFL was fully aware of the existence of the arrangements set out therein before those arrangements took effect.

- 12.9 Understood that the only concerns raised by the EFL about the MSPA, and clause 7 in particular, were concerns raised by the EFL by way of an email dated 9 August 2022, which concerns did not deal with the issues relating to Relevant Person and/or Control which form the basis of the charges.
 - 12.10 Thereafter acted in accordance with their understanding of the MSPA, as set out above.
 - 12.11 Understand, since receiving the Charges, that on one (disputed) reading of the EFL Regulations their activity, or some of it, may have brought them within the definition of Control and/or Relevant Person.
13. Each of the Respondents however admits each of the charges against them on the following basis:
- 13.1 Such breach was entirely unintentional and inadvertent.
 - 13.2 At all times they acted transparently and understood that the EFL was fully aware of their actions, and was not concerned about them.
 - 13.3 They have co-operated in full with the EFL investigation.
 - 13.4 Each of them has already suffered a significant detriment as a result of the EFL's investigation and the resulting termination of the MSPA.
 - 13.5 Each of them hopes to be involved in football as regulated by the EFL (or otherwise) and as such commits to complying with the EFL Regulations in full in the future.
14. The EFL accepts the above admissions and the basis on which they are made. However, in respect of paragraphs 12.8 and 13.2 the EFL notes that parties to proposed transactions (and those advising them) cannot reasonably assume that the EFL will not have concerns about arrangements in relation to proposed acquisitions of ownership of Clubs simply on the basis that relevant transactional documents have been submitted to the EFL. If aspects of a transaction might give rise to concerns in respect of the OADT or otherwise, then such aspects should be proactively and expressly highlighted to the EFL, which may then (in its discretion) give an express, clear, and unequivocal view in respect of such identified arrangements and their apparent compliance or otherwise with the EFL Regulations. Unless the EFL has provided such an express, clear and unequivocal view, it cannot be assumed that any potentially contentious aspect of a transaction is not of potential later concern to the EFL.
15. The EFL is prepared to give the Respondents substantial credit for their early admissions, thereby saving significant costs and time in not having the charges referred to a Disciplinary Commission on a contested basis.

Agreed sanction

16. It has been agreed, and I hereby order that the Respondents are sanctioned for the breaches identified at paragraph 3 as follows:
- 16.1 Mr Southall shall be prohibited from being a Relevant Person for the purposes of the OADT in relation to any member club of the EFL for a period of six (6) months, three (3) months of which are to be suspended until the end of the 2023/2024 season and to come into effect only upon a future breach of the OADT being proven by the EFL.

- 16.2 Mr Richardson shall be prohibited from being a Relevant Person for the purposes of the OADT in relation to any member club of the EFL for a period of two (2) months, which period is to be suspended until the end of the 2023/2024 season and to come into effect only upon a future breach of the OADT being proven by the EFL.
- 16.3 Mr Lopez shall be prohibited from being a Relevant Person for the purposes of the OADT in relation to any member club of the EFL for a period of one (1) month, which period is to be suspended until the end of the 2023/2024 season and to come into effect only upon a future breach of the OADT being proven by the EFL.
17. Each of the above sanctions is to come into effect on and from the date of the Respondents' agreement to the sanctions, being 4 April 2023. The Respondents have agreed to respect the sanctions from that date pending the ratification of this Agreed Decision in accordance with EFL Regulation 86.
18. This Agreed Decision shall not constitute a waiver by the EFL of its rights or remedies (however so arising) in respect of (1) any future breaches of the EFL Regulations by any of the Respondents, including any further breaches of the OADT, and/or (2) any breaches of the EFL Regulations by any other party (in respect of the facts relating to this Agreed Decision or otherwise, and whether previously charged or otherwise).

Costs

19. The Respondents shall be jointly and severally liable to pay the EFL costs of its investigation in the amount of £45,000, but as between the Respondents the liability for costs shall be £20,000 for each of Mr Richardson and Mr Lopez, and £5,000 for Mr Southall.
20. The Respondents shall each bear their own costs.

Publication

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

Finality

22. This Agreed Decision is not subject to appeal or challenge of any sort.

Signed:

A handwritten signature in black ink, appearing to be 'Neil Richardson', with a long horizontal stroke extending to the right.

Dated: 11 April 2023