

IN THE MATTER OF A BREACH OF THE EFL REGULATIONS

BETWEEN:

THE FOOTBALL LEAGUE

The EFL

and -

BIRMINGHAM CITY FOOTBALL CLUB PLC

The Club

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 those 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'.

3. On 20 February 2023, the Club was charged by the EFL with breaches of OADT Rule 2.6 and Rule 3.3, principally on the basis that the Club permitted one or more Persons to bring themselves within the definition of a Relevant Person of the Club and/or acquire Control of the Club without the prior approval of the EFL.

Background - the proposed takeover of the Club

4. On 16 July 2022, Maxco Capital Co Ltd (**Maxco**) (a company owned by Paul Richardson and Maxi 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 representatives of Maxco. Following the meeting, it became apparent to the EFL that the representatives of Maxco 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 representatives of Maxco 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). Representatives/employees of the Club were also interviewed, as were representatives of Maxco.
9. Following the conclusion of its investigation, the EFL charged the Club on 20 February 2023 (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 Matthew 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 of a player and the relevant terms. Mr Southall provided approval.
 - 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'. Mr Southall 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 and the relevant terms. Mr Southall replied by email approving the proposed loan.
- 9.5.2 On 30 August 2022, the Club's Chairman emailed Mr Southall about the Club's proposed loan of a player and the relevant terms. Mr Southall replied by email expressing agreement to the proposed loan.
- 9.5.3 On 31 August 2022, the Club's Chairman emailed Mr Southall about the Club's proposed transfer of a player and the relevant terms. Mr Southall replied by email expressing agreement to the proposed transfer.
- 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 the Club's proposed transfer out of a player and the relevant terms, including a potential payment of over £100,000. Mr Southall replied by email expressing agreement to the proposal.
- 9.6.2 On 6 September 2022, the Club's Chairman emailed Mr Southall about the Club's proposal to pay a non-transfer transaction in excess of £100,000. Mr Southall replied by email expressing agreement to the proposal.
- 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 to a football intermediary in excess of £100,000 and due to be paid by the Club to a third party 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 the Club that the matters set out at paragraph 9 above – taken individually and/or collectively – gave Messrs. Richardson, Lopez and/or Southall (collectively, the **Maxco Individuals**) 'Control' of the Club within the definition of that term as set out in the EFL Regulations on and/or after 1 August 2022 (and the Maxco Individuals also thereby came within the definition of a Relevant Person (of the Club) at the same time), which formed the basis of the charges against the Club as set out at paragraph 3 above.
11. For completeness, (1) on 2 December 2022 Mr Richardson and Mr Lopez publicly announced that the proposed takeover of the Club would not proceed, and (2) the facts set out at paragraph 9 above also underpinned charges against the Maxco Individuals, which were resolved by way of Agreed Decision dated 11 April 2023.

Admission of breach

12. The Club admits the charges and, in doing so, says the following:
 - 12.1 The Club was not a party to the MSPA, nor did it have any influence over its terms.
 - 12.2 The full terms of the MSPA were not disclosed to the Club at the material time.
 - 12.3 The Club understood that the MSPA had been sent to the EFL for review on or around 28 July 2022, and the Club was not aware of the EFL raising any concern about clause 7.5 or any other terms of the MSPA.
 - 12.4 The Club had no power to block Mr Southall's appointment as the **'Purchaser Nominated Consultant.'**
 - 12.5 Mr Southall's appointment did not impact the Club's management hierarchy. Day to day decisions were still taken by the Club's Chairman with the assistance of the Club's senior management team and in the best interests of the Club. Mr Southall did not have authority to direct and/or conduct negotiations on behalf of the Club in any capacity, including with any other football club or intermediary relating to the potential transfer of players. Where the Club became aware of incidents it considered potentially created a false impression that Mr Southall was acting on behalf of the Club, the Club promptly undertook steps to address the point directly with those with whom Mr Southall had communicated, an example of which is included at paragraph 12.17.
 - 12.6 On 6 August 2022, the Club's Chairman sent an email to senior employees notifying them of Mr Southall's appointment by the prospective purchasers. In doing so, the Club's Chairman made it clear that Mr Southall **'has no authority to give instructions at the moment.'** The Club's Chairman went on to say that, **'Any discussions that require authority should follow the same chain as before and [that their] day-to-day obligations remain unaltered.'** This was indicative of the Club trying to ensure compliance with the EFL Regulations.
 - 12.7 On 9 August 2022, the Club's Chairman directed the Club's external counsel to remind the Maxco Individuals that they did not have authority to act on behalf of the Club. This reflected that the Club's Chairman and the senior management team were operating the Club and seeking to curtail any conduct by the Maxco Individuals that could amount to a potential breach of the EFL Regulations.

- 12.8 On 11 August 2022, the Club's Chairman wrote to Mr Richardson and Mr Lopez in relation to the seating arrangement at St Andrew's. Therein, the Club's Chairman noted the 'utmost importance that [they] do not give the impression that [they] are members of the Board or senior executives of the Club at this stage.' This was a further example of the Club seeking to ensure compliance with the EFL Regulations by avoiding the perception that the Maxco Individuals had Control.
- 12.9 The Club also made it clear to third parties that the Maxco Individuals had no authority in relation to the Club. On 15 August 2022, the Club's Managing Director wrote to third parties that the Maxco Individuals 'have no authority to give orders or change instructions for anything to do with the football club'. This was reflective of the Club's Chairman and senior management team having day-to-day control over the Club and seeking to ensure that there was no misunderstanding as to who had Control.
- 12.10 Again, on 29 August 2022 the Club's Chairman reiterated the importance that the Maxco Individuals did not give the impression internally or externally that they were members of the Club Board.
- 12.11 Further on 29 August 2022, the Club's Chairman sent an email to Mr Southall. The Club's Chairman made it clear to Mr Southall that his role was that of an observer and that he was not part of the Club's senior management team. The Club's Chairman reiterated to Mr Southall that he had no authority at the Club and should not give instructions to staff. The Club's Chairman went on to expressly say that it was not acceptable for Mr Southall to act as if he represented the Club until there had been approval from the EFL. Therein, the Club's Chairman was making it clear that the EFL Regulations needed to be complied with.
- 12.12 The Club's Chairman became aware that a third party, a football intermediary, had copied Mr Southall in to an email when requesting payment. Upon becoming so aware, the Club's Chairman directed that the intermediary be made aware that Mr Southall was only a consultant and not a Board member or senior manager. Again, this was an example of the Club's Chairman and senior management team seeking to ensure compliance with the EFL Regulations whilst operating the Club during a potential sale process.
- 12.13 Further in relation to the same intermediary referred to in paragraph 12.12, when the Club's Chairman became aware that Mr Southall had asked for payment to be withheld, he ensured that payment was made to that intermediary and also another intermediary. The Club's position is that payment had not been made to these intermediaries due to cashflow, rather than any direction by Mr Southall. The Club's Chairman took steps to ensure that payment was made and to avoid any perception (either internally or externally) that Mr Southall had the power to stop debts being paid.
- 12.14 The Club's Chairman wrote further to the senior management team on 26 October 2022 stating that, 'only the Board has the authority to make decisions at the Club, and all decisions around management and business should continue to be referred to the Board. The usual authorisation procedures apply.' In doing so, the Club's Chairman reiterated that Mr Southall's role was limited to observation and that the senior management team should be alert to any situations where the Maxco Individuals could be viewed as having authority to act on behalf of the Club.

- 12.15 On 29 October 2022, the Club's Chairman again emailed Mr Richardson and Mr Lopez stating that, 'it is important that you do not give the impression either internally or externally that you are members of the Board at this stage, so please bear that in mind when meeting other clubs' officials and stakeholders at' the Club's games.
- 12.16 On 8 November 2022, the Club's Chairman again emailed Mr Richardson and Mr Lopez in relation to seating arrangements in the Directors' Box. The Club's Chairman again asserted his control over the Club by saying that if his request was not complied with, he would withdraw the Maxco Individuals' invitation to attend the Club's fixtures.
- 12.17 On 16 November 2022, the Club's Technical Director prepared and sent a notification to another football club in response to communications from the third-party football club indicating involvement from the Maxco Individuals, confirming that the Club did not have new owners; that Mr Southall was not its CEO; and that Mr Southall did not have the authority to discuss player transfers on behalf of the Club.
- 12.18 The Club has fully cooperated with the EFL investigation, including providing voluntary disclosure of all relevant documents in its control.
13. The EFL accepts the above submissions and has noted, in determining an appropriate sanction, what the Club has said in making those submissions. However, in respect of paragraph 12.3, whilst the EFL acknowledges the Club's position that it was not aware of the terms of the MSPA until the EFL investigation, 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. Unless the EFL has provided an express, clear and unequivocal view on the relevant transactional documents and their apparent compliance with the EFL Regulations, it cannot be assumed that any potentially contentious aspect of a transaction is not of potential later concern to the EFL.
14. The EFL is prepared to give the Club substantial credit for its early admission, thereby saving significant costs and time in not having the charges referred to a Disciplinary Commission on a contested basis.

Agreed sanction

15. It has been agreed, and I hereby order that the Club is sanctioned for the breaches identified at paragraph 3 with a 2 (two) point deduction, suspended until the end of the 2023/24 season and to only come into effect upon a future breach of the OADT being proven by the EFL.
16. 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 the Club, 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


17. The Club shall be liable to pay the EFL a contribution to the costs of its investigation in the amount of £35,000.
18. The Club shall additionally be liable to pay my reasonable costs relating to ratifying this Agreed Decision pursuant to EFL Regulation 86.6.
19. The Club shall bear its own costs.

Publication

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

Finality

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

Signed:  _____

Dated: 27 April 2023