SR/017/2020

IN THE MATTER OF AN EFL DISCIPLINARY COMMISSION

BEFORE:

Graeme McPherson QC
Robert Englehart QC
James Stanbury

BETWEEN:

The Football League Limited
('the EFL')

Claimant

and

Derby County Football Club Limited
('the Club')

Respondent

DECISION AND WRITTEN REASONS OF THE DISCIPLINARY COMMISSION ON SANCTION

Disciplinary Commission: Graeme McPherson QC (Chairperson)
Robert Englehart QC
James Stanbury

Dates: 18 June 2020

Venue: Remotely, by Zoom

Appearances: For the EFL
Adam Lewis QC, instructed by Solesbury Gay
For the Club
Nick De Marco QC and Tom Richards, instructed by Geldards

Introduction

1) On 16 January 2020 the Football League Limited ('***the EFL***') brought 2 charges against Derby County Football Club Limited ('***the Club***'). Each Charge was brought under the Championship Profitability and Sustainability Rules ('***the P&S Rules***').

2) As set out in our Decision dated 24 August 2020 ('***the DC Decision***')

   (1) We dismissed the First Charge. We need say no more about that First Charge for present purposes

   (2) The EFL withdrew the first Particular of the Second Charge

   (3) We dismissed the second, third and fourth Particulars of the Second Charge

   (4) We found the fifth Particular of the Second Charge to be proven on the basis that, following a change to the policy applied by the Club to amortisation of the capitalised costs of player registrations at the end of the financial year ended 30 June 2015, the Club's annual financial statements for the years ended 30 June 2016, 30 June 2017 and 30 June 2018 failed to adequately disclose such change as required by section 10 of FRS 102.

3) By Notice dated 7 September 2020 the EFL appealed against the dismissal of the second, third and fourth Particulars of the Second Charge. That appeal was heard by the League Arbitration Panel ('***the LAP***') in March 2021. On 7 May 2021 the LAP published its Decision ('***the LAP Decision***'). The LAP

   (1) Allowed the EFL's appeal against the dismissal of the second Particular of the Second Charge on the sole ground 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*', and

   (2) Dismissed the EFL's appeal against the dismissal of the third and fourth Particulars of the Second Charge.

4) The EFL and the Club subsequently agreed – and the LAP consequently directed – that the question of the sanction to be imposed on the Club for the proven breaches of the P&S Rules under the second and fifth Particulars of the Second Charge ('***the proven breaches***') should be remitted to us for determination.

5) The hearing to determine sanction took place on Friday 18 June 2021. In advance of that hearing we received

   (1) Bundles containing such documents as the parties considered relevant to the question of sanction

   (2) Written Submissions on Sanction from the EFL, together with (very shortly before the hearing) a witness statement and exhibit from Nicholas Craig, Director of Legal Affairs at the EFL

   (3) Written Submissions on Sanction from the Club, together with a witness statement and exhibit from Stephen Pearce, the CEO of the Club.

   At the hearing we then heard detailed oral submissions on behalf of the EFL and the Club in accordance with a schedule that had been agreed by the parties in advance of the hearing.

6) At the conclusion of the hearing we informed the parties that we intended to reserve our Decision on Sanction and to provide our Decision with Written Reasons on Sanction in due course. Subsequently the parties requested that we provide our Decision as soon as possible, with Written Reasons to follow. Accordingly

   (1) On 23 June 2021 we provided our Decision to the parties. The terms of that Decision were (and remain) as set out in section (N) below

   (2) We now provide our Written Reasons for that Decision.

7) Before setting out those Written Reasons, we confirm that prior to reaching our Decision and in the course of preparing these Written Reasons we considered with great care the entirety of the materials, the evidence and the submissions that each party put before us, as well as a transcript of the hearing on 18 June 2021. That exercise also included (in light

of certain submissions made by both parties as to how we should view the conduct and failings of the Club that had resulted in the proven breaches being found) revisiting

(1) The evidence given in witness statements and orally in cross-examination in respect of the Second Charge at the substantive hearing last year, and

(2) How each party presented its case on the Second Charge in its opening and closing submissions at the substantive hearing.

8) If we do not explicitly refer to a particular document, piece of evidence or submission below, it should not be inferred that we have overlooked or ignored it; as we say, we have considered the entirety of the materials put before us in reaching our Decision and preparing these Written Reasons.

(B) A brief recap of the Second Charge

9) The Second Charge related to the approach to amortisation of the capitalised costs of player registrations adopted by the Club in its financial statements for the years ended 30 June 2016, 30 June 2017 and 30 June 2018. While the DC Decision and the LAP Decision contain a detailed analysis of the nature of and background to the Second Charge, the substance of the EFL's case on the Second Charge was that

(1) The approach to amortisation of capitalised costs of player registrations adopted by the Club in those financial statements did not comply with FRS 102

(2) The approach to amortisation of capitalised costs of player registrations adopted by the Club in those financial statements was not (in further breach of FRS 102) adequately disclosed therein

(3) As a result, the Annual Accounts submitted by the Club for those years for the purpose of the P&S Rules were not (as required by the P&S Rules) '*prepared … in accordance with all legal and regulatory requirements applicable to accounts prepared pursuant to section 394 [of the Companies Act 2006]*'

(4) Since the Club had submitted non-compliant Annual Accounts for each of those years, the Club had not complied with the requirements of, and had breached, the P&S Rules.

10) The findings made against the Club on the Second Charge, and the bases upon which such findings were made, are similarly set out in detail in the DC Decision and in the LAP Decision. However, again in summary

(1) The LAP concluded that the approach to amortisation of capitalised costs of player registrations adopted by the Club in its Annual Accounts for the years ended 30 June 2016, 30 June 2017 and 30 June 2018

i) had impermissibly taken account of possible resale values of players, and

ii) had consequently not been in compliance with the requirements of FRS 102

(2) The approach adopted by the Club to amortisation of capitalised costs of player registrations in its Annual Accounts for the years ended 30 June 2016, 30 June 2017 and 30 June 2018 had not been adequately disclosed in those Annual Accounts, with the result that those Annual Accounts had also not complied with the requirements of FRS 102 for that reason:

i) As we put it at paragraph 260 of the DC Decision, the descriptions of the Club's amortisation policy set out in the Notes to the Club's financial statements for each year were '*at the very least ambiguous and in reality incomplete and inaccurate*'

ii) The LAP put it more strongly at paragraph 25 of the LAP Decision – '*the explanations [in the Club's financial statements] were at best confusing and at worst seriously misleading*'

(3) As a consequence of the above

i) The Annual Accounts submitted by the Club for the relevant years for the purpose of the P&S Rules had not been (as required by the P&S Rules) '*prepared … in accordance with all legal and regulatory requirements applicable to accounts prepared pursuant to section 394 [of the Companies Act 2006]*', and

ii) The Club had consequently not complied with the requirements of, and had breached, the P&S Rules.

11) It was on those bases that the second and fifth Particulars of the Second Charge were each found proven against the Club.

(C) A preliminary matter

12) Given the LAP's finding

(1) That the approach to amortisation of capitalised costs of player registrations adopted by the Club in its financial statement for the years ended 30 June 2016, 30 June 2017 and 30 June 2018

i) had impermissibly taken account of possible resale values of players, and consequently

ii) had not been in compliance with the requirements of FRS 102, and

(2) That as a result each of the relevant Club's Annual Accounts did not comply with, and had breached, the requirements of the P&S Rules

it was common ground between the parties that those Annual Accounts would need to be revised/restated (although as we set out below, there was until the very end of the hearing before us an issue between the EFL and the Club as to who should undertake that task).

13) In correspondence prior to the hearing the EFL

(1) Identified that once the Club's Annual Accounts had been revised/restated it was possible (to put it as neutrally as we can) that the Club's Earnings Before Tax and Adjusted Earnings Before Tax (as defined in the P&S Rules) for the years ended 30 June 2016, 30 June 2017 and 30 June 2018 might differ from the Earnings Before Tax and Adjusted Earnings Before Tax previously calculated on the basis of the Annual Accounts originally submitted by the Club for those years, and

(2) Made clear that, should an aggregation of any restated Adjusted Earnings Before Tax result in a loss for any relevant period that exceeded the Upper Loss Threshold ('***ULT***') calculated in accordance with Rule 3 of the P&S Rules, the EFL

i) Would consider the Club to be in further breach of the P&S Rules, and

ii) Intended to refer such matter to a DC pursuant to Rule 2.9.2 of the P&S Rules.

14) For the EFL to have 'set out its stall' in that regard was helpful, since it enabled us and the Club to understand better (1) what the EFL considered to be in issue now, and (2) what the EFL considered would be left over, possibly for consideration by a DC on another occasion in the future. However, at least for a period the Club appeared to interpret the EFL's position as an attempt by the EFL, by the back door,

(1) To assert that there existed a possibility that the proven breaches of the P&S Rules would, or might, have the consequence of the Club having breached the ULT,[1] and

(2) To suggest that, because such possibility existed, the Club's proven breaches of the P&S Rules were serious ones.

The term frequently used before us by the Club was that the EFL was attempting to use the existence of such possibility to demonstrate that the proven breaches were '*material*'.

15) That, the Club said, was not something that the EFL could permissibly contend; we could not permissibly speculate as to what the position might be in the future once the Annual Accounts were restated. Indeed, the Club went further – it invited us to conclude that, since there was (as matters presently stand) no evidential basis for concluding that the Club's proven breaches of the P&S Rules would result in the Club breaching the ULT, we should proceed on the basis that the proven breaches of the P&S Rules were '*immaterial*'.

16) In our view the Club misunderstood the EFL's position:

(1) It was not (and so far as we could see, never had been) the EFL's case that, when determining what sanction to impose on the Club for the proven breaches of the P&S Rules

[1] For example, in its written Submissions on Sanction the EFL contended that '*it appears very likely that such restatement will result in substantial breaches by the Club of the "Upper Loss Threshold" in the relevant periods*'.

i) We should conclude that the restatement of the relevant Annual Accounts would result in the Club breaching the ULT in any of the relevant financial periods, and sanction the Club on that basis, or

ii) We should speculate as to what consequence the restatement of the relevant Annual Accounts might have on the Club's Earnings before Tax/Adjusted Earnings before Tax for the relevant years for the purposes of the P&S Rules and/or sanction the Club on the basis that the proven breaches *might* give rise to a breach of the ULT

let alone that we should attempt to assess the extent of any such breach of the ULT and/or reflect the same in any sanction to be imposed on the Club;

(2) Likewise, it was not the EFL's case that the proven breaches of the P&S Rules were serious because the required restatement of the Annual Accounts would or might result in the Club exceeding the ULT; it was the EFL's case that the proven breaches of the P&S Rules were serious and material matters in their own right, regardless of whether or not (in the future) it might be established that a breach of the ULT had occurred.

17) In light of the apparent cross-purposes at which the EFL and the Club were operating, at least for a time, as regards the matters described above, we make it clear at the outset of these Written Reasons that for the purpose of determining the sanction to be imposed on the Club for the proven breaches of the P&S Rules

(1) We did not speculate or form any view as to what, if any, consequence the restatement of the relevant Annual Accounts might have for the purpose of the Club's aggregated Adjusted Earnings Before Tax for the relevant periods, and thus for the purpose of determining whether the Club exceeded or did not exceed the ULT. There was no sufficient material before us from which we could sensibly do so

(2) We proceeded on the basis that, insofar as events might unfold in the future as set out in paragraph 13(2) above, it would be for a future DC to determine what, if any, sanction should be imposed on the Club for breaching the ULT in any relevant period. It would be at that point that the relevance and impact of the Sanctioning Guidelines (which reference only what the EFL would wish to see done in the event of '*breach of*

the 3 season P&S reporting rules' (i.e. a breach of the ULT) by a club, and not any other type of breach of the P&S Rules) would fall to be considered; we did not find those Sanctioning Guidelines of any assistance to the task before us

(3) We rejected the Club's submission that, because it was unknown whether the Club might or might not in the future be found to have exceeded the ULT for any period, it inevitably followed that the proven breaches of the P&S Rules were '*immaterial*'. Materiality, or seriousness, of the proven breaches of the P&S Rules *per se* was something for us to consider and assess in the light of all the circumstances of this case.

(D) Our powers and the principles by which we exercise them

18) Regulation 92 of the EFL Regulations ('*Decisions*') sets out the sanctioning powers open to us in a case such as this. That Regulation gives a DC a broad discretion to make a decision which can include a wide variety of orders.

19) There is no prescribed tariff for either of the proven breaches in this case, and no published guidance to assist us in determining the appropriate sanction. In light of that, it is necessary to return to first principles. That is what the parties did.

20) The EFL's position before us was that any sanction in this case should serve 4 principal purposes - namely

(1) To punish the Club for the proven breaches of the P&S Rules

(2) To vindicate other clubs who had not engaged in conduct which contravened the P&S Rules

(3) To deter future breaches of the P&S Rules, whether by the Club or other clubs

(4) To restore/preserve public confidence in the fairness of the league competition.

21) The Club did not demur from the applicability of those aims of sanctioning *per se*. The issue between the parties was as to what sanction we should impose in this case in order to achieve those aims.

22) It was also common ground between the parties that whatever sanction we imposed should be 'proportionate'. The EFL described that principle as meaning in a case such as this that the sanction should not '*go no further than is reasonably necessary to achieve the aims [of punishment, vindication, deterrence and restoration of public confidence]*'; any sanction that went beyond the achievement of those aims, it accepted, would be disproportionate, and conversely any sanction that failed to achieve those aims would be inadequate.[2]

23) We accept that that description aptly summarises the approach to be taken and the principles to be applied by us in this case. That is the approach that we in fact took, and the principles that we in fact applied, when reaching our Decision.

(E) Principles relevant to a potential deduction of points

24) As we set out below, the EFL's position has at all material times been that the 4 purposes of sanctioning set out above can only properly be achieved in this case

(1) If the sanction imposed in respect of the Club's proven breaches of the P&S Rules was (or included) a substantial deduction of points, and

(2) If that substantial deduction of points was applied in the 2020/2021 season.

25) Unsurprisingly, the Club disagreed. Its position has always been that

(1) A deduction of points cannot, alternatively should not, be imposed in this case

(2) Alternatively, that if we were to conclude a deduction of points (a) was permissible, and (b) should be imposed in this case, any such deduction

[2] As Mr Lewis QC put it on behalf of the EFL - '*one cannot take a sledgehammer to crack a nut, but one still has to crack the nut. One cannot leave it unopened*'.

i) Cannot permissibly be imposed so as to have effect in the 2020/2021 season, alternatively should not be imposed to have effect in the 2020/2021 season, and

ii) Must, alternatively should, be imposed so as to have effect in the 2021/2022 season.

26) The differing positions of the parties gives rise to a number of points of principle with which it is convenient to deal at the outset.

i) When might a deduction of points be imposed by a Disciplinary Commission?

27) The Club submitted that the imposition of a sporting sanction in the form of a deduction of points is an exceptional measure, to be imposed

(1) When required or permitted by particular Regulations e.g. Regulation 12.1 (insolvency events), Regulation 44 (playing an ineligible player) or Regulation 31 (failing to fulfil a fixture), or

(2) Where such sanction has become the 'norm' (e.g. in the event of repeated non-payment of players by a club), or

(3) When breaches of Rules and Regulations have given a club a sporting advantage and a points deduction is necessary to compensate other clubs in the same competition (who have not committed any similar breach) for that unlawfully-obtained sporting advantage

but rarely, if ever, in other cases, and certainly not in this case.

28) The nature of impermissible conduct which might justify a sporting sanction has been considered in a number of the decisions that the parties put before us:

(1) In *EFL v Rotherham United FC* 25 April 2015 the DC imposed a points deduction on the respondent for playing an ineligible player in a match:

i) That conduct (the DC found at paragraph 24) had '*the potential for damaging the integrity of the competition*'

ii) As a result, a sporting sanction was justified to achieve the sanctioning aims

(2) In *EFL v Birmingham City FC (No 1)* 22 March 2019 the respondent had breached the P&S Rules by exceeding the ULT. A substantial points deduction was imposed. In imposing that deduction the DC rejected the suggestion that it needed to be satisfied that an actual sporting advantage had been gained by the respondent as a result of the breach as a pre-condition to imposing a points deduction. It concluded (at paras 27 and 28)

> '… financial fair play rules operate by reference to the failure to comply with financial restrictions, not by analysis of the degree to which any overspending by clubs has the effect of improving the performance of an offending club in competition. Excessive spending on players is clearly designed to achieve an enhancement of sporting performance, but whether in practice it does enable a particular club at a particular point in time to achieve better results than it would have achieved if it had complied with the rules is practically impossible to assess. Even more difficult to assess would be the other counter-factual, namely whether competitor clubs would have performed better if they too had been permitted to overspend to the same degree. The principle of fairness and equal treatment can only be applied in this context by measuring the degree of overspending, recognising that any substantial breach may directly affect the competitive position of the offending club to the detriment of other clubs in the same competition …
>
> For those reasons the Commission cannot accept [the respondent's] argument that for the EFL to justify a sporting sanction it is necessary to prove a 'measurable sporing advantage' caused by the overspending … Any such advantage gained from breach of the rules, in the acquisition of players or in the fielding of a stronger team in competition, is in principle unfair'

(3) In *Sheffield Wednesday FC v The EFL* 4 November 2020 the LAP similarly rejected a submission that sporting sanctions '*should generally be reserved for cases where a club or athlete has achieved a sporting advantage*'. It concluded (at paras 97, 100 and 103)

> '… there are many cases in which a sporting sanction, such as a player suspension or a deduction of points, is the appropriate penalty where there has been no sporting advantage …

> ... to sanction on the basis of quantifying benefit from breach is rarely, if ever, possible. The nature and extent of any sporting advantage obtained from a breach may never be known …
>
> … A points deduction is not designed to assess and reflect the sporting benefit from the breach, which is likely to be impossible to quantify. Instead, it is to punish and to deter with the wider aim of upholding the integrity of the competition and protecting the interests of the game'.

29) In light of the above, we reject any suggestion there is anything which limits the imposition of a sporting sanction (in the form of a points deduction) to the types of cases identified by the Club. While it is correct that sporting sanctions

(1) Will frequently be imposed in cases similar in nature to cases in which sporting sanctions have previously been imposed (so as to maintain consistency in sanctioning), and

(2) Will frequently be imposed in cases where the breach for which the club is being punished has given, or is likely to have given, a sporting advantage to the club being sanctioned and/or is likely to have meant that other clubs in the same competition (who had not committed any similar breach) had been at a sporting disadvantage *vis a vis* that club

the categories of case in which sporting sanctions might be imposed are certainly not confined to such cases and are not closed. Sporting sanctions can (and should) be imposed whenever such a sanction is the necessary and proportionate way to achieve the sanctioning aims described above.

30) We therefore reject any suggestion by the Club that we have no power to impose a sporting sanction in this case in respect of the proven breaches of the P&S Rules; if that is the appropriate, proportionate sanction for the proven breaches in this case, then we have the power to impose it. Of course, that begs the question whether such a sanction is in fact appropriate and proportionate, and should be imposed, in this case. We consider that issue further below.

ii) In what season might a deduction of points be imposed?

31) In the event that we were minded to impose a deduction of points, the EFL urged us to impose that deduction in the 2020/21 season. The justification for that position was primarily said to be

(1) That as a matter of principle any sanction imposed should 'bite' on a respondent in the season in which the relevant charge is upheld/guilt is established, and

(2) That imposing a sporting sanction would better achieve the sanctioning aims in this case if imposed in the 2020/2021 season than in the 2021/2022 season.

32) The Club's primary position was that imposing a sporting sanction in the 2020/2021 season was not an option that was now open to us. That was because, the Club contended,

(1) The 2020/21 season has now ended (and indeed, ended some weeks ago both for the Club and for all other Championship clubs). Matters such as the identity of the clubs to be relegated have already been determined: see (1) the definition of '*Season*'[3], and (2) Regulation 10

(2) The EFL was thus seeking (in effect) a retrospective points deduction; it was asking us to impose a points deduction for a season that had already been completed

(3) The Regulations do not permit a retrospective points deduction to be imposed in that way. Regard should be had, for example, to Regulation 12 (how sporting sanctions will be applied to clubs which suffer an Insolvency Event) which provides that, where a club becomes subject to an Insolvency Event '*outside the Normal Playing Season*'[4] the points deduction '*shall apply in respect of the following Season, such that the Club starts that Season on minus 12 points …*' (emphasis added).

33) In our view, aside from the discrete scenario described in Regulation 12, there is nothing in the Regulations that prevents us now, in June 2021, from imposing a points deduction

[3] '*… the period of the year commencing with the date of the first League Match and, for each Club, ending immediately after the completion of the Club's final fixture of the League Competition, or if the Club is participating in the Play-Offs, the final Play-Off match for that Club*'.
[4] '*… the period of the year commencing with the first League Match and, for each Club, ending immediately after the completion of the Club's final fixture of the League Competition, excluding any Play-Off matches*'.

to take effect in the 2020/2021 season if we were to conclude that that was the appropriate and proportionate sanction to impose:

(1) As we have said above, the powers granted to us by Regulation 92 are wide. That width enables Disciplinary Commissions to craft bespoke Decisions that 'fit the facts' of particular cases

(2) Had it been intended that no DC should be permitted to do as the EFL now ask, we would have expected to see express provision in the Regulations to such effect (as is the case in Regulation 12 in respect of insolvency events occurring between the end of one season and the start of another season)

(3) One can readily formulate examples which would, if the Club's argument was correct, result in outcomes that were unfair and absurd. The Regulations are to be construed against permitting such outcomes unless that is clearly what is intended. For example, consider a scenario where a club towards the top of a league fields an ineligible player in a match against its closest rival, wins the match and ultimately wins the league by a single point from that rival – a situation where (as *EFL v Rotherham United FC* makes clear) a sporting sanction/points deduction is most certainly within the range of sanctions *prima facie* open to a DC to impose on the offending club:

   i) Suppose the match in which the ineligible player is fielded is the penultimate match of the season. Suppose further that a charge is quickly brought against the respondent and proved/admitted, and the DC is required to determine sanction, which it does before the final game of the season. There would be nothing in principle to prevent the DC from imposing an immediate points deduction on the club, effective that season; indeed, one can readily see that the preservation of the integrity of the competition would require it – the immediate points deduction would punish the club in the season in which it had committed the breach (and *prima facie* gained an impermissible advantage), would help redress the very unfairness caused by the breach, would vindicate the rival club that had fielded a team within the rules and restore public confidence in the fairness of the league competition that season

ii) Now suppose the same facts as (i) above, save that for purely logistical reasons the DC is unable to determine sanction until after the final game of the season has been played. 'Redressing the unfairness' still requires the points deduction to be imposed in the just-finished season, and it would be most peculiar if the DC was prevented from achieving the same through nothing more than an accident of timing

iii) Now suppose the same facts as (i) above, save that the match itself is the last match of the season – in effect, a match whose outcome would decide who wins the league. By definition in such a case any charge, determination and sanction would occur (on the Club's case) after the end of the season. However, it is difficult to see how the aims of sanctioning the club fielding the ineligible player – punishing that club, vindicating the opponent who had kept within the Rules and Regulations, deterring future similar breaches and restoring public confidence in the fairness of the competition - could be achieved in this example by anything other than a points deduction in the just-completed season. To put it another way, it is difficult to see how those aims of sanctioning would be achieved if the DC was constrained by the Regulations to impose the points deduction only in the following season.

34) That approach is consistent with that seen in previous decisions such as *The EFL v Sheffield Wednesday* 4 August 2020(DC) & 4 November 2020 (LAP). While this specific point was not considered (because it did not need to be), those decisions are consistent with our view

(1) That the powers of a DC when exercising its discretion as regards sanction are wide, and

(2) That a DC should strive to impose a sanction which best achieves the sanctioning aims and operates in a meaningful way. Consideration of when the sanction should 'bite' is one of the matters which a DC will consider in that regard.

35) We also note that the LAP appears to have had no difficulty in setting aside the sporting sanction imposed by the DC and substituting its own, new decision imposing an immediate points deduction on the club in *The EFL v Macclesfield Town FC* (i.e. a points deduction effective in the 2019/2020 season) on 15/18 August 2020 despite

(1) The respondent club having played its last game in the shortened 2019/2020 season in March 2020

(2) League Two clubs having voted in early June 2020 to end the 2019/2020 season

(3) The DC having imposed its sanction (of a suspended deduction of points) after both of those dates.

Neither the DC nor the LAP in that case appear to have had any concerns about their ability to impose a 'retrospective' points deduction in the sense described above.

36) We therefore reject the Club's submission that we have no power now to impose a deduction of points in the 2020/2021 season merely because the Club has already played its last match of that season. Considering whether or not a points deduction should be 'retrospectively' imposed (in the sense of being imposed so as to have effect in a season in which the club has already played its last match) is in our view an exercise that we are permitted under the Regulations to undertake and, *if* we were to conclude that that was the just and appropriate sanction to impose in all the circumstances of this case, it is a sanction that we are permitted under the Regulations to impose.

iii) Is the club's league position relevant when deciding whether to impose a deduction of points?

37) Clubs finishing in 22nd, 23rd and 24th place in the Championship are relegated to play in League One the following season; the club finishing the season in 21st place in the Championship remains in the Championship the following season.

38) Following the final Championship league match of the 2020/21 season

(1) The Club sat in 21st place in the Championship with 44 points and a goal difference of -22

(2) Wycombe Wanderers sat in 22nd place in the Championship with 43 points and a goal difference of -30.

It therefore follows as a matter of mathematics that the imposition of a points deduction of 2 points or more from the Club in the 2020/21 season would have the consequence of relegating the Club to League One for the 2021/2022 season. To what extent is that a matter to which any regard can and/or should be had insofar as we might decide that a points deduction in the 2020/2021 season should otherwise be imposed?

39) The answer to that in our view is that that will rarely, if ever, be a matter to which weight will be given:

(1) The EFL drew our attention to a number of decisions in which DCs and LAPs had had to grapple with a similar issue and in which that conclusion had been reached – see for example

i) *EFL v Rotherham United FC* (25 April 2015) (DC) @ paras 31-33: '*there is a need for consistency whenever during the season sanctions are imposed and whatever the position in the table of the club involved … it would be plainly wrong if the same breach by the same club was sanctioned differently if it happened in October rather than if it happened in April*'

ii) *EFL v Macclesfield Town FC* (18 August 2020) (LAP) @ paras 21-22: '*The correct approach is to impose a sanction that reflects the seriousness of the wrongdoing. That should be separated from the question of what impact that might have on league position or relegation*'

(2) Even without the assistance of those authorities, we would have reached the same conclusion. While there might conceivably be circumstances in which the impact[5] of a deduction of points on a club in a particular season *could* be taken into account when determining sanction, those circumstances would likely need to be exceptional.

iv) Summary

40) Thus we conclude

[5] Or lack of impact: see for example *The EFL v Sheffield Wednesday FC* 4 August 2020 (DC) and 4 November 2020 (LAP)

(1) That it is open to us to impose a deduction of points on the Club as a sanction for the proven breaches if that is the sanction/one of the sanctions that we consider to be necessary and proportionate in order to achieve the sanctioning aims

(2) That it is open to us to impose such a points deduction to take effect in the 2020/2021 season if we consider that a deduction of points in that season is necessary and proportionate in order to achieve the sanctioning aims

(3) That save in rare cases where the circumstances require otherwise, no account should generally be taken of the fact that a points deduction effective in the 2020/2021 season would (if that deduction was to be 2 points or more) have the effect of relegating the Club.

41) Against that background we now turn to consider

(1) What each party contends are the principal factors relevant to the question of what sanction we should in fact impose on the Club in respect of the proven breaches, and

(2) Our findings in relation to such matters.

(F) The principal factors identified by the parties as relevant to the appropriate sanction

42) The EFL's position was

(1) That the proven breaches of the P&S Rules committed by the Club were serious breaches of important rules necessary to ensure financial stability in the Championship

(2) That the proven breaches of the P&S Rules justify (indeed, as we have said above, require) a substantial points deduction being imposed

(3) That such points deduction should be applied in the 2020/21 season.

43) In its written Submissions on Sanction the EFL relied on a number of grounds to support its position. In summary they were

(1) That the P&S Rules pursue objectives which are of fundamental importance to football. Compliance with the P&S Rules is therefore important and any breach is significant

(2) That the proper operation of the P&S Rules depends on clubs (1) adopting accounting policies which comply with the relevant financial reporting standards and (2) accurately disclosing those policies in their Annual Accounts

(3) That the Club had failed to offer any (or any adequate) explanation as to how it had come to adopt an amortisation policy that was non-compliant with FRS 102 or how in each relevant year its Annual Accounts had inaccurately recorded what that amortisation policy actually was

(4) That although the quantification of the Club's overspend (if any) is a matter for the future (see section (C) above), the effect of the Club's amortisation policy was to reduce its losses in the seasons in question, which gave the Club an illegitimate advantage over other Championship clubs which had operated in compliance with FRS 102 regardless of any breach of the ULT that might in due course be demonstrated

(5) That the Club's impermissible amortisation policy had related to a category of expenditure – players – well known to be the largest item of expenditure for most clubs.

44) Those submissions were developed in the EFL's oral submissions.

45) The Club took issue with much of what was said by the EFL in relation to the above grounds; there was very limited common ground between the parties. The Club's position in essence was that

(1) The proven breaches did not merit any sporting sanction. No sporting advantage could be attributed to either of the proven breaches, and there was no other basis for imposing a deduction of points at all, let alone in the 2020/2021 season

(2) The EFL was wrong to characterise the conduct that had given rise to the proven breaches as serious. The Club's breaches had occurred in good faith. There was nothing sinister or underhand about either of the proven breaches. The breach of the second Particular of the Second Charge was an innocent one. The breach of the fifth Particular of the Second Charge was at worst the result of carelessness

(3) There was substantial mitigation available to the Club.

46) The EFL responded to those matters at the hearing. It was made clear by the EFL that it did not accept that the Club had at all times acted in good faith. This is a matter to which we return below.

47) We propose to consider each of the above factors in turn.

(G) The P&S Rules are important Rules

48) The EFL emphasised that the P&S Rules pursue objectives which are of fundamental importance, both to football generally and specifically to the Championship, since they create a structure with the aim of ensuring that all clubs compete in the league competition on an even and secure 'financial keel' and ensuring the fair operation of the league competition: see for example *DC Decision* @ para 30; *EFL v Birmingham (No 2)* (29 June 2020) @ paras 13-14; *EFL v Sheffield Wednesday* (4 November 2020) @ paras 1, 14, 83-85. Thus

(1) Universal compliance with the P&S Rules is crucial to ensure that clubs who do comply are not disadvantaged against clubs which do not comply, and

(2) Any breach of the P&S Rules

i) Should be considered to be a breach of a significant and important mainstay of the integrity of the league competition, and

ii) Should be considered serious.

49) The Club did not take issue with the point of principle that we have summarised in the preamble to and sub-paragraph (1) of paragraph 48 above. The Club's focus was on sub-paragraph (2). Its position was that

(1) It is wrong to consider each of the individual obligations that make up the P&S Rules to be of equal significance and importance, and

(2) It is wrong to characterise a breach of the P&S Rules as serious simply because it is a breach of the P&S Rules *per se*.

The Club contended that in any particular case involving the P&S Rules the nature of the obligation in question needs to be looked at in context, as does the breach in question, before matters such as significance and gravity can be judged.

50) We accept the EFL's position as regards the importance of the P&S Rules as a whole. However, we do not accept that it follows that *any* breach of *any* of the P&S Rules should automatically be regarded as a serious one. The P&S Rules are a conglomerate of individual rules (i.e. individual obligations on each club) and, while it is necessary for clubs to comply with each such individual rule so as to comply with the P&S Rules as a whole, self-evidently in our view not every individual rule is of equal significance. We therefore agree with the Club in that regard.

51) That said, the P&S Rule under scrutiny in this case – to submit Annual Accounts

(1) Which comply with the relevant financial reporting standards, and

(2) Which accurately record changes in accounting policies

- is plainly an important provision. The preparation and submission of accurate and 'compliant' Annual Accounts is essential for the well-ordered operation of the P&S Rules. If Annual Accounts are submitted by clubs which fail to comply with relevant financial reporting standards and/or which do not accurately record changes in accounting policies, the operation of the P&S Rules is likely to be obstructed and the purpose underpinning the P&S Rules is potentially undermined.

52) We also accept the Club's submission that it would be wrong to consider every breach of an obligation within the P&S Rules to be (1) of equal gravity, or (2) serious *per se*. In each case it will be necessary to consider not just the obligation in question, but also the conduct of the respondent club giving rise to the breach of that obligation, in order to assess the gravity of the particular breach in issue. We consider the Club's conduct in this regard below.

(H) The burden is on clubs to comply with the P&S Rules, and that burden is a heavy one

53) The EFL submitted that the proper operation of the P&S Rules depends upon Championship clubs

(1) Adopting accounting policies which comply with the applicable financial reporting standards, and

(2) Accurately reporting those policies in their financial statements

and on the EFL being able to trust that clubs are doing so carefully and competently, not least because it would be disproportionate for the EFL to have to check (1) each accounting policy applied by each club for permissibility and compliance with relevant financial reporting standards, and (2) whether the policies recorded in a club's financial statements did in fact reflect the policies being applied by the club. Failures by clubs to do as they are required to do in such regard thus impedes the ability of the EFL to 'police' the P&S Rules.

54) We accept that submission. It would place an impossible burden on the EFL

(1) If it could not *prima facie* take the Annual Accounts submitted by each club at face value, or

(2) If it was obliged to check not only the efficacy of each accounting policy in fact applied by each club for the purpose of its Annual Accounts, but also whether that accounting policy had been accurately described in the Annual Accounts.

The burden on each club to submit Annual Accounts prepared and audited in accordance with all legal and regulatory requirements applicable to accounts prepared pursuant to section 394 of the Companies Act 2006 – as the P&S Rules require – is thus a substantial one that clubs must take care to discharge properly and fully.

55) However, that is not to say that every failure by a club to discharge that onerous obligation will be of the same gravity. Consideration always needs to be given to the circumstances which led a club to fall short when seeking to discharge the relevant obligations.

(I) The gravity of the proven breaches

56) The EFL's position was that the Club's proven breaches of the P&S Rules were serious and significant:

(1) The Club's non-compliance with FRS 102 by the adoption of an impermissible amortisation policy in its Annual Accounts was not trivial or insignificant; it was a significant contravention of the P&S Rules

(2) Likewise, the Club's further non-compliance with FRS 102 resulting from the inclusion in the Annual Accounts of misleading descriptions of that amortisation policy was not trivial or insignificant; it was also a significant contravention of the P&S Rules

(3) Those breaches were not 'one-offs'; rather, they were repeated over the course of 3 financial years and in 3 sets of Annual Accounts.

57) Furthermore, the EFL submitted, the seriousness of the Club's breaches was compounded by the fact that the Club had failed to provide any (or certainly any adequate) explanation

(1) As to how its financial statements had come to mis-record the amortisation policy that it was in fact applying, or as to how that misstatement had remained for 3 successive accounting periods

(2) As to how it came to adopt the FRS 102 non-compliant amortisation policy in the first place.

58) In his oral submissions Mr Lewis QC did not hold back in his criticisms of the Club's conduct. He suggested that we could and should infer from the evidence that had been before us at the hearing before us in 2020 (and also from what had been 'missing' from that evidence) and from the findings set out in the DC decision

(1) That the Club's conduct had been 'deliberate'. There was discussion as to what the EFL meant by that, since at one point it appeared that the EFL might be inviting us to infer that the Club had known throughout the relevant period that the amortisation policy that it was adopting was non-compliant with FRS 102, yet had elected to operate that policy in any event – effectively that the Club had acted dishonestly. However, we did not understand that to be what the EFL was contending - and had it been, we would have rejected that suggestion. The Club's conduct was 'deliberate' in the sense only

i) that it knew what policy it was adopting as regards the amortisation of player registrations in the seasons in question, and

ii) that it knew that that policy differed from the amortisation policy previously adopted by the Club, and was no longer a 'straight-line' policy.

The Club did not however know that the amortisation policy was or might be non-compliant with FRS 102

(2) That the Club's conduct had been 'reckless' and not in good faith, in the sense that the Club must have known or suspected that the efficacy of its amortisation policy was questionable (because its amortisation policy differed from that operated by other clubs), yet had chosen not to investigate the same properly or at all prior to implementing and operating the policy. In that regard the EFL pointed to

i) The Club's failure to seek or obtain written advice (before implementing the policy) as to whether the proposed new amortisation policy would comply with FRS 102

ii) The Club's failure to keep written records of its operation of the amortisation policy

iii) The Club's failure to keep written records of any advice sought or received as to whether, as the policy was in fact being operated, compliance with FRS 102 was being achieved

iv) The Club's failure to seek confirmation from the EFL that the amortisation policy that it was proposing to adopt, and then was applying, complied with FRS 102

(3) That the Club's conduct (in not approaching the EFL proactively in connection with the change in policy, in mis-recording the policy in its Annual Accounts and (on the EFL's case) in being less than open when it met with the EFL in May 2019) was consistent with a desire on its part to '*conceal*' the changed amortisation policy that it was in fact applying, specifically from the EFL but also more widely

(4) That the Club had been negligent, and had behaved carelessly and unreasonably, by adopting the amortisation policy that it did and by recording the same in the inaccurate terms that it did in each set of Annual Accounts

59) Mr De Marco QC for the Club objected in strong terms to any suggestion by the EFL – explicit or implicit – that the Club had acted deliberately (in the sense of dishonestly), in bad faith or recklessly or that the Club had sought to consciously conceal anything about the amortisation policy that it was operating. No such suggestion, he reminded us, had ever been put to the Club or any of its witnesses. Likewise, the EFL

(1) Had not pleaded any such *mens rea* in connection with the Second Charge, and

(2) Had not presented its case on the Second Charge before us last year on any such basis.

The Club's position was accordingly that we should approach sanction on the basis that the Club had acted honestly and in good faith in all respects; indeed, the Club's written submissions sought to characterise the proven breaches as '*wholly innocent*' breaches on its part.

60) The conclusions reached by us in such regard are as follows:

(1) This is not a case where the EFL has ever suggested that any individual involved in

i) The formulation, implementation or operation of the amortisation policy, or

ii) The expression of that amortisation policy in the Annual Accounts

knew that what was being done did not comply with FRS 102. Such an allegation would have been akin to an allegation of dishonesty and, if it was to be made, it would have had to be clearly particularised and fairly and squarely put to the relevant witnesses: see *Fish v GMC* [2012] EWHC 1269 (Admin) @ paras 67-70

(2) However, in fairness to the EFL we make clear that, as we have set out above, we did not understand Mr Lewis QC to be inviting us to find dishonesty on the part of the Club, in the sense of finding that it had engaged in conduct which it had known at the relevant times was impermissible. The Club of course knew that it was implementing and operating the amortisation policy which the LAP has now found to be non-compliant with FRS 102, but there is no basis on which to conclude that the Club knew or even suspected that the policy was non-compliant during the relevant seasons.[6] Similarly, the Club knew that the Annual Accounts contained a description of the amortisation policy which we found to be non-compliant with FRS 102, but once again there is no basis on which to conclude that the Club knew (in the sense of 'consciously appreciated') that that description was non-compliant

(3) We reject the EFL's suggestions that the Club acted recklessly or in bad faith for similar reasons. While the DC Decision did not contain any express findings as regards the Club's state of mind (1) when formulating, implementing and operating the amortisation policy, and (2) as regards the wording of the relevant Note in the Annual Accounts (because it was unnecessary for us to do so in order to determine whether each Particular of Charge 2 was or was not proven)

i) We heard relevant evidence from Mr Pearce and Mr Delve

[6] Indeed, despite the conclusions reached by the LAP, the Club remains of the view that the amortization policy for player registrations that it operated in the financial years ended 30 June 2016, 30 June 2017 and 30 June 2018 is compliant with FRS 102, albeit that it accepts that for present purposes the findings of the LAP to contrary effect are determinative.

ii) As set out in the DC Decision, we found each of them to be honest, straightforward and reliable in the manner in which they each gave evidence

iii) As set out in the DC Decision, we accepted as accurate their evidence as regards the formulation, implementation and operation of the amortisation policy

iv) We would also have found – had it been necessary to make findings of fact in such regard – that the erroneous description of the Club's amortisation policy in the Annual Accounts was not due to recklessness or bad faith on the part of the Club. Insofar as it is now necessary for an express finding to be made on that issue, that is the finding that we make.

(4) We also reject the EFL's suggestion that the Club consciously attempted to conceal the true nature of the amortisation policy that it was applying, whether from the EFL or otherwise:

i) While it is of course correct that the amortisation policy described in the Annual Accounts did not accurately describe the amortisation policy in fact being applied by the Club

(1) The Notes did (when compared with previous Annual Accounts) record a change in the Club's approach to the amortisation of player registration from the 'straight-line' policy that had been adopted in previous years. A change in policy was thus disclosed, albeit that the change was misdescribed

(2) The Notes made it clear that the Club's new amortisation policy involved a consideration of the '*residual value*' of players and an amortisation of the capitalised costs of a player's registration taking into account such residual values: see paragraph 51 of the DC Decision. The Notes (the wording of which changed slightly each year) thus described a 'new' amortisation policy which, on the EFL's case, was <u>more</u> radical and <u>more</u> obviously objectionable than the amortisation policy in fact implemented and operated by the Club, since the Notes implied that the Club had adopted a policy which allocated a residual value (other than £zero) to a player at the end of his contract – something that was plainly inappropriate post *Bosman*

(3) Such matters are inconsistent with the Club having been attempting to conceal the change of amortisation policy, or to downplay the nature or significance of the change with a view to diverting attention away from the change

ii) Our conclusion is that the misdescription of the amortisation policy in the Annual Accounts was not the result of a desire or intention on the part of the Club to conceal the true nature of the policy. Rather

(1) The initial misdescription of the new policy is in our view most likely to have been the result of a lack of care being taken to describe that policy in complete and accurate terms, and

(2) The fact that the misdescription was not identified in subsequent years is in our view most likely to have been the result of insufficient care being taken to review that description against the amortisation policy in fact being applied by the Club

iii) It is also the case that when in April/May 2019 the Club communicated and met with the EFL about its amortisation policy, the Club confirmed to the EFL that it used residual values when assessing each player's amortisation charge, albeit that the discussions that occurred did not provide the EFL with a complete or wholly accurate understanding of the actual amortisation policy in fact being operated by the Club. Our view is once again that the Club did not consciously seek to conceal anything from the EFL about its amortisation policy at that time. Rather, the Club simply failed to take the care needed to spell out to the EFL what the policy was and how it was being applied

(5) As to the EFL's submission that the Club acted unreasonably, negligently or carelessly in adopting the amortisation policy that it did:

i) The DC Decision sets out our findings as to how the Club came to formulate and implement the amortisation policy. That process involved not only Mr Pearce, but also Mr Delve. Mr Delve was at the material time the managing partner of Smith Cooper LLP, a firm of chartered accountants and auditors. Smith Cooper was at that time (and continued to be) the Club's auditor

ii) As the EFL identifies, there is a total absence of contemporaneous written documentation surrounding the formulation and implementation of the policy. We reject the suggestion that we should infer from such absence that that inadequate care must have been exercised when the proposed new amortisation policy was being considered or implemented. What matters for this purpose is whether reasonable care was taken to consider the permissibility or otherwise of the proposed new amortisation policy, not whether that consideration was documented

iii) In our view the Club did take care to consider whether or not it could permissibly adopt the proposed new amortisation policy. Mr Pearce – a chartered accountant with extensive experience in the business of football clubs and football finance - considered that matter. Mr Delve considered that matter. While they reached conclusions that – the LAP has found – were wrong, that does not of itself mean that they behaved unreasonably or carelessly, or that their belief that the proposed policy was permissible was an unreasonable belief for them to have held at that time. Indeed, the point was made on behalf of the Club that this DC, with the benefit of an accountant sitting as a member, reached the same view in the DC Decision as that reached by the Club

iv) Our conclusion is reinforced by the fact that, once the amortisation policy had been implemented, no suggestion was made by the Club's auditors at any subsequent time (including after Mr Delve's retirement from Smith Cooper) that the amortisation policy being applied was impermissible or non-compliant with FRS 102

v) While the EFL is right that the Club *could* have done 'more' in 2015/2016 to ascertain whether or not the proposed new amortisation policy was permissible – for example, by taking formal external advice from accountants unconnected with the Club and/or by seeking the views of the EFL on whether or not the proposed policy was or was not FRS 102-compliant – asking whether more *could* have been done is not the correct question to ask when one is considering whether an entity acted reasonably/unreasonably or carefully/carelessly. The question to ask, and that we asked ourselves, is whether the Club *should* have done more, and is to be criticised for not doing more, to test the permissibility of the proposed new amortisation policy before deciding to implement the same

vi) Put in those terms, our view is that what the Club did in such regard was sufficient to avoid a finding that it acted carelessly or unreasonably by implementing the amortisation policy as it did. The Club's adoption of an amortisation policy that, the LAP has found, did not comply with FRS 102 was not due to any lack of care being exercised on its part. The Club's breach of the P&S Rules in that regard thus occurred despite reasonable care being exercised by the Club in that regard

(6) As an aside, our view would have been very different had there not been an 'arms-length' consideration of the proposed policy by external advisers to the Club such as Smith Cooper; a prudent club will generally seek and act in accordance with advice prior to making significant decisions such as that under scrutiny here

(7) The position is however different as regards the repeated inclusion of the erroneous and misleading description of the amortisation policy in the Notes to the Annual Accounts:

i) There is no evidence before us as to who drafted that wording or how it came to be drafted or included in the Annual Accounts

ii) However, whether the wording was drafted by the Club or by a third party, the Club plainly ought to have appreciated that the wording was not a complete or accurate description of the amortisation policy that it was in fact applying, and that such wording had the potential to mislead. The Club effectively accepted as much

iii) That matter ought to have been appreciated (a) at the outset, and (b) upon review of the wording prior to each successive set of Annual Accounts being signed off. The fact that the wording of the Notes changed slightly each year is consistent with the wording of the Notes being reviewed each year, but with insufficient care, since the inaccuracy in the description of the amortisation policy was at no time properly appreciated or corrected

iv) Our conclusion therefore is that the inclusion of the potentially misleading description of the amortisation policy in the Annual Accounts – for 3 successive financial years – must have been the result of carelessness on the part of the Club.

It was not (as the Club urged on us) a '*wholly innocent*' breach of the P&S Rules on its part.

61) It therefore follows that

(1) We consider the Club's breach of the P&S Rules as described in the second Particular of the Second Charge to have occurred without any real fault on its part. As a result, the gravity of that breach was towards the bottom end of the scale (albeit that, because the relevant obligation is an absolute one that does not require any *mens rea* to be proved, the conduct still amounts to a breach of an important provision in the P&S Rules)

(2) We consider the Club's breach of the P&S Rules as described in the fifth Particular of the Second Charge to have been the result of the Club having failed to exercise the care that is to be expected of clubs in such circumstances. The gravity of that breach was thus higher up the scale

(3) It was on that basis that we approached the question of what proportionate sanction needed to be imposed in respect of the proven breaches to achieve the sanctioning aims.

62) Before we leave this section, we record that, had we taken a different view of the Club's conduct – and in particular, had we concluded that the Club had indeed been reckless or dishonest in its decision to implement and operate the amortisation policy, that the Club had acted other than in good faith and/or that the Club had deliberately misrecorded or attempted to conceal the amortisation policy that it had implemented and was operating – we would have taken a far harsher view as to the gravity of the Club's conduct. As we have said above

(1) The P&S Rules pursue objectives which are of fundamental importance, both to football generally and specifically to the Championship, and universal compliance with the P&S Rules is crucial

(2) The burden on clubs to discharge their obligations under the P&S Rules is an onerous one that must be given appropriate care and attention

and any club that consciously or recklessly acts in a manner contrary to the P&S Rules, or that conceals known or suspected non-compliance with the P&S Rules from the EFL, should expect to receive a sanction at the highest end of the scale available to a DC to impose. Regardless of whether any sporting advantage might have been obtained by such a club from its conduct (see below), we see no reason why in principle a points deduction should not be imposed on such a club if the gravity of its conduct justifies such a sanction in order to achieve the sanctioning aims – particularly the need to deter deliberate misconduct or risk-taking, and to ensure that public confidence is maintained in the integrity of the league competition.

(J) The Club obtained an 'illegitimate advantage' by adopting an amortisation policy that did not comply with FRS 102

63) As set out in section (C) above, it was common ground that the question of whether the restatement of the Club's Annual Accounts following the adoption of a FRS 102-compliant amortisation policy might result in the Club being found to have exceeded the ULT for any period is not something which we are to take into account for the purpose of sanctioning the Club for the proven breaches.

64) However, the EFL nonetheless invited us to conclude that, regardless of whether the Club is or is not found in the future to have breached the ULT for the periods in question, the effect of the amortisation policy adopted by the Club in the relevant seasons

(1) Was to reduce the Club's losses in the seasons in issue, and so

(2) Was to give the Club an '*illegitimate advantage*' when compared with other Championship Clubs who operated in accordance with FRS 102 in each season (and which in turn suffered a corresponding sporting disadvantage), since the Club was potentially able to increase its spend on player purchases in those years beyond the level at which it would have been able to spend had it adopted the straight-line amortisation policy which other clubs adopt.

65) We considered this matter extremely carefully. Having done so, we rejected the EFL's submission.

66) The starting point is a consideration of the practical effect of the Club having adopted and operated the amortisation policy that it did:

(1) As the EFL identified, there was evidence before us (from Mr Pearce) that the effect of the non-compliant amortisation policy had been to reduce the Club's losses in a particular season for the purpose of its Annual Accounts (or as Mr Pearce put it, to '*reduce the Club's losses now*' (emphasis added)

(2) The LAP Decision (at paragraphs 29-30) records as much. However, as described in those paragraphs, it is possible to go no further (at the present time) than to say that that '*potentially*' enabled the Club to '*increase their spend on player purchasers in [the relevant years] compared to what would have occurred had [the Club] adopted the straight-line treatment which other clubs adopt*'

(3) Even then, the Club responds, the fact that the amortisation had the effect of decreasing the Club's losses in a particular season for the purpose of the Annual Accounts is only a part of the total picture:

i) Mr Pearce's evidence was to the effect that the amortisation policy did not result in a saving *per se* for the Club; rather, it simply shifted amortisation losses in time

ii) There is no evidence that the amortisation policy did in fact give the Club an impermissible advantage (for example, in spending on players) in any season in question over competitors who were operating an FRS 102-compliant amortisation policy

iii) Given that compliance with the P&S Rules is assessed over a rolling three-year period it is wrong to look at the impact of the amortisation policy in any single season and to ask whether the operation of the policy in that single season did or did not result in the Club having a direct advantage (for example, in spending on players) over competitors who were not operating a non-compliant amortisation policy. What must be looked at – if it is to be looked at at all – is its effect over

rolling three-year periods and whether that resulted in the Club breaching the ULT in each/any year.

67) We accept that for the purposes of making good its submission it is not necessary for the EFL to satisfy us that the proven breaches for which we are sanctioning the Club resulted in any sort of '*measurable sporting advantage*' (our emphasis) caused by what the EFL contends was 'overspending'. However, for the submission to have any merit it is necessary for the EFL to be able to demonstrate that the proven breaches enabled the Club to engage, and did engage, in impermissible expenditure in one or more of the seasons in question (i.e. expenditure that could not permissibly have been incurred by the Club had it been operating an amortisation policy that complied with FRS 102).

68) Ascertaining whether or not that was in fact the case requires

(1) A consideration of the expenditure that the Club in fact undertook in each relevant season, and

(2) An analysis of the expenditure that the Club would have permissibly been able to undertake in each season had it operated an amortisation policy that complied with FRS 102.

If the Club in fact spent more in a particular season than it would have been able to permissibly spend had it operated an FRS 102-compliant amortisation policy, then that is a matter of which account could be taken by us when sanctioning for the proven breaches (since the need to consider whether it should be inferred that the Club had obtained a sporting advantage/that other clubs had suffered a sporting disadvantage as a result of the proven breaches would have been triggered). However, if the Club would have been able to permissibly spend in that season just as it in fact spent, even had it operated an FRS-102 compliant amortisation policy, then 'overspending' becomes a red-herring, since any sporting advantage that the Club might have had over other clubs as a result of expenditure on players would not be a consequence of any proven breach.

69) That is different to the position when a charge is brought under the P&S Rules for a breach of the ULT. There the question is a relatively simple one – does the aggregation of

the club's Adjusted Earnings Before Tax for the relevant three-year period exceed the ULT or not? If it does

(1) Impermissible 'overspending' is automatically established, and

(2) Any DC sanctioning for a breach of the P&S Rules arising by virtue of the ULT having been exceeded is entitled to proceed on the basis

i) That it can be inferred that substantial impermissible overspending (i.e. spending in excess of the ULT) has given the offending club a sporting advantage over other clubs by reason of the club having spent more than it permissibly should have spent on players, and

ii) That such impermissible overspending (i.e. spending in excess of the ULT) is in principle detrimental to the interests of other clubs which comply with the rules because it gives the overspending club a direct advantage in bidding for players during the transfer window.

70) In such cases there is no need to consider any counter-factual scenario; either the club has breached the ULT or it has not. That is not the case here. Here, for the EFL's submission to run, it is necessary for the EFL to satisfy us not only that the non-compliant amortisation policy resulted in the Club's Annual Accounts being misstated, but also that the non-compliant amortisation policy

(1) Not just gave 'extra spending headroom' to the Club in principle (by depressing the Club's losses for the purpose of its Annual Accounts in a particular season), but also in fact provided the Club with the opportunity to incur expenditure in a particular season that it would not otherwise have been able to permissibly incur had it been operating an FRS 102-compliant amortisation policy and so

(2) Gave the Club a direct advantage in bidding for players in the season(s) in question that it would not otherwise have had.

That is because there is no cap on spending *per se* in the P&S Rules; what the P&S Rules regulate is net loss.

71) The EFL made no reference at the sanction hearing to the Club's Annual Accounts or P&S returns, and made no attempt before us to demonstrate before us that the Club's amortisation policy had in fact given the Club an illegitimate sporting advantage in any one or more of the seasons in question i.e. an advantage that, had the Club not been operating a non-compliant amortisation policy, it would not have otherwise been able to enjoy in that season. In our view the Club is correct to contend that there is in fact no evidence, or certainly no sufficient evidence, before us from which we can draw the inference that the EFL invites us to draw in this regard. Accordingly, while we accept (as Mr Pearce accepted) that the Club's amortisation policy had an impact on the Club's losses in seasons under scrutiny – and may well have given 'extra spending headroom' to the Club in a particular season by reason of the fact that the amortisation policy shifted losses to future financial years – we were not satisfied

(1) That in any relevant season such 'extra spending headroom' enabled (let alone in fact led) the Club to incur expenditure in that season that it would not otherwise have been able to permissibly incur had it operated an amortisation policy that did in fact comply with FRS 102, or

(2) That the proven breaches (in particular, the proven breach of the second Particular of the Second Charge) thus had the effect of in fact giving the Club any meaningful advantage in any of the seasons in issue over other clubs that it would not in fact have enjoyed had it operated an FRS 102-compliant amortisation policy.

72) We therefore did not accept the EFL's submission that we should sanction the Club on the basis that the operation of the FRS 102 non-compliant amortisation policy gave the Club an illegitimate sporting advantage over other clubs, regardless of whether the Club had in fact (once its Annual Accounts have been restated) breached the ULT. It will be for a future DC to consider – if the EFL proceeds as we have set out in paragraph 13(2) above –

(1) Whether the Club has in fact breached the ULT, and

(2) Whether a sporting sanction should be imposed in respect of any such breach.

73) There is one further matter to which we refer in this regard. In his witness statement dated 8 June 2021 (served on behalf of the Club for the purpose of the hearing on sanction) Mr Pearce has set out what he considers the Club's P&S Calculations would look like if/when the Club restates them, based on

(1) A straight-line amortisation policy, and

(2) An 'alternative' amortisation policy that is not a straight-line policy but which the Club believes is nonetheless FRS 102- compliant.[7]

We make no findings in relation to those calculations (and to be clear, we also make no findings as to whether or not the proposed alternative amortisation policy is or is not compliant with FRS 102). However, it is apparent from those calculations that there is, and will presumably continue to be until resolved by a future DC, an issue between the Club and the EFL as to whether, had an FRS 102-compliant amortisation policy been operated by the Club, the Club would or would not have permissibly been able to spend as it did in the seasons in question. That evidence thus in our view reinforces the need for us to avoid speculating at this stage whether the Club engaged, or was able to engage, in any impermissible spending in any of the seasons in question.

(K) The non-compliant amortisation policy related to a significant category of expenditure

74) While the EFL identified this as a separate factor that was said to compound the gravity of the proven breaches, it did not appear to us to add very much. Insofar as the EFL makes this point to emphasise

(1) The potential for a club's amortisation policy to have a substantial (rather than merely trivial) impact on the figures in that club's Annual Accounts, and so

[7] Mr Pearce also factors in to certain of those calculations additional profit that the Club now believes it is entitled to bring into account from the sale of the Stadium.

(2) The potential for aggregated Earnings Before Tax calculated by reference to Annual Accounts prepared using a non-compliant amortisation policy to differ significantly from aggregated Earnings Before Tax calculated by reference to Annual Accounts prepared using a straight-line (or otherwise FRS 102-compliant) amortisation policy, and so

(3) The importance of a club complying with obligation in the P&S Rule to submit Annual Accounts prepared using an amortisation policy that complies with FRS 102

then we accept that argument. However, aside from that, it does not appear to us that the fact that the non-compliant accounting policy under scrutiny relates to a particular category of expenditure is of any real consequence for the purpose of determining the sanction to be imposed on the Club in this case.

(L) Specific matters raised by the Club as mitigation

75) The Club's submissions and the witness statement of Mr Pearce dated 8 June 2021 identified a number of discrete matters that, the Club contended, provided substantial mitigation in this case. We deal with each in turn.

i) Reliance on professional advice

76) The Club makes the point that at all times it relied on professional advice from its auditors Smith Cooper LLP that its accounting policies were compliant with applicable financial reporting standards.

77) We have already dealt with that matter above. As we have said

(1) It is in the Club's favour that the amortisation policy

i) Was formulated and implemented with advice and assistance from Smith Cooper, and

ii) Was not the subject of any adverse comment by Smith Cooper during subsequent audits (or during a file review).

We took due account of that matter when considering the appropriate sanction to reflect the Club's breach of the second Particular of the Second Charge

(2) That is not however something that assists the Club to anything like the same extent as regards the proven breach of the fifth Particular of the Second Charge. While the wording of the Note did pass the scrutiny of the Club's auditors on 3 occasions

i) Responsibility for the preparation of the financial statements ultimately rests with the Directors of the Club

ii) Failing to identify that wording does not properly describe a policy that the Club was regularly applying is not something that required professional advice; it is something that the Club ought to have appreciated itself.

ii) Candour and transparency on the part of the Club

78) We accept that the Club has at no time sought to mislead the EFL. However, in our view the Club goes too far when it submits it has '*always been completely upfront with the EFL about what it was doing*' in its amortisation policy; that submission ignores

(1) The inaccurate and potentially misleading description of the policy in the Notes,

(2) The confusion that remained after the May 2019 meeting, and

(3) The fact that it was only extremely late in the disciplinary process that the realities of the Club's amortisation policy were actually revealed by the Club.

79) In all other respects we accept that the Club has acted with candour and transparency in its dealings with the EFL. However, we do not regard that as any, or certainly significant, mitigation in a case such as this. Transparency and candour on the part of clubs in their dealings with the EFL is to be expected and should be the default position; it is not something for which a club can claim 'credit'. While a lack of candour or transparency would undoubtedly be a factor that would aggravate any proven breach, actual candour or transparency is a neutral factor.

iii) Lack of any sporting advantage

80) We have addressed this point above. On the evidence available to us we are unable to say that the Club's operation of a non-compliant amortisation policy gave it any impermissible sporting advantage (i.e. an ability to spend sums which, had it operated an FRS 102-compliant amortisation policy, it would not have been able to spend without breaching the P&S Rules in any particular season). That is something for a future DC to consider

(1) When the Club's Annual Accounts have been restated, and

(2) If the EFL considers that the Club's aggregated Adjusted Earnings Before Tax calculated from those restated Annual Accounts demonstrates impermissible overspending (i.e. in excess of the ULT) by the Club in any relevant rolling 3 year period.

iv) Reason for player impairments

81) Mr Pearce's witness statement explained at some length why certain significant player impairments had occurred in the financial year ended 30 June 2019. That evidence appeared to be relied on by the Club for 2 purposes:

(1) First, to further demonstrate the approach adopted by the Club to player amortisation at the relevant times. Given the findings in that regard set out in the DC Decision, that was unnecessary

(2) Secondly, in an attempt to counter any suggestion by the EFL

i) that significant impairments in the years following the implementation of the Club's amortisation policy were an inevitable or likely consequence of that policy, or

ii) that a cycle of artificial 'depression of losses' followed by 'substantial impairment' to redress the position was what the Club had always anticipated and intended by the use of the amortisation policy.

In other words, to counter the EFL's suggestion that the Club should be taken to have known that the amortisation policy could not be FRS 102 compliant and/or had not implemented or operated the policy in good faith.

82) We placed little weight on that evidence for any purpose. Given the findings that we made

(1) In the DC Decision, and

(2) On the basis of the evidence that was available (and tested) at the hearing in 2020

we felt that the contents of Mr Pearce's further witness statement added little in that regard. As we have set out above, even without that evidence our finding was that the Club's formulation, implementation and operation of the amortisation policy was *bona fide* and occurred with the benefit of professional advice. While the LAP has found that the policy did in fact not comply with FRS 102, the Club did not know that, or have any reason to know that, at the time.

v) The EFL's silence and delay

83) The Club's criticism of the EFL for '*silence and delay*' in expressing concerns about the Club's amortisation policy is unfounded, particularly given what we have said above about

(1) The inaccuracy of the description of the amortisation policy in the Notes to the Annual Accounts, and

(2) The fact that it was only in 2020 that the Club properly explained the amortisation policy that it had operated.

vi) Realised profit on the sale of stadium

84) Mr Pearce's latest witness statement explains at some length how the Club has – it appears relatively recently – learned that a substantial additional profit on disposal in relation to the sale of the Stadium

(1) May be available for inclusion by the Club in its Adjusted Earnings Before Tax for the season in question, and

(2) May of itself result in the Club's P&S calculations needing to be revised.

85) That does not seem to us to be of any consequence for the task before us – sanctioning the Club for the proven breaches – save perhaps to reinforce the view expressed above that, on the evidence before us, it is impossible for us to conclude that by virtue of the adoption of a non-compliant amortisation policy in each/any of the seasons in question, the Club

(1) Was able to spend sums that it would not otherwise have been permissibly able to spend had it operated an amortisation policy that complied with FRS 102, and so

(2) Gained a sporting advantage over other Championship clubs.

As we have said, while the amortisation policy may well have had the consequence of depressing losses in the Club's Annual Accounts in one or more of the seasons under scrutiny, it does not automatically follow that that meant that the Club was able to spend, or in fact spent more, on players in any season than it would otherwise have permissibly been able to do had it been operating an FRS 102-compliant amortisation policy.

vii) Materiality: alternative amortisation policy/straight line policy

86) We have addressed this matter above and say nothing more about it here.

viii) Registration embargo since early 2020

87) It is a matter of fact that since early 2020 the Club has been almost continuously under a registration embargo, although the registration embargo was lifted by the EFL in summer 2020 to enable the Club to make two permanent signings.

88) The Club invites us to regard that as a mitigating factor for present purposes. The EFL disagrees. The EFL's position is that the various registration embargoes to which the Club has been subject (and continues to be subject)

(1) Are in some instances wholly unconnected to the matters that have given rise to the Second Charge, and

(2) Are in any event entirely a consequence of the Club's own conduct.

89) Both points are in our view well made. The EFL provided (as an exhibit to a witness statement from Mr Craig dated 16 June 2021) a summary of the registration embargoes to which the Club has been and is subject, and the reasons for the same:

(1) A number of those registration embargoes have been imposed following the Club's failures to pay monies due (to other clubs as transfer instalments, to HMRC and to players as wages)

(2) Two registration embargoes have been imposed following delay/failure by the Club to submit Annual Accounts and P&S calculations to the EFL

(3) Two registration embargoes have been incurred as a result of the Club's failure/refusal to comply with requests by the EFL for information under the P&S Rules.

90) The fact that the Club has been, and remains, subject to registration embargoes is thus not a mitigating factor when it comes to sanctioning the Club. The position in which the Club has found itself, and continues to find itself, in that regard is one that results from its own actions.

ix) Adverse impact on investment and reputation

91) Finally the Club submits that the current proceedings have – at least indirectly – had substantial adverse commercial and reputational consequences for the Club. Mr Pearce summarises the same in his witness statement dated 8 June 2021.

92) The detail given in that statement in that regard is 'thin' – little more than bare assertions and descriptions of undated events. We therefore place only very limited weight on what is said therein.

93) However, the more fundamental point is that any commercial and reputational consequences that have been suffered by the Club as a result of the Charges being brought arise at least in large part from the Club's own conduct i.e. the conduct that has given rise to the Second Charge and ultimately to the proven breaches. Reputational and commercial consequences are inevitable for any entity such as the Club which is found to have operated an impermissible accounting policy for a substantial period and/or to have

misreported the nature of an accounting policy that it was operating. That is not a mitigating factor in this case.

(M) Drawing the strands together

94) Having carefully considered the submissions of the parties, we therefore turn to what we consider the appropriate sanction should be

(1) To reflect the 4 aims summarised above, and

(2) To reflect the various matters that we have analysed above.

95) We concluded

(1) That it would be wholly disproportionate to impose a deduction of points in this case. Such a sanction was not necessary to achieve the sanctioning aims

(2) That a 'package' of alternative sanctions as set out below best achieved what is necessary and proportionate in this case to satisfy the sanctioning aims.

i) A declaration of non-compliance

96) The most appropriate way in which to reflect the findings in the DC Decision and the LAP Decision is in our view 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

(1) The policy adopted for the amortisation of player registration

(2) The description in the Notes to such Annual Accounts of the policy adopted for the amortisation of player registrations.

97) We therefore determined to make a declaration to such effect.

ii) Restating the Club's Annual Accounts

98) Given the findings in the DC Decision and the LAP Decision that the Club's Annual Accounts do not comply with FRS 102, the Club's Annual Accounts for the relevant periods must be restated and resubmitted by the Club to the EFL.

99) Until late in the sanction hearing there was an issue over whether that exercise should be undertaken by the Club or by the EFL:

(1) The EFL initially wished to undertake the exercise itself

(2) The Club objected to that; it considered that it should undertake the exercise of restating its Annual Accounts.

100) At the very end of the sanction hearing the EFL accepted that the Club was best placed to carry out the exercise of restating the Annual Accounts for the years ended 30 June 2016, 30 June 2017 and 30 June 2018. We agree. While there may be occasions when the EFL can (and should) carry out such an exercise itself[8], in a case such as this where restatement will be a significant exercise, that task is best undertaken by the Club.

101) Restatement of the Annual Accounts should thus be carried out by the Club, not by the EFL. That must be done promptly, and the restated Annual Accounts must then be submitted to the EFL.

iii) Submission of restated P&S calculations

102) It may well be the case that, once restated Annual Accounts have been prepared by the Club, the P&S calculations previously submitted by the Club to the EFL for the periods in question will also need restating, and those restated P&S calculations will then need to be submitted to the EFL. As part of the package of sanctions that we impose it is therefore appropriate that we make a direction that, insofar as might be necessary, those steps should also be taken by the Club (and taken promptly).

iv) No sporting sanction

103) We do not impose any deduction of points or other sporting sanction. That is because

[8] See for example *The EFL v Sheffield Wednesday FC* 4 August 2020 (DC)

(1) As we have set out above, we do not consider this to be a case where, on the evidence presently available, we can safely conclude that the Club derived any impermissible sporting advantage from the particular conduct that underlies the proven breaches. While it may be that

i) The restated Annual Accounts, and

ii) Any restated P&S calculations

will demonstrate that the Club in fact exceeded the ULT in one or more three-year period (and so committed additional breaches of the P&S Rules in that further regard), it will be for a future DC to consider whether, on the evidence then available to that DC, it is satisfied that the Club did so, did in fact obtain a sporting advantage as a result of any those breaches of the P&S Rules and should be sanctioned accordingly. However, it is not for us to speculate in that regard

(2) Regardless of any question of sporting advantage, we do not consider the gravity of the Club's conduct in committing the proven breaches to be such that it is necessary and proportionate to impose a sporting sanction in this case:

i) Such a sanction is not necessary to punish the Club for the proven breaches, nor would such a severe sanction be proportionate to the proven breaches

ii) Such a sanction is not necessary in this case to vindicate other clubs against whom the Club competed in the seasons in question

iii) Such a sanction is not necessary in this case to deter clubs from committing similar breaches of the P&S Rules. Given our findings above as regards the Club's conduct and how it came to commit the proven breaches, 'deterrence' is a factor of only limited relevance in this case, particularly as regards the breach of the second Particular of the Second Charge

iv) Such a sanction is not necessary in this case to restore public confidence in the league competition. While we appreciate that there is a great deal of detail through which to wade in the DC Decision, the LAP Decision and these written reasons, anyone who undertakes that task will understand why the conduct that underlies

the proven breaches should not, of itself, be considered as having impacted adversely on the integrity of the Championship in this case – although that position may change if in fact the restated Annual Accounts show that the Club in fact breached the ULT in each/any of the relevant periods.

104) If we had concluded that a sporting sanction in the form of a deduction of points was necessary and proportionate to achieve the sanctioning aims in this case

(1) We would have imposed that points deduction in the 2020/2021 season. In our view imposing a deduction of points in that season

i) Would better achieve the sanctioning aims described above than imposing a points deduction in the 2021/2022 season, and

ii) Would operate as a far more meaningful sanction than a deduction of points in the 2021/2022 season.

We would have seen no justification for departing in this case from what we agree is the generally accepted approach of imposing sanction in the season in which findings of guilt are determined; indeed, to depart from that principle in this case would put yet further distance between the conduct for which the Club is being sanctioned and the 'bite' of the sanction, which is undesirable in any case

(2) We would still have imposed that points deduction in the 2020/2021 season even if that would have resulted in the Club being relegated. We would not have regarded the fact that, prior to any such points deduction being imposed, the Club sat 21st in the league, 1 point above the 22nd club, as being a matter that either required or justified us 'postponing' any points deduction to take effect only in the 2021/2022 season.

v) A reprimand and warning as to future conduct

105) As above, we have rejected the Club's assertion that it acted '*wholly innocently*' and have found that in relation to the conduct that gave rise to the fifth Particular of the Second Charge the Club failed to exercise due care in relation to an important obligation under the P&S Rules.

106) That conduct in our view

(1) Merits a reprimand, and we accordingly issue such a reprimand

(2) Justifies us warning the Club as to its future conduct. The warning that we issue is as to the Club's conduct in complying with the P&S Rules. Should the Club commit any further breach of the P&S Rules in the future it would be open to a future DC to take into account when sanctioning the Club for that breach that the Club had previously been warned by this DC as to its future conduct in that regard.

vi) A financial penalty payable to the EFL

107) We impose a financial penalty of £100,000 on the Club. In our view such a sanction, as part of the total package of sanctions that we impose

(1) Properly and adequately punishes the Club for the conduct that has given rise to the proven breaches of the P&S Rules, and

(2) Assists (as part of the overall package of sanctions) in achieving the other sanctioning aims described above.

108) We did not find it easy to quantify the financial penalty to be imposed on the Club, not least because we received very little assistance from either party

(1) As to what financial penalties had been imposed on other Championship clubs for breaches of Regulations or misconduct that might conceivably be considered comparable (whether where the underlying conduct could be characterised as careless or otherwise), or

(2) As to what financial penalty would properly be regarded as 'significant' in the circumstances of this case.

109) However, doing the best that we could on the information available to us, we concluded that a figure of £100,000 best reflected the circumstances of this case.

vii) Should the sanction or any part of it be suspended?

110) The Club submitted that, whatever sanction we imposed, we should suspend it for a period of time. While we do have the power to defer or suspend any sanction pursuant to Regulation 92.3 this is not a case where we can see any justification for doing so, and we do not do so. The sanctions that we have imposed are thus imposed with immediate effect.

viii) A last point

111) It will be obvious from what we have said above that we have imposed a single 'package' of sanctions in respect of both of the proven breaches. That is the approach that each party urged on us – neither suggested that we should sanction the Club separately for each proven breach – and after consideration we concluded (1) that that approach was one that was open to us (not least because each proven breach was part of a single Charge), and (2) that we would adopt that approach.

112) We have however tested our conclusions by asking ourselves whether, had we

(1) Considered each of the proven breaches in isolation and imposed a separate sanction in respect of each proven breach, and then

(2) Stepped back and considered matters in the round

we would have reached any materially different conclusion as to the overall sanctions to be imposed on the Club. We would not.

(N) Decision

113) The sanction that we impose on the Club is as follows:

(1) We declare 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

(2) By 4.00pm on Wednesday 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

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)

(3) Insofar as (following the submission of revised and restated Annual Accounts pursuant to paragraph (2) above) Rule 2.5 of the P&S Rules applies to the Club, the Club shall also by 4.00pm on Wednesday 18 August 2021 submit to the Executive of the Football League (a) revised calculations of its Adjusted Earnings Before Tax pursuant to Rule 2.5 of the P&S Rules, and (b) revised calculations of its aggregated Adjusted Earnings Before Tax pursuant to Rule 2.2.3 of the P&S Rules

(4) The Club is reprimanded and warned as to its future conduct as regards the preparation of its Annual Accounts

(5) The Club shall pay a financial penalty of £100,000 to the Football League by 4.00pm on Wednesday 21 July 2021.

(O) Right of Appeal

114) The parties are entitled to appeal this Decision pursuant to Regulation 94.3 The time limit of 14 days shall run from the notification of these Written Reasons, not from the date (23 June 2021) that we communicated our Decision.

(P) Publication of these Written Reasons

115) In accordance with Appendix 2 paragraph 20.2 of the EFL Regulations these Written Reasons may be published unless otherwise agreed by the parties subject to appropriate redaction to protect third party confidentiality.

Graeme McPherson QC (Chairperson)

Robert Englehart QC

James Stanbury

Disciplinary Commission

30 June 2021