

IN THE MATTER OF A DISCIPLINARY COMMISSION CONVENED PURSUANT TO SECTION 8 OF THE EFL REGULATIONS

Before:

Mr Nicholas Stewart KC (Chair)
Dr Leanne O’Leary
Mr Alistair McHenry

BETWEEN:

THE FOOTBALL LEAGUE LIMITED

Complainant

and

ANDREW CURRAN

Respondent AC

DARRELL ROSE

Respondent DR

FAICAL SAFOUANE

Respondent FS

DAVID BOTTOMLEY

Respondent DB

ROCHDALE ASSOCIATION FOOTBALL CLUB LIMITED

Respondent RAFC

(together the Respondents)

DECISION OF THE DISCIPLINARY COMMISSION WITH REASONS

INTRODUCTION

1. This matter involves disciplinary charges brought by the Complainant (the “**EFL**”) against each of the Respondents by charge letters dated 14 March 2022. All the charges are

for breaches of the EFL Regulations 2021/22, specifically relating to provisions in Appendix 3: Owners' and Directors' Test (the "**OADT**"). The OADT applies in the case of the Respondent, Rochdale Association Football Club Limited (the "**Club**"), as a member club of the EFL, currently playing in League Two after relegation from League One at the end of the 2020-21 season.

2. The OADT imposes restrictions and conditions on who may be involved in ownership, control, directorship, or senior management of EFL member clubs (defined as "**Relevant Persons**"). That is backed up by obligations on clubs and individuals to provide information to the EFL concerning such matters, including advance information where there is a proposed change of ownership or control of an EFL club.
3. The EFL's clear and declared intention of the OADT is to protect the image and integrity of the EFL and its competitions, the well-being of its member clubs, and the interests of all the stakeholders in those clubs.
4. All the charges here relate to events surrounding the sale and purchase of shares in the Club on or around 1 July 2021.
5. The charges, with a slight corrective modification by the EFL in the case of the Respondent Faical Safouane ("**FS/Mr Safouane**"), were all admitted by the Respondents before the in-person hearing held by this Disciplinary Commission (the "**DC**" or "**Commission**") on 5 September 2022. Accordingly, the task of the DC has been limited to deciding on the fair penalties for the admitted breaches of the EFL Regulations. There was a single hearing, as by consent of all parties all five cases had been consolidated by order of the DC Chairman on 27 April 2022 under Procedural Rule 5 in Appendix 2 to the EFL Regulations.
6. The admission of those charges still left some differences between the EFL and Respondents over the factual basis on which we should decide on the penalties. Accordingly, the DC decided to hold the hearing on 5 September 2022 to examine that question and also give all parties an opportunity of making submissions.
7. All five Respondents now accept that the EFL and this DC have disciplinary jurisdiction over them under the EFL Regulations.

8. While there are disputes of fact relevant to our decisions, most of the facts in this case are undisputed. Wherever we state a fact without qualification, it can be taken as undisputed or so clearly established by the end of the hearing that there is no value in going back into the details of any earlier disagreement.

Owners' and Directors' Test: Summary

9. The full provisions of the 2021/22 OADT in Appendix 3 to the EFL Regulations (which are the provisions accepted by all parties as applicable to all the charges) can be found at: <https://www.efl.com/contentassets/b3cd34c726c341ca9636610aa4503172/regulations-season-2021-22-final.pdf>
10. To put the charges and our decision in context, we summarise the key points of the OADT relevant to these cases, without going into all the detailed definitions.
11. As noted in paragraph 2 above, a key concept in the OADT is '**Relevant Person**'. At the times of their acts or omissions giving rise to these charges, all the individual Respondents were or proposed imminently becoming Relevant Persons in connection with the Club.
12. Linked to the definition of Relevant Person is a '**Disqualifying Condition**'. That is widely defined to cover a range of matters which the EFL regard as making a person unsuitable to be involved at a responsible level with an EFL Club. The most obvious is a serious criminal conviction but the definition is significantly wider - for example, insolvency.
13. The OADT is specifically designed to identify unsuitable persons *before* they become involved in or can influence the management or administration of a club, i.e. before harm can be done. A crucial requirement of the OADT is that a club must give the EFL at least 10 days' notice before a person becomes a Relevant Person at that club. That notice must be accompanied by a written '**Declaration**' in the EFL prescribed form, signed by the proposed Relevant Person and counter-signed on behalf of the club. It includes declarations on a number of points relevant to the possibility of a Disqualifying Condition

(e.g. no unspent criminal convictions for dishonesty). Signing and dating the Declaration is also expressed as that person's agreement to be bound by the EFL Regulations.

14. The EFL then has the opportunity of reviewing the matter and making enquiries. Crucially, until the EFL has confirmed that the person is not subject to any Disqualifying Condition, they are not permitted to do anything that brings them within the definition of Relevant Person (in broad terms, must not become involved in the ownership or management of an EFL club).
15. Where a person proposes to acquire '**Control**' of a club – and Control has a wide definition in the EFL Regulations – the club and that person must also submit '**Future Financial Information**' (defined in EFL Regulation 16) to the EFL at least 10 days before acquiring Control. The information ("**FFI**") is required in some detail, to enable the EFL to be satisfied that after the change of Control, the club will be on a firm financial footing. The EFL can require more evidence of the source and sufficiency of funds for the acquisition and subsequently for the running of the club.
16. We examine the specific charges against each Respondent later in this decision. Apart from an extra charge against each of Respondents Andrew Curran ("**AC/Mr Curran**"), Darrell Rose ("**DR/Mr Rose**") and Mr Safouane of failing to provide information to the EFL after it had begun to look into all these matters, all the charges except against Mr Safouane are based on failures to submit Declarations and FFI to the EFL before a change of Control of the Club on 1 July 2021. The basis of the first charge against Mr Safouane is essentially the same, although in his case the relevant change of Control was on 20 August 2021.

Background events

17. The key events took place in April to July 2021. The central point is that on 1 July 2021 the Respondents DR and AC acquired Control of the Club, as the term 'Control' is defined in the OADT. It is that acquisition which has triggered the charges brought against these Respondents, because it was done without compliance with the OADT for advance steps and provision of relevant material to the EFL.

18. The background events set out here are a brief summary. Further relevant details are added where needed later in this decision.
19. Back in 2019 the Club had already been exploring proposals for external investment, which could have involved an investor acquiring a controlling interest. The Respondent David Bottomley (“**DB/Mr Bottomley**”) had been a director of the Club since 2015 and took the lead. He was also appointed Chief Executive Officer (“**CEO**”) of the Club in December 2018.
20. There was no concrete result and after the disruption by the covid pandemic, it was around March 2021 before the search for external investment got under way again.
21. On 14 April 2021, DB received an email from Alexander Jarvis (“**AJ**”), with whom DB had had correspondence in September 2019, who is an investment broker not apparently subject to EFL disciplinary jurisdiction and is neither charged nor a participant in any capacity in these proceedings. That email was a first reference in writing to AC’s interest in buying the Club and made an offer to buy a 51% shareholding.
22. By email dated 19 April 2021, DB passed that AJ email on to the Club’s board of directors, which then consisted of Andrew Kelly, Tony Pockney, Frances Fielding, Graham Rawlinson, Nick Grindrod and DB. The largest shareholder in the Club and chairman of the board, Andrew Kilpatrick, had resigned as a director on 18 February 2021 and Mr Kelly had become interim chairman.
23. The special purpose vehicle (“**SPV**”) for AC to acquire Control of the Club was a company Morton House MGT and First Form Construction Limited (“**Morton House**”), which is also where Respondents DR and FS come in. On 1 May 2021, DR had acquired 51% of Morton House and on the same day FS was appointed a director of Morton House.
24. On 4 May 2021, by which time DB was also in touch with another potential purchaser of the Club, AJ sent DB a revised offer on behalf of AC; and on 10 May 2021 it was confirmed to DB that the ultimate beneficial owner of the acquiring SPV was AC (though we note here that it was DR who held 51% of Morton House and the remaining 49% apparently belonged to a Denise Courtneil).

25. On 11 May 2021, AJ asked DB if he had submitted the FFI. That was a slightly odd question, as it must have been apparent to AJ that by then nothing had been prepared anywhere near to what the EFL would need. Moreover, AJ asked DB if he had a template and said that AC's CFO would work on it. DB replied that he had not submitted anything, adding that anything submitted must come via the Club and not direct to the EFL (which, as DB knew, was a firm requirement of the EFL).
26. On the same day, 11 May 2021, DB sent AJ the details of Appendix 3 and the OADT from the EFL Regulations, as well as an EFL document "Acquisition of Control Guidance" and the template that needed to be completed for the FFI, adding that even with the Club's help this was a huge undertaking. DB, as an experienced football club CEO, was himself fully familiar with all that material.
27. On 14 May 2021, Respondents AC and DR each signed Declarations in the prescribed OADT form (the "**May Declarations**"), which they gave to AJ, who sent them on to DB together with what he said was proof of funding of the SPV Morton House.
28. DB was at the time the CEO and a director of the Club. He was supposed to submit those Declarations to the EFL but he failed to do it. We accept that was an oversight and was not deliberate. It was a serious failure for a club CEO but we find that DB had no improper motive.
29. There was a lot else going on at the Club at that time, much of which has little or no bearing on the decisions of this Commission and is unnecessary to recount here. There were strongly differing views among both supporters and directors about the direction in which the Club should be going, especially on the question of what sort of ownership – and who among possible new owners – would be best for the Club's future. One significant result was that, on 3 May 2021, a group of shareholders from the Rochdale Supporters Trust gave notice of a resolution to remove DB and Graham Rawlinson as Club directors and that resolution was passed at an EGM on 1 June 2021.
30. On 7 June 2021, the Club's Interim Chairman Andrew Kelly wrote to DB inviting him to a meeting in the Club boardroom on Thursday 10 June 2021 to discuss his position as CEO in the light of that resolution passed on 1 June. The letter also confirmed that DB

was not required to attend to his duties as CEO and requested (although it was clearly meant as an instruction) that he really should take paid leave of absence until that meeting.

31. At DB's request, that proposed meeting was postponed. It then never took place. On 10 June 2021, DB emailed to the board that he had put an out of office notice on his email and had taken the suggestion of paid leave for the rest of the week, which he would then review. As far as the board understood, DB did not return to his duties and was on paid leave until his employment was terminated on either 29 or 30 June 2021 (it matters not which) by a settlement agreement dated 30 June 2021.
32. On 1 July 2021, Morton House entered into share purchase agreements (the "SPAs") with six shareholders of the Club, by which Morton House bought 212,895 shares in total (an overall 42.3% of the issued shares of the Club-owning company Rochdale Association Football Club Limited). DB himself sold 12,960 shares, which was just under 2.6% of the Club. One of the other sellers was Graham Rawlinson, who had been a director of the Club from at least September 2019 until removed on 1 June 2021.
33. Each of the SPAs contained the same express provision that pending registration of Morton House, the seller would exercise all voting rights as directed by Morton House. Under the EFL Regulations, the ability directly or indirectly to exercise voting rights of 30 per cent of a company's shares is 'Control' for the purposes of the OADT. None of the Respondents disputes that both DR and AC acquired Control of the Club on 1 July 2022, which they plainly did.
34. The EFL was told by the Club only on 2 July 2021 that AC and DR had approached shareholders of the Club and were using Morton House as the SPV. Then on 6 July 2021 DR and AC told the Club supporters' trust that they had acquired at least 40% of the Club's shares.
35. On 8 July 2021, the Club belatedly provided the May Declarations to the EFL. They had been dated 8 July 2021 and were countersigned by the Club Secretary George Delves.
36. On 15 July 2021, AC and DR signed fresh OADT Declarations (the "**July Declarations**"), again countersigned by George Delves. Although they were obviously

too late under the OADT, the July Declarations were at least sent by the Club to the EFL on that same day.

37. On 27 July 2021, the EFL held a meeting with DR, AC, AJ and representatives of the Club.
38. On 16 August 2021, the Complainant EFL wrote to Morton House, to DB in his personal capacity and to AC and DR, notifying them of the alleged misconduct and requesting that they give undertakings to provide requested information.
39. On 19 August 2021, the EFL received a response from Morton House (confirmed to have been for and on behalf of Morton House, its directors and its representatives including both AC and DR) which required the EFL to provide confirmation, by no later than 12pm on Friday 20 August 2021, that Morton House had been approved pursuant to the EFL Regulations.
40. On 20 August 2021, the EFL responded to Morton House to confirm that it would not be able to provide such confirmation until it had concluded its investigation. On the same day, Morton House wrote to the EFL to inform it that Morton House, its directors and its representatives including AC and DR, would be withdrawing from the EFL's approval process and would not be co-operating with any request for information in respect of any investigation.
41. On that same day 20 August 2021, FS acquired 100% of the shares of Morton House, which gave him Control of the Club for the purposes of the OADT.

Charge letters 14 March 2022

42. The five separate charge letters against the Respondents were issued on 14 March 2022. All the Respondents submitted their responses on 28 March 2022. The Club submitted a written Defence which did not admit the charges against the Club. Mr Bottomley admitted the one charge against him. Mr Curran and Mr Rose each admitted two of the three charges against them and after consideration the EFL did not proceed with the non-admitted Charge 2 against each of them. Mr Safouane essentially admitted

the two charges against him, though on 13 May 2022 his solicitors raised a point for clarification of Charge 2 and the EFL has accepted that point as reasonable and responded accordingly.

Procedural steps

43. On 26 April 2022, Nicholas Stewart QC (now KC) was appointed under EFL Regulation 90.3 as Chairman of this Disciplinary Commission. On 27 April 2022 he issued Procedural Order No. 1, consolidating the five separate cases as had been agreed by all parties.
44. On 13 May 2022, the four individual Respondents confirmed their admission of the charges, with that point for clarification raised on Mr Safouane's behalf as mentioned in paragraph 42 above. The Club confirmed that it pleaded not guilty to the two charges against the Club.
45. On that same day 13 May 2022:
 - (1) Dr Leanne O'Leary and Mr Alistair McHenry were appointed by Sport Resolutions as independent side members of this Disciplinary Commission under EFL Regulation 90.3.
 - (2) The Chairman issued Procedural Order No. 2, including directions for written submissions and witness statements.
46. On 31 May 2022, the Club changed its plea to guilty on both charges against it.
47. On 1 June 2022, the Chairman issued Procedural Order No. 3, giving further directions for mitigation statements, evidence and an EFL response.
48. On 1 July 2022, each of the individual Respondents filed further mitigation statements.

49. On 15 July 2022, the EFL filed detailed witness statements of Nick Craig, EFL Chief Operating Officer, and Ryan Hyde, the EFL Governance Manager.

50. On 11 August 2022, the Chairman issued Procedural Order No. 4 giving final directions for an in-person hearing to start on Monday 5 September 2022.

51. On Monday 5 September 2022, the hearing took place at the International Dispute Resolution Centre in London. Although Tuesday 6 September had been reserved for a second hearing day, the parties' cases were presented so efficiently that the second day was not needed.

52. The hearing was attended by:

Panel	
Nicholas Stewart QC (now KC)	Chair
Leanne O'Leary	Side member
Alistair McHenry	Side member
EFL	
Jim Sturman QC (now KC)	Counsel
Jumani Robbins	Bird & Bird, solicitors
Ryan Hyde	EFL Governance Manager
Mr Bottomley	
David Bottomley	Respondent (4 th)
Rochdale AFC	

Nicholas Harrison	Counsel
Dean Hulse	HY Solicitors
Simon Gauge	Club chairman
Guy Courtney	Club board director
Chris Harrison	Club non-executive director
Messrs Curran, Rose and Safouane	
Harry Dyson	Counsel
Gareth Jones	Sperrin Law, solicitors

Mr Matt Berry of Sport Resolutions also attended and has provided the administrative support for this Commission throughout.

53. The Commission was provided with a Core Hearing Bundle of 195 pages and a Supplementary Hearing Bundle of 1,415, both indexed, as well as a 10-page chronology. All those items were extremely well prepared in searchable electronic form (and hard copy on request). Together with skeleton arguments from all Respondents except DB, this was a great help to the Commission.

54. The Club's skeleton made the point that although there were inconsistencies among the various individuals' accounts, it was unlikely that the Commission would need to resolve all (or many) of those inconsistencies to arrive at a just result. None of the parties quarrelled with that view, and we agree. Moreover, although the Commission has read all relevant material, and taken into account everything which could fairly have a bearing on our decisions on sanctions (and costs), there is a huge amount of detail which need not be mentioned at all in this decision.

55. We did not hear any oral evidence at the hearing, which was confined to submissions. All parties except Mr Bottomley were represented by counsel and solicitors. Mr Bottomley made his own submissions. While that involved a familiar difficulty that here and there his submissions included assertions of fact not already in evidence, the DC has been careful to ensure that nothing contentious was added to evidence in that way. We are also sure that Mr Bottomley was not trying to take any improper advantage.

Key provisions of the EFL Regulations and Owners' and Directors' Test

56. Specifics of the separate charges and the basis of the guilty pleas of the Respondents are set out where we examine each of their cases one by one below. All those charges involve breaches of one or more of the following four provisions of the EFL Regulations, including the OADT in Appendix 3 of those Regulations:

OADT Rule 2.6

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

OADT Rule 3.1.1

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

3.1.1 the Club and/or the Person shall, as far in advance of the acquisition of Control as reasonably possible and in any event no later than 10 Normal Working Days prior to the date on which it is anticipated that such acquisition of Control will take place:

(a) submit to the League a duly completed Declaration in respect of each Person

who will become a Relevant Person upon the proposed acquisition of Control;

and

(b) submit to the League up to date Future Financial Information (as defined in

Regulation 16) prepared to take into account the consequences of the change of Control on the Club's future financial position

OADT Rule 3.3

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

3.3.1 The League provides confirmation that all Persons that are required to do so have complied with the process set out in Rule 3.1(a)(i) and no such Persons are liable to be disqualified as a Relevant Person;

3.3.2 The League provides confirmation of its satisfaction with the information provided pursuant to Rule 3.1(a)(ii); and

3.3.3 The Club and any Person proposing to acquire Control have acceded to any powers and/or accepted any conditions imposed pursuant to Rule 3.2.

EFL Regulation 83.5

83.5 Any failure by any Club, Player or Official to co-operate with any request for information or disclosure from The League under this Regulation shall be treated as a separate breach of these Regulations.

57. All these provisions contain terms defined in the EFL Regulations (including the OADT in Appendix 3). Reference may be made to those Regulations through the link in paragraph 9 above, but it is not necessary to set out those detailed definitions here.

58. By rule 5 of the OADT rules in Appendix 3, breaches of OADT rules 2 or 3 are Misconduct. Under EFL Regulation 83.1 the League has the power to initiate and prosecute disciplinary proceedings for that Misconduct, as it does for the failures to co-operate under Regulation 83.5.

General observations on all five cases

59. We shall consider the cases against each Respondent in turn, examining the admitted charges and the mitigation and reaching our decision on the fair sanction for that Respondent.

60. An important preliminary observation applies to all five cases: The Owners' and Directors' Test is a crucial element of the EFL's regulatory responsibilities in the interests of all its member clubs, their supporters and everyone else involved or interested in football. Responsible ownership and management of EFL clubs and the financial stability of the clubs and the whole League are vital to the health of the game.

61. Following the expulsion of Bury FC from the EFL during the 2019/20 season, as a result of its huge financial problems, the EFL Regulations and OADT had been significantly tightened up by changes to ensure that the EFL would have the full opportunity of detailed consideration of the suitability of any person proposing to be involved in the ownership or management of a club **before** that person became involved (within the wide definition of Relevant Person). The EFL would also be able to scrutinise the financial plans (Future Financial Information or FFI) for a club **before** any prospective change of ownership. After obtaining any further information needed, the EFL would be able to withhold approval of that person and/or a change of ownership. Those are crucial elements of the EFL Regulations and the OADT which are applicable to these cases. It will be rare that a failure to comply with the OADT can be regarded as only a technical breach. That is certainly not a description which applies to any of the breaches charged and admitted in the cases against these Respondents. The breaches here deprived the EFL of the vital ability to carry out those investigations as contemplated and required by the OADT.

62. We have been referred to several previous decisions:

- *EFL v (1) Watford AFC (2) Laurence Bassini*, 10 February and 11 March 2013, EFL Disciplinary Commission: dishonest dealings and failures to report information to the EFL in relation to financing of an EFL club

- Agreed Decision between (1) EFL (2) Leeds United FC Ltd and (3) Massimo Cellini
- *Christopher Farnell v EFL*, 10 November 2020 (SR/184/2020), League Arbitration Panel: appeal and/or review application under the OADT
- [REDACTED] v EFL, 27 January 2022 (SR/227/2021), League Arbitration Panel (chairman as sole arbitrator): review application under the OADT

63. Accepting the clear principle that sanctions for similar cases should be in a broadly similar range, each case must be always judged on its own facts. Previous decisions are not binding precedents and all of the cited cases involve significant differences from the five cases we have to decide. However, while we have had regard to the cases cited by the parties, and see nothing in any of those decisions with which we should disagree, we do not consider it helpful to go into case-by-case comparisons on the facts.

64. This Commission endorses and applies the uncontroversial principles stated by the Disciplinary Commission in *EFL v Derby County*, 30 June 2021 (SR/017/2020), applicable to individuals as to Clubs, that sanctions serve four principal purposes:

- i) Punishment for proven breaches.
- ii) Vindication of those who do not break the rules.
- iii) Deterrence of future breaches, by these Respondents and others.
- iv) Restoration/preservation of public confidence in the fairness of league competition.

65. We now turn to consider what sanctions are fair for each of these five Respondents. Noting that the EFL has not sought or even suggested fines against any of the Respondents, we have therefore not felt it fair to consider fines when that was not part of the case put against any of the Respondents for them to answer at the hearing.

The Club

66. The two charges against the Club are:

Charge 1: On 1 July 2021, in breach of Rule 3.3 of Appendix 3 of the EFL Regulations, the Club permitted DR to acquire Control of the Club without the prior approval of the EFL.

Charge 2: The Club failed to provide the information required by Rule 3.1 prior to the date on which DR acquired Control of the Club.

67. We note that neither charge refers to AC, although his acquisition of Control on 1 July 2021 is also alleged and admitted. However, this makes no practical difference to our decision on the fair sanction for the Club.

68. On 28 March 2022, the Club filed a defence denying both charges, on the basis that the Club was not to be held responsible for the failures of DB as its CEO, because he had not been acting in the best interests of the Club. That point could never have succeeded and two months later was wisely abandoned by the Club.

69. On 31 May 2022, the Club changed its plea to guilty on both charges, as notified to the EFL by the Club's lawyers:

I write to formally notify the Chair that our client has instructed us to confirm that it admits both charges brought against it by the EFL on a limited basis. That basis is as follows:

- i. The Club accepts that it is in technical breach of the Rules relevant to the charges as brought; however
- ii. DB acted without Board authority;
- iii. DB had been requested by the Board to refrain from his duties as CEO at all material times.
- iv. The Club was therefore put in breach of the relevant Rules by virtue of DB's acts and omissions alone.

70. On 1 July 2022, the Club filed its Further Mitigation Statement, which superseded its 28 March 2022 written defence.

71. The Club's mitigation gives a helpful and fairly detailed account of the period May to November 2021, including some very specific details of DB's activities and communications, especially during his paid leave in June 2021. We have examined all that history but do not need to go through it all here. What the Club's position boils down to is that its breaches of the OADT were all the fault of DB, that he engaged in underhand discussions and negotiations with the Morton House camp (AC, DR and AJ) and that the Club board were kept in the dark and had no idea that control had changed or might change hands without all the required steps being taken by the Club under the OADT.

72. The Club's Statement of Mitigation notes that the EFL brings Charge 2 against the Club on the basis of the "*omissions and failures of DB*", and against DB on the basis that his "*omission to provide the May Declarations to the [EFL] is the sole cause of the Club's breach of Rule 3.1 as had the Respondent provided the May Declarations and FFI to the [EFL], the Club would have satisfied its obligations under Rule 3.1.1.*". That is all true, as long as it is understood: first, that precisely because he was the CEO the acts and omissions of DB were also the Club's acts and omissions; secondly, that in context to say that the omission was the "sole cause" is only to be understood as meaning that if DB had done his job the problem with the Declarations would never have arisen; and thirdly, there was also the failure to submit the Future Financial Information.

73. While DB's failures are enough on their own to substantiate both charges (as implicitly acknowledged by the Club by its guilty pleas), the Commission does not see the Club's culpability as limited to those failures by DB as its CEO. The overall responsibility for the management of the Club lies with its board of directors. The board may quite properly leave not only day-to-day management but often more significant matters in the hands of a CEO without interference or the need for the CEO to be constantly reporting to the board. However, all directors of any EFL club are expected to know about the OADT and the vital importance of ensuring that their club fully complies. However much they may delegate to a CEO or other employees, they must take all reasonable steps to ensure that the club has the necessary systems and checks to comply with the OADT.

74. We do find that in May and June 2021 this Club's directors took too casual an approach to the OADT. In particular, we note:

- (1) Mr Hyde's witness statement reports at paragraph 36.2 that when interviewed by him and the EFL's Regulatory Solicitor Mr Robert Jackson on 18 November 2021, a former Club director Nick Grindrod told them that the whole Club board had been aware of Morton House's interest. We see no reason to doubt that Mr Grindrod was telling the truth on that occasion, even without noting also that on 19 April 2021 DB had emailed Messrs Pockney, Kelly, Fielding, Rawlinson and Grindrod informing them of AC's formal offer to buy 51% of the Club.
- (2) When Mr Hyde and Mr Jackson interviewed Mr Pockney on 19 November 2021, he said he had had no knowledge of any kind of AC, DR or Morton House until July 2021. However, the points set out in paragraph 36.3 of Mr Hyde's witness statement, including reference to emails sent by DB to the Club board including Mr Pockney, show that this assertion by Mr Pockney was plainly untrue. There is no serious possibility that this was a failure of recollection by Mr Pockney: he was deliberately misleading the EFL.
- (3) It is clear that on or close to 27-29 April 2021, in addition to DB, at least some other member or members of the Club board actually met AC.
- (4) On 27 May 2021, a statement was issued to the Club's shareholders by the Club chairman and board to update the shareholders on the position on prospective new ownership and investment in the Club. The statement included:

"Furthermore, the stringent tests now imposed by the EFL, with regards to owners and directors, are in place to ensure another situation like at those other clubs will never arise again. Not only is proof of funds required for any potential new owners and shareholders, but there are requirements to demonstrate how those funds were acquired and how they will sustain the club going forward. **All of the parties that we are engaged in talks with fulfil those EFL requirements.**" [Bold emphasis added here]

75. While we are not convinced that the use of the plural "interested parties" is simply by itself a clear indication that it was referring to AC, DR and Morton House, we are in no

doubt that when the statement was issued, at least some members of the board knew perfectly well that the Morton House camp were still actively interested. Although there was another serious candidate, who was clearly preferred by some board members and by others in the Club and had been given a period of exclusivity (apparently for a period of a couple of weeks or so in May and/or possibly late April), it would have been highly misleading to issue this statement on the footing that the Club was no longer engaged in talks with the Morton House camp.

76. Whether the statement was referring to parties including Morton House, AC and DR, or only to another prospective purchaser whose identity and interest had been known to the board for some time, on the evidence before us it is impossible anyway to see how the passage we have marked in bold could have been responsibly stated by the Club's board. Even full submission of Declarations and FFI under the OADT could not have justified that statement, unless either:

- the board knew that the EFL had given its approval after examination of all the required OADT material; or
- if all the material had been fully reviewed by the Club and the board was completely confident that it would satisfy the EFL that it felt able to make that statement to shareholders

77. The board could not possibly have claimed the first of those justifications. Even if they believed that all that material had been submitted to the EFL, they had no reasonable basis whatever to assert that it had passed the EFL's scrutiny. As to the second, even if they believed (which we do not accept) that such a review had been done, the unequivocal assertion in that last quoted sentence would still have been an extraordinarily rash statement by the board.

78. We accept the EFL's submission that this statement shows a careless indifference to the OADT rules on the part of the Club board.

79. The EFL also rely on the fact that after the EGM on 1 June and the Club board meeting on 6 June 2021, former directors of the Club including DB agreed to sell their shares to Morton House. Given that those individuals no longer owed directors' duties to the Club,

we attach no weight to that point, which at most is a slight indication of their continuing indifference to the OADT and which is consistent with our view of the 27 May 2021 board statement.

80. However, it is significant that Mr Kelly, who chaired the Club board until Simon Gauge took over on 16 June 2021, was in discussions with AJ in the first half of June 2021. A written statement of Mr Kelly, confirmed by his solicitors on 15 November 2021 as signed off by him, describes how he was contacted by AJ “in or around the second week of June 2021” (and we see from the context that it was clearly when he was still a Club director). According to Mr Kelly, AJ told him (falsely, in fact) that AC had obtained more than 50% of the Club shares and therefore wanted to talk to Mr Kelly about selling his shares. Mr Kelly says he was surprised but had no reason to doubt that, as AJ told him that deals had been done with enough shareholders (including DB and Graham Rawlinson) to take them over the 50% threshold. We know that Mr Kelly was not at all well at that time but he was still the chairman of the Club board and he was actively discussing these matters. Mr Kelly met AJ on 25 June 2021 to discuss selling his shares and then, on 2 July 2021, Mr Kelly told AJ that he had decided not to sell his shares. However, following that earlier conversation with AJ, when he was still a Club director, believing that control of the Club had already changed hands, Mr Kelly ought then immediately to have raised concerns about AC, Morton House and the OADT with his fellow directors (and with DB, even though DB was on paid leave from 9 June 2021). Whether or not Mr Kelly was alive to the point, that also meant that the Club board statement issued on 27 May 2021 (when he was still chairman) needed urgent correction.

81. DB’s paid leave raises another question mark about the board’s responsibility in all this. While many significant matters may be entrusted to a club CEO, at the very point of such active discussions about new ownership the board had placed DB on paid leave and expressly asked him not to carry out any duties. We are not questioning that decision, which was taken in the light of the obvious loss of confidence in DB which led to his removal as a director. However, there is no evidence of any steps taken to ensure that the heavy responsibilities of the Club CEO were quickly taken over by capable hands. With that experienced CEO suddenly no longer in the saddle, it was remiss of the board

not to make active enquiries and take whatever steps were necessary to ensure that the Club was doing whatever it was required to do under the OADT, including becoming fully apprised of the latest developments with the Morton House camp.

82. A club can only act through its directors, employees or other agents. Their acts and omissions are the club's acts and omissions. As a general principle, a club is to be held fully responsible for any consequent breach of rules, whatever charges may also be brought and sanctions imposed on individuals. We are not saying that where a club is in breach of regulations, it is never a mitigation on sanctions that it has been let down (and here badly let down) by one or more of those agents. Each case is judged on its own facts. On these charges against the Club, our judgment is that the failures of DB as CEO and the Club's board are to be treated as directly attributable to the Club and that the sanction on the Club is not to be mitigated by passing the blame on to DB (or the Club board, though noting that the Club did not attempt to blame any of its directors except DB). This Commission would have been reluctant anyway to dilute that clear principle of corporate and Club responsibility for the actions of its CEO (who was also a director until removed on 1 June 2021). The failures of the Club board simply reinforce our view that we should reject out of hand the Club's attempts to detach itself from responsibility for the failures of its own CEO.

83. Simply stated, these were serious breaches of the OADT for which the Club bears full responsibility and is to be sanctioned accordingly.

84. The EFL asks for a sanction of points deduction against the Club, to be suspended for a period on condition that there are no further breaches of the OADT rules. Taking into account that on 31 May 2022 the Club did plead guilty to both charges, the EFL specifically proposes a 6 points deduction.

85. This Commission accepts that the starting point for such serious breaches of the OADT is a points deduction. We see no special circumstances justifying departure from that starting point. The EFL submits that if the charges had been contested by the Club, the deduction should have been 9 or 10 points but with the Club's guilty plea it should be 6 points. No fine is sought, and we see a 6 points deduction as no more than fair as the penalty for such serious breaches of the OADT rules, and that is what we order.

86. As to the period of suspension, we accept with Mr Sturman's submission that backdating is not realistic. He indicated that it could be two years but that the EFL would not vehemently disagree with one year.

87. We accept that in all the circumstances the 6 points deduction should be suspended. As a reason for this suspension, we give only slight weight to the fact that the CEO and most of the Club's board have changed since these events, but overall we accept that it is not necessary or fair to impose an immediate points deduction. The period of suspension will be until 30 June 2024, which is no longer than reasonable for a club which has committed such serious breaches and has avoided an immediate points deduction. It should help to ensure that the Club has introduced a far more robust and permanent system for future compliance with the OADT.

Andrew Curran

88. The three charges against Respondent AC are:

Charge 1: On 1 July 2021, in breach of Rule 3.3 of Appendix 3 of the EFL Regulations, AC acquired Control of the Club without the prior approval of the EFL.

Charge 2: On 1 July 2021, in breach of Rule 2.6 of Appendix 3 of the EFL Regulations, AC became a Relevant Person of the Club without the prior approval of the EFL.

Charge 3: In accordance with Regulation 83.5, AC has committed Misconduct as he has failed to co-operate with a request for information lodged by the EFL.

89. On 28 March 2022, AC filed a Statement in Response which contained a mixture of admissions, denials and submissions in response to the EFL's Charge Letter and Notification of Charges dated 14 March 2022. At paragraph 12 of that statement AC says:

The club clearly considers that it has an absolute discretion as to whether they submit the forms to the EFL. I therefore cannot force them to submit the documents once I have complied with the requirements. All that I can do is comply with the regulations, and that is exactly what I did. If the club has a discretion, I cannot do anything else and have not breached any regulations. If the club does not have such a discretion, then any breach of the regulations lies firmly with the club, not me.

90. At paragraph 16 of that statement AC goes on to say:

I am advised that I am forced to admit the charge against me in technical terms, but it is absolutely clear that in moral and factual terms, I am entirely innocent. I did everything properly and have been put in this position entirely as a result of the failure of the club to send the forms onto the EFL, in circumstances where it not only never told me it had not done so, but actually told me that the forms were being processed by the EFL. I had no reason to believe that I was being misled. I acted in good faith at all times and naturally believed that the documents were submitted to the EFL pursuant to EFL Regulations. I was even told by the Club that the EFL had given approval for me to acquire control.

91. Following Procedural Order No. 2 dated 6 May 2022, on 13 May 2022 AC's solicitors filed a clarification of AC's plea which admitted Charges 1 and 3 but did not admit Charge 2.

92. On 31 May 2022, the EFL confirmed that it had received acceptable pleas to all charges against AC (implicitly dropping Charge 2).

93. AC's Additional Mitigation Statement repeats substantial elements of his earlier statement and again seeks to blame DB and the Club. At paragraph 12 of that statement AC says:

If RAFC did have proper processes, then we would not be here and the EFL would not have been forced by the breaches of Regulations on the part of RAFC to initiate this process. All roads lead to RAFC being the party which has placed everyone in this unfortunate position.

94. At paragraph 29 of that statement AC says:

RAFC is clearly trying to hang Mr Bottomley out to dry, which is between them and him, but the “innocent party” here is Mr Curran and the other parties associated with Morton House, who were materially misled by RAFC and its Officers in respect of what was happening with the EFL.

95. At paragraph 66 of that statement AC says:

...while I am advised that I have a strict liability, I trust the Tribunal will appreciate that I am not in any way the author of any breach and a substantial wrongdoing has been laid at my door by the actions or omissions of RAFC (and potentially even the EFL if in fact I can apply “direct” as the rules imply but their officers directions state to the contrary).

96. AC was represented but was not present at the hearing on 5 September 2022.

97. The EFL seeks for AC a lengthy ban from any involvement in football but did not suggest any particular period other than to say that AC’s case “is at least as serious if not more so” than the EFL case involving Mr Laurence Bassini (noted in paragraph 62 above), who in 2013 received a ban of three years from a Football Disciplinary Commission for misconduct characterised by that panel as “serious, prolonged and deliberate”.

Darrell Rose

98. The three charges against Respondent DR are identical to those for AC but are set out here for ease of reference:

Charge 1: On 1 July 2021, in breach of Rule 3.3 of Appendix 3 of the EFL Regulations, DR acquired Control of the Club without the prior approval of the EFL.

Charge 2: On 1 July 2021, in breach of Rule 2.6 of Appendix 3 of the EFL Regulations, DR became a Relevant Person of the Club without the prior approval of the EFL.

Charge 3: In accordance with Regulation 83.5, DR has committed Misconduct as he has failed to co-operate with a request for information lodged by the EFL.

99. On 28 March 2022, DR filed a statement in response. It is largely the same statement as that filed for AC and contains the same paragraphs 12 and 16 cited above for AC.
100. Following Procedural Order No. 2, on 13 May 2022 DR's solicitors filed a clarification of DR's plea which admitted Charges 1 and 3 but did not admit Charge 2. The plea clarification for DR was identical to that of AC.
101. On 31 May 2022, the EFL confirmed that it had received acceptable pleas in relation to all charges against DR (as with Mr Curran, implicitly dropping Charge 2).
102. DR's solicitors provided an additional mitigation statement on 1 July 2022. That statement referred to AC's Additional Mitigation Statement dated 1 July 2022, saying:
- “That [AC] statement sets out greater detail of the factual matrix of events. We request that you refer to that document also by way of mitigation for Mr Rose”.
103. DR's additional mitigation statement goes on to say that if any penalty is appropriate, it is “*only a nominal financial penalty*”.
104. The EFL seeks for DR a lengthy ban on the same basis as for AC.
105. DR was represented but not present at the hearing on 5 September 2022.
106. Unlike AC, no apology or explanation appears to have been forthcoming from DR for the stance not to co-operate with the EFL's investigation as indicated in the Morton House letter dated 20 August 2021.

Faical Safouane

107. The two charges against Respondent FS (as amended) are:

Charge 1: On or around 20 August 2021, in breach of Rule 3.3 of Appendix 3 of the EFL Regulations, FS acquired Control of the Club without the prior approval of the EFL.

Charge 2: In breach of Rule 3.1 of Appendix 3 of the EFL Regulations, FS failed to provide the information required by Rule 3.1 prior to the date on which FS acquired Control of the Club.

108. On 28 March 2022, FS submitted a Statement in Response which contained a mixture of admissions, denials and submissions in response to the EFL's Charge Letter and Notification of Charges dated 14 March 2022.

109. Following Procedural Order No. 2, on 13 May 2022 solicitors on behalf of FS filed a clarification of FS's plea which admitted Charge 1 (albeit noting, correctly, that "*it was only from or around 19 November 2021 that Mr Safouane became bound by the [EFL] Regulations, by virtue of him having signed and the Club submitting an OADT in respect of him*") and which neither admitted or denied Charge 2 (as then alleged and subsequently amended).

110. On 31 May 2022, the EFL confirmed that it had received acceptable pleas to the charges against FS.

111. Paragraph 5 (9) of FS's 28 March 2022 statement says: "*By default, I acquired Control of the Club on 20 August 2021, without the written approval of the [EFL].*"

112. Solicitors on behalf of FS provided an additional mitigation statement on 1 July 2022. As for DR, it sought to place reliance on AC's Additional Mitigation Statement and states in addition:

Mr Safouane's role is solely to have been in an administrative position in Morton House (director). As such, he has pleaded to the charges which he faces effectively on a strict liability basis... Mr Safouane has played no active role in the acquisition of a shareholding by Morton House in RAFC.

113. FS was represented but not present at the hearing 5 September 2022.

114. Again the EFL seeks a lengthy ban for FS from any involvement in football, albeit it was suggested that he should receive a shorter ban than that for AC and DR in the light of: i) his only becoming involved at a later stage; and ii) his co-operation with the EFL investigative process (FS attended an interview with the EFL on 17 December 2021,

during which he said, amongst other things, that he had no knowledge of the Morton House letter sent to the EFL of 20 August 2021).

Findings on Curran, Rose and Safouane

115. The EFL has accepted (and we agree) that, as with DB, all these three Respondents should be treated as having pleaded guilty at the first opportunity.

116. The Commission has given detailed consideration to the efforts made by AC and DR, and Mr Jarvis acting on their behalf, to comply with the EFL Regulations. We have focused on the weeks leading up to 1 July 2021, when their roles could still properly have been described as prospective owners of an EFL Club. To expand on the summary of Background Events in paragraphs 17 to 41 above:

a. On 11 May 2021, Mr Jarvis asked DB if he had already submitted the FFI. Mr Jarvis said:

“...Have you already submitted the FFI? In terms of the FFI Andy’s [AC] CFO will work on this – we will come back to you with a few questions – do you have a template so we don’t have to start from scratch?... We will aim to get the owners and directors test by end of week as that takes a few weeks generally...”

b. Mr Jarvis was informed by DB in response that nothing had been submitted yet and that everything must come via the Club – *“no we have not submitted anything, and please must come via RAFC not direct to EFL”*. Later that same day DB sent Mr Jarvis Appendix 3 of the EFL Regulations along with the following caution:

“...a huge amount of documentation is now required and please see the Financial document that must be completed – even with our help this is a huge undertaking...”

c. On 14 May 2021 AC and DR signed OADT Declarations. AC and DR signed to confirm they would become Relevant Persons for the purposes of the EFL Rules.

They each ticked the boxes for the different ways they would qualify as a Relevant Person pursuant to the EFL Rules: i) Club Director; ii) Group Company Director; iii) Shareholder. The OADT form contains no fewer than four references to Appendix 3 and contains the following declaration in bold:

I, the undersigned, understand that by signing and dating this Declaration I acknowledge and agree to be bound by the Regulations of the English Football League. I further acknowledge that as a Relevant Person I am / will become a "Participant" as that term is defined in the Football Association Rules and, as such, will be bound by them.

- d. On 23 May 2021, Mr Jarvis wrote to DB seeking responses to various questions *"in order to complete the FFI statement"*.
- e. On 26 May 2021, Mr Jarvis chased DB for a response to his 23 May email.
- f. On 27 May 2021, the Club released the statement discussed in paragraphs 75 to 77 above.
- g. On 7 June 2021, Mr Jarvis wrote to DB to enclose the FFI document. Mr Jarvis writes:

"Hi David...Find the attached FFI document for submission to the EFL in line with the OADT requirements. I've been working on it all day with Andy's financial advisor..."

117. It is clear from the above that AC and DR were, via Mr Jarvis, seeking to engage with the EFL's OADT process. They sent financial information and signed OADT forms to DB. They placed trust in DB and Mr Jarvis as their conduits and left DB to relay that information to the EFL. It is now clear that the financial information would not have satisfied the EFL so would have required more work, but that would not have been unusual as part of the proper OADT process.

118. We consider it reasonable for external investors to place a degree of reliance on those employed by the Club to guide them through the OADT process. As the EFL conceded at the hearing, in respect of AC and DR it is a mitigating factor that the documents were

to be sent by the Club to the EFL. DB was on the inside, as it were, and therefore in a more informed position than any potential external investors new to the industry. That said, a prudent investor would have taken their own independent advice on the regulatory requirements. There is no evidence before the Commission that either AC or DR did so.

119. The corollary to that degree of engagement is that AC and DR were fully aware (or should have been) of the requirements of Appendix 3. DB had even told them this was a huge undertaking.

120. With that background, it is astonishing that on 1 July 2021 share purchase agreements were concluded for the acquisition of shares in the Club and, worse, that those SPAs were not conditional on or subject to obtaining EFL approval. Those documents were drafted by solicitors.

121. Credit for whatever efforts and engagement had gone before (mostly the efforts of Mr Jarvis with DB) was effectively wiped out by the completion of those documents, which appear to have been executed in the full knowledge that EFL approval to the takeover had not been granted. It is as clear a knowing breach of EFL Rules 2.6 and 3.3 as can be imagined.

122. AC and DR have sought to blame DB and the Club for nearly everything, but that is not credible in circumstances where:

- a. By signing the May Declarations, AC and DR were bound by EFL Regulations from 14 May 2021 onwards.
- b. They appear not to have taken adequate independent advice on the regulatory requirements of taking over a football club.
- c. They proceeded without any regard to EFL approval. However it happened, whether through their own ignorance of the Rules, or by placing too much trust in the wrong places, they knowingly committed flagrant rule breaches.

123. What happened next undoubtedly made things worse. There was a fractious meeting with the EFL on 27 July 2021, at which AC informed the EFL that “*we own 43% regardless of what you do*”, showing a contemptuous disregard for a regulatory body; and then came the Morton House letter of 20 August 2021, effectively unilaterally resigning AC and DR from the EFL’s investigative process. This Commission considers that letter extremely ill-advised and entirely inconsistent with the OADT declarations signed by AC and DR on 14 May (and on 15 July 2021). Again, that letter constitutes a clear and inexcusable breach of EFL Regulation 83.5.

124. The Commission takes a dim view of the stance not to cooperate, albeit noting that AC did (eventually) apologise at paragraph 79 of his 1 July 2022 mitigation statement. At paragraph 88 he says:

Mr Curran will appreciate that the EFL may wish not to look kindly upon his initial failure to co-operate. He repeats his apology but trusts that the Tribunal will take into mitigation the horrendous circumstances that led him to take that initial decision in haste. He wishes that he responded in more conciliatory terms, though it is reasonable to conclude that other than being charged with the failure to co-operate, he would be in very must [sic] the same position today, even if he had done so.

125. An excuse put forward at the hearing for the lack of co-operation, that the Morton House directors were prioritising other litigation, is completely unacceptable. That was their choice, which they saw as in their own interests, but it is no mitigation in relation to the EFL and these charges. In any event, as Mr Harrison for the Club pointed out, there had been no evidence put forward by AC and DR on that point. The EFL is entitled to insist that anyone wanting to gain entry into the football industry by ownership or other significant involvement in an EFL club should fully comply with the EFL rules. If those persons decide that it suits them to follow priorities above compliance with those rules, they cannot expect to have that accepted as mitigation before a Disciplinary Commission applying those rules.

126. To have walked away because of frustrations with either individuals they were dealing with at the Club they were looking to acquire, or with the EFL in its regulatory process, was unacceptable.

127. Some of the submissions on behalf of AC and DR, for example those paragraphs 12 and 16 of AC's Statement in Response, and AC's apology, all cited above, have the appearance of pleas which are reluctant, or admissions which sound qualified; and throughout they have been quick to blame the Club, DB and even the EFL – essentially, anyone but themselves. This unwillingness to take responsibility is symptomatic of AC and DR's conduct, certainly since 1 July 2021.

128. It was put to the Commission at the hearing that any penalty given to AC and DR should be reduced so as not to dissuade potential investors from investing into football. We take the opposite view. Potential investors need to be aware of, and take seriously, their regulatory requirements, and there must be consequences for those who do not. Buying a football club is not an undertaking to be taken lightly. It should be done with due diligence, regulatory co-operation and general care – all of which were conspicuously lacking from these Respondents.

Curran and Rose sanctions

129. We impose a single penalty for all charges against Andrew Curran. He will be banned from being a Relevant Person in relation to any EFL club for a period of two years, to start from the date of this decision. This takes full account of all points for and against Mr Curran, including his early guilty plea, while we note just two specific points here: in his favour, that he did initially attempt to submit the required OADT declaration and FFI; but against him, his defiant stance of non-cooperation in breach of EFL Regulation 83.5.

130. Although the EFL sought against each of the individual Respondents that they should receive lengthy bans from any involvement in football, we see the appropriate ban in each case as a prohibition from being a Relevant Person in relation to any EFL club. To adopt the introductory words from the OADT, the definition of Relevant Person in the OADT is intended to be and is sufficiently wide to prevent them from “being involved in or influencing the management or administration of an EFL club”.

131. In January 2022, a Football Association Regulatory Commission found Mr Curran in breach of the FA rules by using an offensive term aggravated by reference to sexuality

during a meeting with EFL representatives on 27 July 2021. Although that meeting was in the context of the events with which we have been concerned, and Mr Sturman submitted that this meant that Mr Curran was not of “good character” in football, we do not consider it fair and proportionate to increase the sanction here for that reason. It was a different type of offence for which he has been punished by that FA tribunal and we leave it there.

132. This Commission finds Darrell Rose’s culpability and points of mitigation closely in line with Mr Curran’s and he will also be banned from being a Relevant Person in relation to any EFL club for a period of two years, to start from the date of this decision.

Safouane sanction

133. As to Faical Safouane, this Commission agrees with the EFL’s submission that:

It is entirely unsatisfactory for any person seeking to take control of a Member Club to have no knowledge of the relevant regulations, or apparently to take no advice as to what his obligations are.

134. Whether or not FS was actively seeking to take control of a club, and whether by design or default, it happened. Whilst he played what the EFL has characterised as a subordinate role, his ignorance of the EFL rules is no mitigation. It is clear to us that that FS was used by AC and DR as some sort of cat’s paw. But allowing yourself to be used in that way is itself a serious menace which undermines and obstructs compliance with the extremely important requirements of the OADT.

135. That said, there was some co-operation from FS with the EFL’s investigative process, including his attendance at interview.

136. The Commission considers it fair and proportionate to impose a ban on FS from being a Relevant Person in relation to any EFL club for a period of 18 months, to start from the date of this decision, for his admitted breaches of EFL Rules 3.1 and Rule 3.3.

David Bottomley

137. The single Charge against Respondent David Bottomley is:

Charge 1: In breach of the undertaking given to the EFL by virtue of Regulation 21.2, the Respondent committed misconduct by omitting and or failing to ensure that the May Declarations were provided to [the EFL] causing the Club to be in breach of Rule 3.1.1 and Rule 3.3.

138. On 22 March 2022, DB filed a defence in which he denied that the Club's failure to provide the information required under Rule 3.1.1 was due to his omission to provide the relevant OADT declarations.

139. On 13 May 2022, and following Procedural Order No 2, DB changed his plea to admit the Charge, as notified to the EFL by his (then) lawyer.

140. On 1 July 2022, DB, now acting in his own defence, provided a Statement of Mitigation which outlined the background to his involvement with the Club, the lead up to the share purchase transaction, his removal as a Club director by the RAFC Supporters Trust and his suspension then termination of his employment as the Club's CEO.

141. At the 5 September 2022 hearing DB confirmed that he was aware of the Charge and accepted that as the person primarily responsible for the Club's practical day-to-day compliance with the rules, he had failed. In mitigation, DB submitted:

- i) He had assisted the EFL with its enquiries, given freely of his time, provided two testimonies and a statement and had been "*open and transparent*" about his actions.
- ii) He emphatically denied that he had been involved in any "*clandestine*" meetings or dealings with AC and AJ as suggested by the Club. DB submitted that the Board was aware of his attempts to secure external funding from AC through conversations and the email messages that DB sent, some of which had been submitted to the DC. He further stated that on the occasions that he met with AC and AJ, other board directors, Nick Grindrod and Graham Rawlinson, were also present, and that a Club director, Tony Pockney, was present in April 2021 for the

first meeting via Microsoft Teams. DB emphatically denied that others in the Club did not know of the meetings with AC and AJ.

- iii) He contended that since he joined the Club in June 2015, the Board's intention had been to acquire outside investment to improve its facilities and make it self-sustainable. The Club had always been, and remains, "*fan-owned, fan-led*," but during the entire time he was on the board, acquiring outside investment had been the Club's focus. DB explained that this all changed suddenly, without communication, in late May/early June 2021 when he was removed from the board and a largely new board of directors formed.
- iv) He was under pressure during lockdown as he was initially the only person left running the Club while others were furloughed, and during which he took a 50% pay cut. DB pointed out that the Club now has a larger board running the Club than it did between 2019 to 2021.
- v) He admitted that he was not sure why he did not submit the paperwork. DB accepted that he had made a big mistake by not submitting the documents, and that he actually thought that he had.
- vi) He stated that the Club was the love of his life, and that all he ever wanted was the best for the Club, which at the time was considered to be external investment so that the Club could benefit from facilities it had never had.
- vii) He had had a very difficult time since leaving the Club, because of abuse received from some of the Club's supporters, including death threats which had required him to involve the police. This had adversely affected his mental health and also his partner and immediate family. DB admitted that because of the death threats, he was also frightened to go out.
- viii) Regarding his current and future involvement in football, DB stated that he continued to attend football matches with friends and that he intended to seek employment in football in the future.

142. The EFL contends that DB was aware of the Rules which came into force in 2020 and that his failure to comply with them was a serious matter. It accepts the good character references that DB submitted in his defence, including by one individual who refused to provide their name because of the attitude of some Club supporters towards DB, but who the EFL accepted spoke highly of DB's character. The EFL acknowledged that DB had been the subject of vitriolic abuse from Club supporters.

143. As for all the individual Respondents, the EFL seeks a ban on DB from any involvement in football, which it says should be lengthy but without specifying any proposed length.

Findings and sanction on Bottomley

144. Mr Bottomley has had a life-long devotion to the Club. He was born in Rochdale and even though he moved away in the late 1970s, he remained a keen and loyal Club supporter, frequently making a 410-mile round trip to attend home matches, before joining the board as an unpaid director in 2015 and becoming the Club's full-time paid CEO in 2018. His devotion to the Club has not been challenged by the EFL or any of the other Respondents.

145. We find that DB never intended to harm the Club, whose interests he always had at heart; and that although there were sharply differing views within the Club, he was not involved, as the Club alleged, in any clandestine plan to secure external investment of which the board was unaware. On the contrary, we find that the Club's officials were very much aware of DB's attempts to secure external investment. An email message dated 11 April 2021 and sent at 11:42am by DB to Andrew Kelly, Tony Pockney, Nick Grindrod and Graham Rawlinson and others, and with the subject heading "*Investor Update*", shows that AJ was one of the people with whom DB was meeting with to secure external investment. A follow-up email sent to the same people eight days later on 19 April 2021, and before a board meeting scheduled for later that day, attached an offer proposal from AJ on behalf of AC, for the board's consideration. Although there was subsequently a period of exclusivity afforded to another potential purchaser, we do not

accept the assertions made by the Club that DB did not keep the Club or its officials informed of discussions that he was having with AJ and AC.

146. Nevertheless, while DB's loyalty and devotion to the Club is undisputed, and he did not intend to harm the Club in any way, his admitted breach is serious. The Commission observes that DB was unable to offer an explanation why he did not submit the paperwork, except to state that he actually thought he had.

147. The Commission accepts: i) that DB cooperated with the EFL's investigation; ii) that there is no evidence that he deliberately flouted the Rules but rather that the failure to submit the documents was an oversight, albeit a serious one; iii) his acknowledgment of the mistake of not submitting the OADT paperwork; and iv) the good character references which have not been challenged in these proceedings.

148. Nevertheless, DB was very much aware of the requirements of the rules and particularly the OADT, not least because he was a member of the EFL Working Party Group that considered the Rules' form and content. As the CEO of the Club, he had primary responsibility for the Club's practical compliance with all the EFL Rules, a point he acknowledged during the hearing. The EFL regulatory framework requires a high standard of conduct from Club officials, and it is a serious oversight when it deprives the EFL of the opportunity of vital investigations to ensure the financial stability of clubs and the whole League.

149. We do not see the burden of running the Club with little assistance during the pandemic as justifying a more lenient sanction in these circumstances. While noting the effects on DB's mental health of the vile and reprehensible abuse that so-called fans of the Club have directed at him since he left the Club's employment, for which the Commission has considerable sympathy, the Commission nonetheless finds that the seriousness of DB's breach requires a substantial ban.

150. The Commission considers it fair and proportionate to impose a ban on DB from being a Relevant Person in relation to any EFL club for a period of two years, to start from the date of this decision, for his admitted misconduct by breach of the undertaking pursuant to EFL Regulation 21.2.

Costs

151. With one qualification, the EFL asks for an order that all five Respondents should be jointly and severally liable for all the EFL costs, including the costs of the Commission.
152. That qualification is that the EFL proposes that the Club alone should pay the EFL's costs of the two side members of the Commission, Dr O'Leary and Mr McHenry, because if it had admitted the charges in March 2022, instead of waiting until 31 May 2022, it would not have been necessary to appoint a three-person Commission. That basic point is a fair one, although we observe that just as the work done by the two side members in this three-person team has reduced the chairman's work, if they had not been appointed that would have increased his work as the sole member of the Commission. We deal with this point in a practical way by ordering that as between the Club and the other four Respondents, the Club should pay one quarter of the fees and expenses of the Commission, with all five Respondents being equally liable for the remaining three quarters.
153. We note Procedural Rule 14.9, expressly providing that until they are paid in full, the parties shall be jointly and severally liable to meet the fees and expenses of the Commission; and that the total amount of those fees and expenses must be specified in our decision.
154. We see no reason why the EFL, as opposed to the Respondents, should have to bear any of the EFL's costs in relation to these disciplinary proceedings, which resulted from these Respondents' serious breaches of the EFL Regulations and the Owners' and Directors' Test.
155. EFL Procedural Rule 14.3 gives the Disciplinary Commission the discretion to make such order in respect of the costs of the investigation, the parties and the Disciplinary Commission as we think fit.
156. Taking all circumstances into account, including those specifically mentioned in Procedural Rule 14.6, the Respondents will be jointly and severally liable to the EFL for all its other costs, but as between the Respondents they will each be liable for one-fifth of those costs.

Order of the Disciplinary Commission

157. The Disciplinary Commission orders:

- (1) The Respondent Rochdale Association Football Club Limited (**'the Club'**) shall have six Football League points deducted if during the period of two years starting from the date of this order it commits any misconduct by failure to comply with the Owners' and Directors' Test of the Football League.
- (2) The individual Respondents shall each be prohibited from being a Relevant Person for the purposes of the Owners' and Directors' Test of the Football League in relation to any member club of the Football League for the following periods starting from the date of this order:
 - Andrew Curran – two years
 - Darrell Rose – two years
 - Faical Safouane – eighteen months
 - David Bottomley – two years
- (3) In accordance with Procedural Rule 14.9 of the EFL Regulations, until they are paid in full, the parties shall be jointly and severally liable to meet the fees and expenses of the Disciplinary Commission, which are in total £19,835.50 (excluding VAT) PROVIDED THAT as between the parties the liability for those fees and expenses shall fall as to:
 - 40% on the Club
 - 15% on each of the four Respondents Curran, Rose, Safouane and Bottomley

- (4) The Respondents shall be jointly and severally liable to pay to The Football League Limited its costs of the investigation and prosecution of the charges against the Respondents PROVIDED THAT as between the Respondents the liability for those costs shall fall as to 20% on each Respondent.
- (5) The Respondents shall each bear their own costs.
- (6) In accordance with Procedural Rule 14.8, the Chairman of the Disciplinary Commission will tax, assess or determine any costs on request by any party.
- (7) As directed by Procedural Rule 20.2.3, unless otherwise agreed between the parties, this decision shall be published (subject to any appropriate redaction to protect third party confidentiality).

158. Each party has the right to appeal under Regulation 94.



Nicholas Stewart KC

On behalf of the Disciplinary Commission

14 October 2022

London, England

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