SPORT RESOLUTIONS (UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

SR/086/2020

IN THE MATTER OF A LEAGUE ARBITRATION PANEL

Before:

Sir Wyn Williams
Robert Englehart QC
Nicholas Coward

BETWEEN: -

THE ENGLISH FOOTBALL LEAGUE (the EFL)

Appellant

-and-

BIRMINGHAM CITY FOOTBALL CLUB (the Club)

Respondent

DECISION

James Segan QC, instructed by Solesbury Gay and Nick Craig (Governance and Legal Director) for the EFL

Kendrah Potts and William Harman, instructed by Ciara Gallagher (Club Secretary) for the Club

1. On 10 June 2020, we heard the appeal brought by the English Football League ("the Appellant") against a decision of Mr Charles Flint QC sitting alone as a Disciplinary Commission whereby he dismissed a charge of misconduct which had been brought by EFL against Birmingham City Football Club ("the Respondent"). The misconduct

alleged was specified in a letter dated 19 May 2019, to which we refer, more fully, below.

2. At the conclusion of the appeal hearing, we indicated that we would notify the parties of our decision as soon as we were able and that we would provide written reasons for our decision as soon as reasonably practicable.

3. By email dated 11 June 2020, sent on our behalf by Matt Berry of Sport Resolutions, we notified the parties of the following unanimous decisions. First, that the Appellant's appeal was allowed and that the charge brought by the Appellant against the Respondent was proved. Second, that the sanction imposed upon the Respondent for its misconduct was a reprimand.

4. We set out below our reasons for reaching those decisions.

The EFL, its Regulations, Rules and Member Clubs

5. "English Football League" is the name under which the company known as The Football League Limited conducts its business. The Memorandum of Association of the company include the following amongst the objects for which the company was incorporated.

> "3.1 To be a governing body for Member Clubs and to represent and further the interests of the game of Association Football, the League and Member Clubs.
>
> 3.2 To organise an annual league competition for Member Clubs…
>
> 3.3 To regulate the activities of Member Clubs and their respective officers, employees, registered players and agents."

6. The Appellant publishes regulations known as *"the EFL Regulations"* on an annual basis. Unless the context dictates otherwise the phrase "*the Regulations"* is used as shorthand for the regulations issued in each year, The Regulations are comprehensive as is to be expected given that they are intended to define and regulate the relationship between the Appellant and its member clubs.

7. Section 1 of the Regulations is concerned, primarily, with the definition of various words and phrases used in the Regulations. The word club has more than one meaning, but when spelt "*Club*" means "*any Association Football club which is, from time to time, a member of The League*". The words "*The League*" are defined to mean "*the Football League Limited*". The phrase "*Member Club*" means "*Any Club which is from time to time a member of The League in accordance with the League's Articles of Association and these Regulations*". "*Misconduct*" includes "*a breach of an Order, requirement, direction or instruction of The League*".

8. Section 2 of the Regulations is entitled "*Membership*". Paragraph 3.1 of that Section provides that membership of The League shall constitute an agreement between The League and each Club to be bound by and comply with "*these regulations and the Articles of Association*".

9. Section 4 of the Regulations contains detailed provisions relating to "*Clubs*". Paragraph 16 of the section is concerned with Clubs' financial records. In summary, all Clubs are obliged to keep financial records which accord with the provisions of the Rules of the Football Association and each club is obliged, too, to submit a copy of its annual accounts to the Appellant within a timescale specified in the Regulations.

10. At all material times the member clubs of the Appellant competed in three divisions, the Championship, the First Division and the Second Division. Paragraph 16.6 of the Regulations imposes an obligation upon those Clubs which are members of and compete in the Championship. These clubs are obliged, by 31 March in each season, to provide to the Appellant "*Future Financial Information*". This phrase encompasses *"projected profit and loss accounts, cash flow, balance sheets and relevant explanatory notes……"*.

11. Paragraph 16.19 provides:

> "16.19 The League shall have the powers set out in Regulation 16.20 if:
>
> 16.19.1 The Championship Club has failed to submit to The League annual accounts as required by Regulation 16.2 and 16.3; or

16.19.2 The Championship Club has failed to submit to The League interim accounts as required by Regulation 16.11; or

16.19.3 The Championship Club has failed to submit to The League the Future Financial Information as required by Regulation 16.16…"

Paragraph 16.20 provides:

"16.20 The powers referred to in Regulation 16.19 are:

16.20.1 To require the Championship Club to submit, agree and adhere to a budget which shall include, but not be limited to, Transfer Fees, Compensation Fees, Loan Fees or subsequent payments which become due under the terms of any transfer, Players' remuneration and fees payable to any intermediary…"

12. Section 8 of the Regulations relates to investigations and disciplinary proceedings. Section 9 is concerned with arbitration (which includes appeals from decisions of disciplinary commissions). We deal with the salient parts of Section 9 of the Regulations below.

13. As from the season 2016/17, Rules known as the *Championship Profitability & Sustainability Rules* ("the P&S Rules") were adopted by the Appellant and were expressed to be "*supplemental to the Regulations*". In this decision it is unnecessary to set out these Rules in detail (save for Rule 2.9 as to which see below). An informative account of predecessor rules (Financial Fair Play Rules (FFP)) and their rationale is to be found in the Arbitral Award dated 19 October 2017 in the dispute between Queens Park Rangers FC v EFL. The P&S Rules, although different in some respects as to their detail, share identical or virtually identical objectives to FFP. They are to introduce more discipline and rationality into club finances, to encourage responsible spending for the long-term benefit of football and to protect the long-term viability and sustainability of league football.

14. By virtue of Rule 2.9 of the P&S Rules, if the aggregation of a Club's Adjusted Earnings Before Tax for a three year period results in a loss that exceeds the "*Upper Loss Threshold*" (calculated in accordance with Rule 3), then:

"2.9.1 The Executive may exercise its powers set out in Regulation 16.20.

2.9.2 The Club shall be treated as being in breach of these Rules and accordingly The League shall refer the breach to the Disciplinary Commission in accordance with Section 8 of the Regulations."

By virtue of Rule 3.1, at all times material to this case the annual upper loss threshold for Championship clubs was £13 million.

15. The Respondent is a Member Club of the Appellant which participates in the Championship. It is common ground that the legal relationship between the Appellant and Respondent is governed by the Regulations and that the Regulations constitute a written contract between them.

Relevant Background Facts

16. In the season 2015/16, the Respondent incurred an annual adjusted loss of £1.982m. In the following season (2016/17), the annual adjusted loss was £12.944m. In season 2017/18, the annual adjusted loss was £33.861m. Over that three-year period the aggregate loss suffered by the Respondent was £48.787m, with the consequence that the upper loss threshold of £39 million over that same period was exceeded by £9.787m. Self-evidently, on the figures, the trend was of increasing losses during the three-year period. The evidence filed by EFL before the Commission (which was not challenged by cross-examination) was to the effect that as at the summer of 2018, EFL believed not just there had been a breach of the P&S Rules in the period 2015 to 2018 but that there was a very significant risk that the Respondent would continue to exceed the upper loss threshold in the season 2018/19 and the following seasons (thereby continuing its breach of the P&S Rules).

17. By letter dated 13 July 2018, the Appellant notified the Respondent that it was contemplating taking action against the Respondent by reason of its actual and potential breaches of the Rules. The letter detailed two possible courses of action which were under contemplation. First, the Appellant was considering referring the Respondent to a Disciplinary Commission in accordance with Rule 2.9.2 of the P&S Rules by virtue of its breach of the P&S Rules. The Respondent was notified that

this proposal would be recommended to the Appellant's Board. Second, the Respondent was notified that the Appellant might invoke its power under P&S Rule 2.9.1 to exercise the powers conferred upon it by Regulation 16.20, i.e. it might require the Respondent to "*submit, agree and adhere to a budget…*". In relation to this possible course of action, the Respondent was invited to provide written submissions to the Appellant by "*no later than 4:00pm on 20 July 2018*".

18. On 26 July 2018, the Board of the Appellant resolved to refer the Respondent to a Disciplinary Commission for breach of the P&S Rules in accordance with Rule 2.9.2.

19. By email dated 30 July 2018, the Respondent provided written submissions to the Appellant (albeit late), as it had been invited to do in the letter of 13 July. In summary, it set out its proposed maximum and minimum expenditure on players in the summer transfer window which was about to open. In reality it sought approval from the Appellant to spend the maximum it had specified. It also set out a list of players it proposed to transfer immediately and in the summer transfer window of 2019. The written submissions did not read as a comprehensive "budget" for the Respondent in a particular year; rather the submissions' focus was upon the Respondent's proposals for buying and selling players over the course of the year August 2018 to August 2019.

20. The Club's proposals elicited a very swift and essentially negative response from the Appellant which was contained in an email dated 1 August 2018 together with an attached letter of the same date. The email was short and, no doubt, was intended only as an introduction to the letter attached. It is of some note that the email described the letter as seeking to *"set out the terms of the Business Plan that would be acceptable to the EFL under the provisions of Regulation 16.20"*. The letter began with specific reference to the terms of Regulation 16.20. It went on the describe the Respondent's submissions of 30 July as going *"far beyond that which could reasonably expected given the latest financial return under the P&S Rules"*. It alleged that the information available to the Appellant *"illustrates that the Club has not fully embraced the objectives the Rules seek to achieve"*. It then continued:-

"Accordingly, the EFL has determined that it is appropriate to require the Club to agree and adhere to a number of conditions relating to the Club's budgets, including player related expenditure. Those conditions commence with immediate effect and are intended to help ensure that the Club works towards compliance with the P&S Rules through overall cost reductions, principally through player sales but at the same time allowing the Club to secure replacement players albeit at a reduced cost.

The conditions are as follows:

1) The Club will be permitted to register up to six new professional 'first team' players, as follows:

a) if it so chooses, the Club can register Kristian Pederson based on the Transfer Agreement and Playing Contract lodged with the EFL on 29 June 2018; and

b) a further five players may be signed as contract players subject to the following restrictions:

i. no transfer / compensation fee (other than a future sell on amount);

ii. basic wages in the player contract are to be capped at no more than [redacted] per week per player (and may not be aggregated). Any image rights payments are included within that cap; and

iii. appearance fees, signing on fees, intermediary fees and bonuses are to be in line with the Club's normal parameters.

Should the Club choose not to proceed with the registration of Pederson, then a sixth player can be registered subject to the terms set out in paragraph b) above.

Applications to register younger players (e.g. under 23 Squad players) will be considered on their merits, but subject always to a restriction on eligibility so that they cannot play first team unless otherwise permitted by the EFL. That restriction will need to be noted in the Player's contract.

2) Prior to the 1 February 2019, the Club is required to complete the sale of registered players which, after taking into account the costs associated with

any registrations permitted by the EFL, generate a cost saving to the Club of not less than £9m to be made up of profit on player sales, a reduction in player wages and/or a reduction in player amortisation charges in the 2019 season. The amount has been determined by reference to not only the Club's current financial results, but also taking into account some of the potential savings identified by the Club itself in its submission of 30 July. The objective of the above costs saving is to put the Club on a trajectory in order to achieve an Adjusted Earnings Before Tax for 2019/20 and beyond, but does not exceed the Annual Upper Loss Threshold. Should you require further clarification on how the EFL will calculate this saving, please contact Jim Karran.

3) The cost of signing new players must be met by way of equity injections from the current owner, Mr Suen, and cannot be supported by debt funding (including for the avoidance of doubt the proposed forward selling of ticket and / or commercial revenues)…

4) The Club shall not later than 14 February 2019 provide to the EFL:

   a) audited financial statements for financial year ending 30 June 2018;

   b) management accounts for the period ending 31 December 2018; and

   c) Future Financial Information covering the period through until June 2020, together with forecast P&S results for the 2018/19 and 2019/20 Reporting Periods.

The EFL will then determine what if any restrictions are required for season 2019/20, the objective being to ensure that the Club's Adjusted Earnings Before Tax for each of seasons 2019/20 and beyond do not exceed the annual upper loss threshold in the relevant seasons."

The letter ended with an explicit warning that if some or all of the players permitted to be registered under Condition 1) were so registered, the failure to comply with Conditions 2), 3) and 4) would constitute misconduct and might result in separate disciplinary proceedings.

21. The same day, the Respondent accepted the terms which we have set out above. Subsequently, there was an agreed amendment to the Condition 2) of the Conditions, with the consequence that the cost saving which the Respondent had to achieve was increased to £10.574m.

22. Both in oral submissions and in writing the letter of 1 August 2018 has been referred to as "*the conditions letter"*. In these reasons any reference to *"the conditions letter"* and/or any reference to *Conditions 1), 2), 3) and 4)* are references to the letter of 1 August 2018 from the Appellant to the Respondent and the conditions set out therein.

23. Mr Segan QC submitted that the Respondent had a choice about whether to accept the terms contained within the Appellant's letter of 1 August 2018. He submitted that it would have been open to the Respondent to reject the terms suggested by the Appellant. Ms Potts did not dissent from that proposition. It is clear and not disputed by the Appellant and Respondent that if the Respondent had rejected the Appellant's terms there would have existed a dispute between the Appellant and Respondent which had arisen *"from a decision of the Appellant"* (see Regulation 95.2.1) and that accordingly a "*Board Dispute*" would have existed within that Regulation. In that event, by virtue of Regulation 95.1, the dispute would have been referred to arbitration. That arbitration would have been governed by Regulation 95.3 which provides:

> "In the case of a Board Dispute, The League Arbitration Panel sits as a review body exercising a supervisory jurisdiction and this section of the Regulations shall not operate to provide an appeal against the Decision and should operate only as a forum and procedure for a challenge to the validity of such decision under English law on the grounds of:
>
> 95.3.1 Ultra vires (including error of law); or
>
> 95.3.2 Irrationality; or
>
> 95.3.3 Procedural unfairness,
>
> and where a decision directly and foreseeably prejudices the interests of a person or persons who are in the contemplation of The League or Board."

24. As we have said, the Respondent chose not to dispute the terms suggested by the Appellant; rather it accepted them without demur.

25. The Respondent did not generate a costs saving of not less than £10.574m before 1 February 2019. Its cost saving at that date was £1.87m. Shortly before the time limit expired, however, an offer was made by another Club to purchase one of the Respondent's players, [redacted], for the sum of [redacted] with a further [redacted] payable in the event that certain conditions were satisfied. Had that offer been accepted by the Respondent, the costs savings required by Condition 2) would have been made. However, the Respondent considered that the offer for [redacted] did not represent his true market value and it declined the offer.

26. Meanwhile, in August 2018, the Appellant had referred the Respondent's failure to comply with the P&S Rules to a Disciplinary Commission. The Respondent admitted the breach of the Rules alleged against it. By a decision dated 22 March 2019, the Commission, chaired by Mr Flint QC, imposed upon the Respondent a sporting sanction, namely a deduction of 9 points from the Respondent's points tally for the season 2018/19.

27. By letter dated 14 May 2019, the Appellant gave notice to the Respondent that it was referring to a Disciplinary Commission an allegation of misconduct arising out of the Respondent's failure to comply with the direction that it should achieve costs savings in accordance with Condition 2) as amended. The salient parts of the letter reads as follows:-

> "We write to you with notice that the EFL is referring BCFC to a Disciplinary Commission in connection with breaches of the EFL Regulations… These proceedings arise out of the Club's failure to comply with a Direction of the EFL at the time the EFL imposed a business plan on BCFC in accordance with the provisions of the EFL's Profitability and Sustainability Rules… and Regulation 16…
>
> 3. **NOTIFICATION OF BREACH**
>
> 3.1 By the Conditions Letter, as accepted by the Club on 2 August, the Club was subject to the following Direction from the EFL:

'(2) Prior to the 1 February 2019, the Club is required to complete the sale of registered players which, after taking into account the costs associated with any registrations permitted by the EFL, generate a costs saving to the club of not less than [£10.574M] to be made up of profit on player sales, a reduction in player wages and/or a reduction in player amortisation charges in the 2018/19 Season. The amount has been determined by reference to not only the Club's current financial results, but also taking into account some of the potential savings identified by the Club itself in its submission of 30 July. The objective of the above costs saving is to put the Club on a trajectory in order to achieve an Adjusted Earnings Before Tax for 2019/20 and beyond, but does not exceed the Annual Upper Loss Threshold.

…

3.5 The Conditions Letter constituted a requirement, direction or instruction of The League, issued pursuant to the powers granted to it in accordance with Rule 2.9.1 and/or Regulation 16.20.

3.6. The Club has failed to demonstrate that it completed a sale of registered players which, after taking into account the costs associated with any registrations permitted by the EFL (see below) generate a costs saving to the club of not less than £10.574M.

3.7 By failing to comply with the requirements of the Conditions Letter, the Club is guilty of misconduct."

By a decision dated 6 March 2020, the Commission dismissed the charge brought by the Appellant against the Respondent.

28. Ultimately, the defence maintained by the Respondent to the charge was that Condition 2) did not constitute an absolute obligation upon the Respondent that it should achieve costs savings of £10.574m before 1 February 2019 by the sale of registered players but, rather, that it was obliged to use its best endeavours to achieve such savings through such sales and that, as a matter of fact, the Respondent had used its best endeavours to sell players to achieve the savings. This defence was based upon the contention made on behalf of the Respondent that it was permissible to imply a term into Condition 2) to the effect that the

Respondent was to use its best endeavours to effect sales of players to achieve the necessary costs savings but that it was not obliged to sell players at whatever financial detriment may result in order to achieve such sales.

29. The Commission acceded to the thrust of the Respondent's arguments and dismissed the charge which had been brought against it.

30. Both before the Commission and before us Mr Segan QC submitted that experience had demonstrated that the successful control of expenditure on or involving players is generally the most important element of achieving compliance with the P&S Rules. The undisputed evidence adduced before the Commission was that the largest item of expenditure for most clubs comprises player wages. In his witness statement adduced before the Commission, Mr Detko, the Appellant's Director of Finance, explained that usually *"the only realistic and meaningful way in which a Club with significant forecast losses can work towards compliance with the P&S Rules is to sell players….thereby achieving savings on player wages and, in some circumstances, obtaining transfer fees"*. The evidence of Mr Detko was not challenged on behalf of the Respondent (no doubt because it was uncontroversial) and, in our view, it forms an important part of the background facts which inform the proper interpretation of the contract concluded between the parties on 1 August 2018. We also take the view that it constitutes an important consideration to be taken into account when applying the legal test which must be satisfied before a term can be implied into a contract.

The Reasoning of the Commission

31. The Commission concluded that a contract had been constituted between the Appellant and Respondent when the Respondent accepted the terms of the Appellant's letter dated 1 August 2018. The Commission does not say so expressly, but it seems to us that the effect of paragraphs 17 and 18 of the its Decision is that the Commission was of the view that this was a free standing contract between the parties i.e. a contract in its own right quite independent of and unconnected with the Regulations as a whole save for the fact that the making of the contract came about following the Appellant's invocation of Regulation 16.20. Further, the

Commission appears to have concluded that this contract was constituted by the exchange of letters on August 1 2018 (as subsequently amended consensually) and that the express terms of the contract were to be determined solely by reference to the words used in the relevant correspondence.

32. In paragraph 17 and 18, too, the Commission began its discussion of whether there could be implied terms of the contract which had come into existence between the parties. The Commission appeared to rule out the possibility that implied terms could be incorporated into any actual budget agreed by the parties. However, it accepted the possibility that "*if particular conditions are attached to an agreed budget as to the means by which the Club is required to manage its income and expenditure so as to adhere to the budget, then the position [as to the incorporation of implied terms] may be different*". The salient passage in the decision is to be found at paragraph 17:-

> "…If a Club submits and agrees a budget, then it must adhere to that budget and, if it does not, it has failed to comply with a requirement lawfully imposed, has committed misconduct and is subject to disciplinary proceedings under Section 8. The requirement to adhere to the agreed budget under Regulation 16.20.1 is not in general subject to any qualification as to the financial or commercial capability of the Club. But if particular conditions are attached to an agreed budget as to the means by which the Club is required to manage its income and expenditure so as to adhere to the budget, then the position may be different."

33. Having acknowledged the possibility of the incorporation of an implied term in respect of a condition attached to an agreed budget, the Commission next identified the test to be applied in order to determine whether such an implied term had been so incorporated in any given case. At paragraph 19 of the Decision, the Commission referred, specifically, to two recent cases, namely *Marks & Spencer v BNP Parisbas [2015] UKSC 72* and *Ali v Petroleum Trinidad & Tobago [2017] UKPC 2* before going on to quote the test formulated by Lord Simon in *BP Refinery (Westenport) Pty. Ltd v Shire of Hastings* [1977] 180 CLR 266, which is in the following terms:

> "For a term to be implied, the following conditions (which may overlap) must be satisfied: (1) It must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract."

Having set out the test as formulated by Lord Simon, the Commission next formulated in its own language the principles which it considered it should apply:

> "The general principles relevant to this case which I derive from those authorities are firstly that the test is one of necessity not reasonableness, secondly that the fairness of a suggested term is an essential but not a sufficient pre-condition for its implication, thirdly that the implication must either be taken to have been obvious to the parties or as necessary to give the agreement business efficiency, and fourthly in judging obviousness the viewpoint is that of notional reasonable people in the position of the parties, not that of the parties based on their understanding of agreement at the time it was made. …"

34. Between paragraphs 22 and 42 of its Decision, the Commission set out the reasons why it concluded that Condition 2) should be read as incorporating an implied term that the Respondent was required to "*exercise best endeavours to sell registered players to achieve the required cost saving*" but was not subject to an absolute obligation to engage in such sales (see paragraph 41 for the Commission's formulation of the implied term). Obviously, this section of the Commission's decision must be read as a whole. It is, however, possible to discern a number of factors which seem to have influenced the decision of the Commission to a significant degree. They are as follows. First, compliance with Condition 2) was dependent upon the willingness of other Clubs to make offers for players who were willing to be transferred. Second, there was an inevitable tension between an absolute obligation under Condition 2) to sell sufficient players to meet the required cost saving and the Respondent's responsibility to manage its financial performance so as to comply with the P&S Rules in 2019/20 and beyond. Third, Condition 2) required the sales of players to take place during the January transfer window in circumstances where the would-be purchasers would know that the Respondent was

under compulsion to sell, which would make it difficult to achieve fair value for sales. Fourth, the express purpose of Condition 2) was to "*put the Club on a trajectory in order to achieve an Adjusted Earnings Before Tax for 2019/20 and beyond but does not exceed the Annual Upper Loss Threshold*". The purpose of the Condition was to improve the financial position of the Respondent – not impose a disciplinary sanction. This point was encapsulated at paragraph 38 of the Decision in the following passage:

> "The purpose of Condition 2) and the implicit assumption underlying it, was that the sale of players would be to the financial advantage of the Club and improve its position under the P&S Rules, both by making profits on player sales and reducing player wages in the future. There should be no conflict between the financial interests of the Club and the obligation to sell players. That is not to say that compliance with the Condition might not require the Club to suffer some real detriment, but the detriment would arise from selling players whom the manager might have preferred to retain. In that respect, the Club was obliged to subordinate its competitive interests to the requirements set out in Condition 2)."

35. It seems to us that the constant theme underlying this analysis is the view of the Commission that the effect of Condition 2), absent the implied term, was that the Respondent might be obliged to act in a way was which contrary to its financial interests and to its financial detriment. Nowhere in the Decision is this better illustrated than in the concluding sentence of paragraph 40 which speaks of *"the evident potential absurdity of an absolute requirement to sell by 1 February 2019 however many players it took to achieve a costs saving of £10.57m".* We query how this theme sits with the rejection by the Commission of a submission made by Ms Potts below (but not repeated before us) to the effect that there should be implied into Condition 2) a term to the effect that the Respondent was not required, in the course of selling registered players, to act to its financial detriment (see paragraph 21 of the Decision) but as will become apparent we do not find it necessary to resolve whether this constitutes a fatal inconsistency in the reasoning of the Commission.

36. Having found that the contract between the Appellant and Respondent incorporated an implied term to the effect that the Appellant was required to use its best

endeavours to sell registered players to achieve cost saving, the Commission considered, finally, whether, as a matter of fact, the Respondent had used its best endeavours to sell players prior to 1 February 2019, so as to achieve the necessary cost saving. It concluded, first, that it was for the Appellant to prove that, on the balance of probabilities, the Respondent had failed to use its best endeavours. Second, having analysed the evidence which had been adduced by the Respondent as to the steps which it had taken to achieve sales, it concluded that the Appellant had failed to prove a failure on the part of the Respondent to use its best endeavours.

37. Two points are worth noting at this stage.

38. First, at paragraph 37 of its Decision, the Commission considered of the meaning of the phrase "*best endeavours*" as it intended to apply it in the context of this contract. It concluded that *"a best endeavours obligation required the Club to do all that it reasonably could to enable the required costs savings to be generated from player sales by 1 February 2019"*. At paragraph 38 the Commission discussed whether a contractual term to use best endeavours could require a Club to act contrary to its financial interests. In our view, the Commission did not reach a concluded view upon whether such a term could ever impose that obligation upon a Championship Club; however, it seems to us that it did conclude that the implied term in this contract did not have that effect.

39. Second, the Respondent accepts that the Commission fell into error in its assessment of one aspect of the evidence. We can summarise the point shortly. The evidence adduced by the Respondent established that it was willing to transfer one of its star players, [redacted] during the January 2019 transfer window for the sum of [redacted] Shortly before the transfer window closed, an offer was made for [redacted] in the sum of [redacted] together with an additional [redacted] should certain conditions be met. As we have recorded above that offer was rejected by the Respondent. However, the Commission proceeded on the basis that even if the offer had been accepted the requisite cost saving of £10.57 million would not have been met (see paragraph 45(2) of the Decision). The Appellant and Respondent agree that this was an error on the part of the Commission. Had the

Respondent accepted the offer made in respect of [redacted] Condition 2) would have been met.

The Correct Approach to This Appeal

40. Regulation 95.4 provides as follows:

> "In the case of a disciplinary appeal, the League Arbitration Panel sits as an appeal body and the standard of review is:
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> 95.4.1 where required in order to do justice (for example to cure procedural errors in the proceedings before the Disciplinary Commission), the disciplinary appeal should take the form of a re-hearing de novo of the issues raised in the proceedings, i.e. the league Arbitration Panel should hear the matter over again, from the beginning, without being bound in any way by the decision being appealed;
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> 95.4.2 in all other cases, the appeal should not take the form of a de novo hearing, but instead shall be limited to a consideration of whether the decision being appealed was in error and the burden of establishing the decision was in error shall rest with the Appellant."

41. In the Notice of Appeal dated 20 March 2020, the Appellant advanced two grounds. First, it asserted that the Commission erred in law when it concluded that there was incorporated into Condition 2 an implied term that the Respondent was required to exercise best endeavours to sell registered players to achieve the required cost saving. Second, it alleged that the Commission had erred in concluding that the Appellant had failed to prove, on balance of probabilities, that the Respondent had not used its best endeavours sell registered players to achieved the requisite savings. This ground was based primarily upon two sub-grounds: (1) the Commission had erred in its interpretation of the phrase "*best endeavours*" in the context of the contract between the parties; (2) the Commission had fallen into error in its understanding of the evidence – see paragraph 39 above.

42. We should also record that in the Notice of Appeal the suggestion is made that there had been procedural unfairness towards the Appellant in the Commission's approach

to determining whether, as a matter of fact, the Respondent had used its best endeavours to comply with Condition 2). The Appellant complained in its Notice of Appeal (see paragraph 5.2) that the Commission resolved the issue of whether the Respondent had used its best endeavours "*largely on the basis of a burden of proof*" and that for the reasons set out in paragraphs 5.2.1 to 5.2.3 this was procedurally unfair.

43. We mention the issue of procedural unfairness only because if that contention had been pursued and was well-founded, we would have been obliged to conduct a re-hearing. However, it was not suggested to us either in the Appellant's Written Skeleton Argument or in the oral submissions upon which the Appellant relied that we should conduct a re-hearing. The reality is that in the Appellant's skeleton arguments and in the hearing itself the appeal was conducted on the basis that it could be allowed only if the Appellant proved, on balance of probabilities, that the decision under appeal was in error.

44. The decision under appeal in the instant case is the Commission's decision to dismiss the charge of misconduct laid against the Respondent. Before we can allow the appeal, we must be satisfied that the Appellant has proved that decision was erroneous. That said, it is common ground between the parties that if the Commission was wrong to hold that condition 2) was subject to an implied term the Appeal must be allowed. In the absence of the implied term, the Respondent must have been in breach of Condition 2) and, accordingly, misconduct would be proved. Different considerations arise in respect of Ground 2 which are considered, so far as necessary, below.

45. In writing and orally, Ms Potts argued that when determining whether or not the implied term was incorporated into Condition 2, the Commission was engaged in what she described as "*an evaluative judgment*" involving the weighing up of a number of different and to an extent competing considerations. Relying on passages in the textbook, *Leabeater on Civil Appeals*, she submitted that an Appeal Tribunal should be very slow to interfere with a properly reasoned evaluative judgment of a first instance Tribunal. Further she argued that the weight to be attached to the different and competing elements was very much for the First

instance Tribunal and that the cases would be rare in which an Appeal Tribunal was justified in allowing an appeal on the basis that it took a different view of the weight to be attached to the relevant considerations.

46. Mr Segan QC submitted that the Commission was not engaged in making an evaluative judgment (as asserted by Ms Potts) when it decided that an implied term was to be incorporated into Condition 2). Rather, it was engaged in deciding a question of law. In support of that submission, he relied upon the decisions of the Court of Appeal in *Comptoir Commercial Anversois v Power, Sun & Company* [1920] 1 KB 868 and *Tournier v National & Provincial Union* [1924] 1 KB 461. There is no doubt that these two decisions support the contention advanced by Mr Segan QC. Further, we were referred to no modern authority which cast any doubt upon them or demonstrated a willingness on the part of the court to depart from them.

47. We are satisfied that the issue of whether a term should be implied into a contract is a matter of law. That means that if an appellate Tribunal considers that a first instance Tribunal was wrong to have concluded that a term was to be implied into a contract, it has no option but to overrule the first instance Tribunal. The Appeal Tribunal cannot dismiss the appeal on the basis that it was open to the first instance Tribunal to conclude as it did. That is so even if the first instance Tribunal has correctly identified the appropriate legal test which must be applied when determining whether there is to be a term implied into the contract in question and even if the first instance Tribunal has identified all the relevant factors to which the test is to be applied, attaching such weight to those factors as many tribunals would regard as reasonable.

Discussion

Ground 1

48. Ms Potts submitted that the Commission correctly formulated the test which it should apply in order to determine whether an implied term should be incorporated into Condition 2. She relied upon the passages from the Decision which we have quoted at paragraph 33 above. Mr Segan QC did not, unequivocally, suggest

otherwise; he accepted that the Commission's formulation of the test was accurate "*so far as it goes*". However, he stressed that the test we have quoted at paragraph 33 above and, in particular, the formulation of the test expressed by Lord Simon in *BP Refinery* has been the subject of further consideration in a decision of the Privy Council in *Byron v Eastern Caribbean Amalgamated Bank* [2019] UKPC and *Duval v 11-13 Randolph Crescent Limited* [2020] KSC 18.

49. It does not seem to us that we need consider these decisions in any detail. It suffices that we say that they both reinforce two principles which had emerged clearly in *Marks & Spencer* and *Ali*. Those principles are (i) no term will be implied into a contract unless without it the contract would lack commercial or practical coherence (which, in our view, is simply a more modern way of expressing the view that no term will be implied unless it is necessary to give the contract business efficacy); (ii) prior to applying the test for implied terms, it is incumbent upon the first instance Tribunal to ascertain the meaning of the express words used by the parties in the documentation said to constitute the contract. This second principle is, perhaps, of more recent origin than the principles formulated by Lord Simon in *BP Refinery*, but its importance was stressed by Lord Neuberger in his judgment in *Marks & Spencer* – see paragraphs 25 to 28 of that judgment. As Lady Hale put it, succinctly, in *Byron*:

> "Construing the words of the contract involves deciding what the parties meant by what they did say. Implying terms into the contract involves deciding whether they would have said something that they did not in fact say had the matter occurred to them. And until one has decided what the parties meant by what they did say, it will be difficult to set about deciding what they would have said."

50. We are satisfied that the Commission had well in mind that it was permissible to imply a term into a contract only if the test which it formulated at paragraph 19 of its Decision was satisfied and that the test formulated in that paragraph was a proper and sufficient formulation of the modern legal test. Importantly, in our view, the Commission recognised that it was necessary that all the components of the test were satisfied before a term could be implied. Further, the Commission repeatedly reminded itself that no term could be implied unless that was necessary to give business efficacy to the contract – which was obviously a crucial issue in this case.

So much is clear from the formulation of principles at paragraph 19 of the Decision and from the way in which the Commission sought to apply the principles – see paragraphs 22 to 41 of its Decision.

51. We are not persuaded, however, that the Commission engaged in the task of ascertaining the correct interpretation and/or scope of the contract which it found that the parties had concluded by their exchange of correspondence on 1 August 2018, before it went on to apply the test for implying a term into that contract. We appreciate that the meaning to be attributed to Condition 2), despite some odd drafting, may be easily discernible but, in our view, it was necessary for the Commission to consider its meaning both in the context of the letter of 1 August 2018 as a whole and also against the relevant factual background which had given rise to the terms of the letter. There is at least a suggestion in paragraph 20 of the Decision that the focus of the Commission's attention was the words used in Condition 2) no more and no less.

52. We begin our search for the correct interpretation and/or scope of the contract between the parties with the Regulation which empowered the Appellant to require the Respondent to enter into the contract. It is worth repeating the precise words of Regulation 16.20 again:

> "16.20 The powers referred to in Regulation 16.19 are:
>
> 16.20.1 To require the Championship Club to submit, agree and adhere to a budget which shall include, but not be limited to, transfer fees, compensation fees, loan fees o subsequent payments which become due under the terms of any transfer, player's remuneration and fees payable to any intermediary…"

In our view, this provision confers upon the Appellant the power to require the Respondent to "*submit, agree and adhere to a budget*". Further, the Regulation makes it mandatory for the *"budget"* to make provision for transfer fees and other specified kinds of fees and payments albeit that *"the budget"* was not necessarily to be limited to such fees and payments.

53. The word budget is not defined either in Regulation 16.20 or any other provision of the Regulations. Mr Segan QC submitted that in its ordinary and natural meaning, the word *budget* conveyed the concept of a plan for receipts and expenditure. That is one of the definitions of the word *budget* to be found in the Oxford English Dictionary. It is also, in our view, essentially the meaning which should be attributed to the word in Regulation 16.20. Importantly, however, in our view, the meaning to be attributed to the word *budget* in Regulation 16.20 necessarily involves the Appellant having the ability to limit expenditure by a club if necessary.

54. Did the letter of 1 August 2018 constitute a budget? Somewhat strangely the letter itself did not describe itself as such. Rather the letter suggested that the Respondent was required to *"adhere to a number of conditions relating to the Club's budgets, including player related expenditure"*. The email to which the letter was attached described it as amounting to a "*business plan*". All that said Ms Potts did not seek to argue (correctly in our view) either before the Commission or before us that the letter of 1 August 2018 did not contain an offer to *"agree"* a budget. Nor did she suggested that there was no agreed budget within Regulation 16.20 once the Appellant's offer had been accepted. In our view the letter of 1 August 2018 constituted an offer to agree a *budget* within Regulation 16.20 which offer the Respondent accepted.

55. We have laboured this point because in its Decision (paragraph 17), the Commission drew a distinction between a budget, strictly so called, within Regulation 16.20 and conditions attached to that budget. It seems that the Commission was inclined to the view that there could be no term implied into the budget to the effect that the Respondent was to use its best endeavours to comply with it whereas a best endeavours term might be impliedly incorporated into terms attached to an agreed budget *"as to the means by which the Club is required to manage its income and expenditure so as to adhere to the budget"*.

56. We cannot accept that this is a valid distinction at least in this case. In reality, there was no agreed budget set out in the letter of 1 August 2018 apart from the provisions contained within conditions 1) and 2). Condition 1) permitted the acquisition of new players but contained express budgetary provisions about

payments in respect of those players. Condition 2) demanded a specific cost saving and specified the means by which that was to be achieved. The costs saving demanded of the Respondent was, in our view, part of an agreed budget. As such even on the Commission's analysis the Respondent was obliged without qualification to achieve the specified costs saving. In our view, as a matter of interpretation, the obligation to achieve the costs saving by the sale of players was just as much a part of the budget agreed between the Appellant and Respondent as was the specified costs saving. To hold otherwise, in our view, would be very likely to drive and coach and horses through the obligation to achieve the costs saving itself. We do not accept that Condition 2) should be treated as if that part of it which specified the means by which the cost saving should be achieved was a condition attached to the budget. That part of Condition 2) was an integral part of the budget itself.

57. It is against this background that we turn to consider whether the Commission was correct to conclude that a term should be implied into Condition 2) so as to require the Respondent within the specified deadline to exercise its best endeavours to sell registered players to achieve the required cost saving. Ms Potts submitted that it was. Essentially, she relied upon the reasoning of the Commission. However, she also relied upon an additional point relating to the principle of "*equality of treatment*" with which we deal discretely below.

58. Mr Segan QC submitted that there was a formidable combination of factors and arguments which militated against the incorporation of the implied term for which the Respondent contended. He submitted, first, that the fact the Respondent would be viewed as a forced seller by other clubs in the January 2019 transfer window was entirely foreseeable to the parties at the time the contract was concluded. Accordingly, it was impossible to say that the Appellant and Respondent had failed to address their minds to this issue at the time the contract was concluded and/or had they done so the need for the implied term, objectively, would have been obvious. Further, the fact that the Respondent would, foreseeably, have been viewed as a forced seller negated any argument that the implied term was necessary to give the contract business efficacy and/or provide it with commercial and practical coherence. Second, the agreed budget was not a contract between two parties with competing commercial interests but, rather, an agreement made

between the Appellant, in its capacity as a Regulator, and the Respondent in its capacity as a Member of the Appellant. The Appellant was wholly familiar with the market in which the Respondent would have to operate in order to achieve costs savings through player sales as was the Respondent itself. It is obvious from the evidence filed before the Commission that in July 2018 both the Appellant and Respondent proceeded on the basis that the most likely means of achieving significant costs savings was through player sales. The aim of the budget was expressed, clearly, in the letter of 1 August 2018, i.e. to "*help ensure that the Club works towards compliance with the P&S Rules through overall cost reduction, principally through player sales but at the same time allowing the Club to secure replacement players albeit at a reduced cost*". The objective of Condition 2), itself, was explained as being "*to put the Club on a trajectory in order to achieve an Adjusted Earnings Before Tax for 2019/20 and beyond that does not exceed the Annual Upper Loss Threshold*". These objectives, of course, were formulated against the background of a very significant breach of the P&S Rules in the three year period beginning August 2015 and ending May 2018 and the clear and undisputed prospect that breaches of those Rules would continue in the absence of significant cost saving. Mr Segan QC submitted the objectives militated clearly and obviously against the term implied rather than supported the implication of such a term as the Commission found. Third, at any stage between 1 August 2018 and 31 January 2019, the Respondent could have sought a relaxation of the terms of Condition 2) from the Appellant, but it did not do so. Ms Potts urged us to accept that it would not be proper to take account of the possibility that the Appellant would have been willing to modify the terms of Condition 2) had it been asked, because that was a "*hypothetical subsequent event*" and, in consequence, irrelevant. She had made a similar submission to the Commission which had been accepted (see paragraph 23 of the Decision). We do not accept Ms Potts' submission on this point. At the time this contract was concluded the parties knew that they were governed by Regulation 95. Whether the contract concluded on 1 August 2018 was a free-standing contract or one which was subject to the Regulations seems to us to be immaterial. At all material times the parties knew that there was a mechanism for dispute resolution which was binding upon the parties and which the Respondent could invoke, if necessary. We appreciate that the grounds upon which the Respondent could seek to maintain a challenge to Condition 2) by arbitration

were circumscribed under Regulation 95. However, the rationality of Condition 2) could have been called into question. In our view, the existence of the dispute mechanism in Regulation 95, affording as it did the opportunity to the Respondent to challenge the rationality of an express contractual term, is an important consideration to be taken into account when determining whether it was necessary to imply a term into the contract which had the effect of modifying the express provision.

59. Overall, we are persuaded that the submissions made by Mr Segan QC point powerfully away from the implication of a term as suggested by the Respondent. In particular we are satisfied that such a term was not necessary to give business efficacy to the agreed budget and/or a term thereof nor was such a term demanded in order to give the budget and/or Condition 2) commercial and practical coherence.

60. In reaching that conclusion we have considered with care the point heavily relied upon by the Commission that an absolute obligation to sell sufficient players to achieve the requisite costs saving prior to February 2019 was a *"potential absurdity"* because that might necessitate the sale of a large number of players regardless of their true worth in the market. We acknowledge this as a possibility but we regard the likelihood that this scenario would arise as being remote. On the facts of this case, properly understood, it did not arise in the instant case although that is probably an irrelevant consideration. The plain fact is, however, that the requisite saving could have been achieved by player sales before 1 February 2019 if the Respondent had accepted the offer for [redacted] The offer made in respect of him was very close to the Respondent's valuation of his worth in the market as at January 2019. Much more importantly, however, the Respondent was in the position of having to reduce costs because it had, in reality, acted to its own financial detriment by substantially overspending in breach of the P&S Rules. The object of the budget, as we have said, was to bring the Respondent into compliance with the Rules (see paragraph 58 above). Further, the Respondent had the means through arbitration with the Appellant, if necessary, to avoid the agreed budget being used unfairly against it.

61. In her written Skeleton for this appeal, Ms Potts argued that Condition 2) would be unlawful in the absence of the implied term for which she contended. That contention was premised upon the argument that the Respondent was entitled to "*equal treatment*" from the Appellant. She submitted that the governing body should treat all its participants/members equally in the absence of sound objective reasons for departing from that principle. Her argument is encapsulated in paragraph 62 of the Appellant's written Skeleton Argument which is in the following terms:-

> "In this case there was, or would have been, no good objective reason to subjecting the Club (and only the Club) to a condition which required it to jettison its longer-term financial best interests in favour of an arbitrary requirement to generate savings by a prescribed method within a short time frame. By imposing an absolute obligation to generate the relevant saving in the prescribed manner, the Club would have been subjected to more onerous obligations than all the other clubs in the Championship without reasonable justification. That would have been unlawful and, accordingly, the implied term was necessary. The ill-conceived, unfair and therefore unlawful nature of Condition 2 is clear from the fact that the Club complied with the provisions of the P&S Rules for 2018/2019, i.e. the Rules applicable to all Championship clubs, and yet is being charged with misconduct for breaching an onerous obligation imposed solely on the Club without any good objective reason."

62. There is no reference to this argument in the Decision of the Commission. The argument does not appear in the Skeleton Argument presented to the Commission on behalf of the Respondent. Nonetheless, the Appellant does not submit that this point is not open to the Respondent on appeal. Rather, it contended that there was no question of there being an equal treatment meted out to the Appellant since the Respondent was in a different position from the other clubs in the Championship. It had admitted serious breaches of the P&S Rules and, at the time when the agreed budget was concluded, there was a very significant risk that the Respondent would breach those rules in future seasons. Those factors, submitted the Appellant, were a rational and sufficient basis for treating the Respondent differently from other clubs within the Championship.

63. We accept that submission on behalf of the Appellant. In our view, the terms contained within the Appellant's letter of 1 August 2018 constituted a reasonable and rational response on the part of the Appellant to the financial predicament in which the Respondent found itself at that time.

64. We have reached the clear conclusion that the Commission was wrong to imply a term into Condition 2) to the effect that the Respondent was required before 1 February 2019 to exercise best endeavours to sell registered players to achieve the required cost saving. In our view, such a term was not necessary to give business efficacy to the contract which had been concluded between the Appellant and the Respondent. On the contrary, we are satisfied that the express terms of the agreed budget were entirely consistent with the stated objectives as set out in the Appellant's letter of 1 August 2018 and that applying the test which the Commission itself identified as to whether an implied term was justified we are satisfied that no such term was necessary to give business efficacy to the contract made between the parties.

65. By way of postscript to this ground of appeal we would also like to record that at least two of us (to varying degrees) had reservations about whether it was legitimate to apply a contractual test for the implication of terms to a *"requirement"* specified by the Appellant in its capacity as a regulator. However, both parties argued their respective cases on the basis of such a test. In those circumstances, we were satisfied that it was both appropriate and correct to determine this ground of appeal on the basis of the arguments presented to us by the parties.

Ground 2

66. In view of our conclusion upon Ground 1, we can deal with this ground quite shortly. As we have said, the Commission proceeded on the basis that the obligation to use best endeavours to sell registered players to achieve the required cost saving within the specified deadline required the Respondent to do all that it reasonably could to achieve the stated cost saving. That formulation, in our view, was derived from the decision of the majority of the Court of Appeal (Longmore and Moore-Bick LJJ) in *Jet2.Com Limited v Blackpool Airport Limited* [2012] EWCA Civ 417. In his

judgment Moore-Bick LJ expressly equated the requirement to use best endeavours with the requirement to do all that could reasonably be done at paragraph 31 of his judgment and it is self-evident from the judgement that he found such a formulation to be entirely consistent with much earlier authorities which had been quoted to him by leading counsel for the airport. Longmore LJ did not, in terms, expressly equate the obligation to use best endeavours with an obligation to do all that could reasonably be done to achieve the specified object but he agreed with the judgment of Moore-Bick LJ. Further, during the course of his judgment, he said nothing which suggested that he had in mind a different test from Moore-Bick LJ and quoted with approval the dictum of Laurence J in *Sheffield District Rly Co. v Great Central Rly Co.* [1911] 27 TLR 451 that "*best endeavours does not mean second best endeavours*". That, in our view, very strongly suggests that he was in agreement with the proposition that a requirement to use best endeavours to achieve a stated object required the party subject to the obligation to do all that he reasonably could in order to achieve the objective in question.

67. Neither Moore-Bick LJ nor Longmore LJ ruled out the possibility that an obligation to use best endeavours might require the party obliged to act against his financial interests. Both concluded that whether this was so would depend upon the nature of the contract in question and the relevant surrounding circumstances under consideration.

68. At the forefront of Ms Potts' submission to us was the contention that the Respondent was not obliged to act against its financial interests upon the true interpretation of the implied term found to exist by the Commission.

69. We do not agree with Ms Potts' submission if, as we believe it to be the case, she was asserting that the Respondent was never obliged to act against its financial interests, whatever the circumstances, notwithstanding the obligation to use best endeavours. In our view, the issue of whether the Respondent was obliged to act against its financial interests must be viewed in the context of the agreement itself, the relevant surrounding circumstances and, in relation to those circumstances, the nature and extent of the financial detriment which the Respondent would suffer in the event of it acting against its financial interests.

70. In the instant case, there came a point in time on or prior to 31 January 2019 when the Respondent would have been able to transfer [redacted] for a sum which was very close to the sum which the Respondent's Board had resolved was acceptable. The difference between a transfer fee of [redacted] and a transfer fee of [redacted] with an additional [redacted] payable subject to conditions was, in our view, and viewed objectively, a financial detriment to the Respondent which was comparatively, and we stress comparatively, minor in nature. Certainly, in our view, no cogent evidence was adduced before the Commission which demonstrated that the acceptance of that offer would have caused the Respondent significant financial detriment. Had that offer been accepted, not only would Condition 2) have been satisfied (with the consequence that potential disciplinary action would have been avoided) but the stated objectives of the contract as a whole and Condition 2) in particular would have been achieved. It must be remembered that players had been acquired by 31 January 2019 in accordance with Condition 1). The two conditions were very much part of a package even allowing for the fact (had it been the case) that the rigour of Condition 2) had been modified by the implied term. In reality, the Respondent was not inclined to transfer one of its star players for a sum which was less than it considered was his minimum value. In our view, an obligation to do all that it reasonably could to achieve the specified cost saving did require the Respondent to transfer [redacted] for the sum offered when the contractual term in question and the surrounding circumstances as we have described them above are considered as a whole.

71. For the reasons we have given in this Decision we were satisfied following the hearing that this appeal should be allowed – hence our communication of 11 June 2020.

Sanction

72. Very little time was spent at the appeal hearing dealing with the appropriate sanction to be imposed if the charge was found proved by us. That is not surprising since (a) this appeal was very much motivated by the desire of the Appellant to have ground 1 determined by an appellate tribunal and (b) a sporting sanction of any significance was always likely to be problematic given that it would have to be

imposed in a season already subject to very significant disruption through no fault of anyone and one season later than the season in which the misconduct occurred. We content ourselves by saying that the sanction we imposed was that suggested by Ms Potts. In her skeleton argument for the Commission she provided cogent reasons why a reprimand was sufficient in this case. In summary, her reasons were that the Respondent achieved the necessary cost saving by the end of the season 2018/19 (albeit by a different mechanism than that specified in Condition 2), it complied with the P&S Rules in the season 2018/19 contrary to expectations and to an extent at least the Respondent was subject to pressure from other clubs in January 2019 to sell players for sums which it considered to be less than their true market value.

73. We stress that the sanction in this case is no precedent of any kind for the type of sanction which will be appropriate normally in cases in which a club is found to have engaged in misconduct by failing to comply with an agreed budget under Regulation 16.20.

Sir Wyn Williams
On behalf of the League Arbitration Panel
29 June 2020

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