

IN PROCEEDINGS UNDER THE RULES OF THE ENGLISH FOOTBALL LEAGUE

Before:

Murray Rosen QC (Chair)

Mr Kwadjo Adjepong

Mr Ashley Cukier

BETWEEN:

THE ENGLISH FOOTBALL LEAGUE LIMITED

Claimant

-and-

MACCLESFIELD TOWN FOOTBALL CLUB

Respondent

AWARD DATED 05 MAY 2020

(1) Introduction

1. This is the award of the Disciplinary Commission in relation to charges by the English Football League Limited ("**the EFL**") against Macclesfield Town Football Club ("**MTFC**") in respect of its alleged breaches of:

- (a) EFL Regulation 31.1 in that MTFC failed to fulfil a fixture against Plymouth Argyle FC scheduled to take place on Saturday 21 December 2019 ("**the Non-Fulfilment Charge**"); and
 - (b) EFL Regulation 63.7 in that MTFC failed to pay 18 Players on or before the payment due date of 29 February 2020 under the terms of their Standard Contracts ("**the Non-Payment Charges**").
2. In the current 2019/20 season MTFC has been competing in the EFL's League Two. When the season was suspended in March 2020 after 37 out of the 46 scheduled games, it was 22nd in the League Two table, level on points with Morecambe FC in 23rd place and 10 points and two places above the bottom (24th) placed club, Stevenage FC, which had a game in hand.
3. One of the main issues in the present proceedings is how to sanction MTFC for the most recent breaches in circumstances where the club has already breached the EFL Regulations this season. It has been previously sanctioned for various non-payment and non-fulfilment breaches of the EFL regulations by point deductions in previous proceedings ("**SR/343/2019**") under a Disciplinary Commission decision dated 24 December 2019 varied on appeal by the League Arbitration Panel on 17 March 2020 ("**SR/011/2020**"), as referred to further below.

(2) Background

4. MTFC is a relatively small club in the EFL's terms, with a ground capacity at its Moss Rose Stadium of only 6,355 (2,599 seated). It is however well-established, having first been formed in 1874 and gained promotion from the National League at the end of the 2017-2018 season. For more than 15 years it has been majority owned by a Mr Amar Alkadhi through a company apparently called Ramy Limited.
5. In earlier proceedings this season, MTFC was charged with and admitted misconduct in respect of three breaches of the EFL Regulations, by failing to pay its players on time for July, September and October 2019, and for November 2019 in breach of a

Disciplinary Commission provisional award, and in failing to fulfil its fixture against Crewe Alexandra FC on 7 December 2019.

6. It appears that MTFC had been in financial difficulty from at least early 2019, resulting, at least in part, from an unpaid debt to HMRC. The consequence of these financial difficulties was that various overdue monthly player payments were only met between 5 days and two weeks late, leading to a player's strike that would ultimately give rise to the non-fulfilled Crewe Alexandra fixture.
7. These were serious breaches, tending to disrupt and undermine the EFL as a whole. The Disciplinary Commission and League Arbitration Panel ("**LAP**") both treated, as an appropriate starting point for sanctioning, each breach with a 3-point deduction (comparable to the usual win/loss points difference in a single league match).
8. Prior to the hearing in SR/343/2019, later in December 2019, MTFC's scheduled home game against Plymouth Argyle was cancelled at the 11th hour, because the club did not submit the necessary and overdue safety barrier test reports for its Moss Rose ground until 2 days later, on 23 December 2019 (after the expiry of the relevant deadline). The local council's safety advisory group ("**SAG**") decreed the ground had "zero capacity" and EFL thereafter refused a request from MTFC to play the match "behind closed doors".
9. In the proceedings SR/011/2020, the LAP on 17 March 2020 differed with the Commission's decision of 24 December 2019 as to the relative mitigation/aggravation regarding those previous offences, reducing the Commission's total deduction of 10 points with 4 of them suspended, to a reduced sanction by the LAP of 7 points with 3 of them suspended, until the end of this 2019/20 season. As Sir David Foskett rightly noted, a margin of only one or two points can be crucial to a club's future.
10. In the course of those hearings and prior to the hearing and disposal of the LAP appeal, MTFC failed to pay its players on time yet again, for the month of February 2020. It appears that, in attempted distinction from its failures to pay the players on time in the previous Autumn, in this instance the club had relied in some of its

budgeting on receiving payments from the EFL which were withheld, and Mr Alkadhi did not make good the shortfall.

11. The conditions for the suspension of the 3 points deduction in SR/343/2019, as reduced by LAP from the 4 points ordered by the Commission, were (as stated in paragraph 80 of the Commission's decision) that it ... *shall only come into effect upon the Club being found to have committed any further breach of (i) Regulation 63.7 of the EFL Regulations by not paying its registered Players on time, and/or (ii) regulation 31.1 of the EFL Regulations for failing to fulfil a League Two fixture...*

(3) The present proceedings

12. By a letter dated 17 January 2020, the EFL notified MTFC of the Non-Fulfilment Charge, namely that:

"Pursuant to Regulation 31.1, the Club is guilty of misconduct for failing to fulfil the Fixture [ie the match against Plymouth Argyle] on its originally scheduled date of 21 December 2019 and/or causing the League to suspend the Fixture.

Particulars

The Club failed to fulfil the Fixture on that date and/or caused the League to suspend the same following its failure to ensure that its safety certificate was not suspended or withdrawn, as the effect of the reduction in the capacity to zero was of the same effect..."

13. The EFL informed MTFC that it would be seeking a sporting sanction and/or a fine, together with compensation in favour of Plymouth Argyle (which had quantified its wasted expenses as totalling £7,481.23), and costs.
14. On the appointment of the Commission, the Chair through Sport Resolutions convened, on 12 February 2020, a telephone hearing with Counsel for the EFL, Mr Steven Flynn, and for MTFC, Mr Richard Stubbs (Ms Anna Thomas of Sport Resolutions also in attendance). Procedural Order No 1 was issued on 14 February

2020 and countersigned by the parties, which provided among other things for various directions (some later varied by Procedural Order No 2 dated 10 March 2020) and fixed the hearing for 2 April 2020 at the Chair's chambers in London.

15. MTFC initially resisted the Non-Fulfilment Charge, in grounds dated 10 February 2020 and amended on 1 March 2020.
16. By a letter to MTFC dated 6 March 2020, the EFL then notified the club of the Non-Payment Charges, namely that:

*The Club was required to pay the players listed in the schedule attached to Appendix 1 of this letter (**Players**) for February 2020 on or before 29 February 2020 (**Payment Due Date**).*

It is alleged that the Club failed to pay the respective Players by the applicable Payment Due Date....

Pursuant to Regulation 63.7, the Club is guilty of misconduct for failing to strictly adhere to the terms of the Standard Contracts that were in force as between the Club and the Players...

the EFL repeats this charge for each and every Player, such that each charge constitutes a separate Charge in relation to the Standard Contract with each of those Players in each of the applicable months.

17. The EFL's notification expressly asked that, in addition for sanctions in respect of the Non-Payment Charges, the suspended points deduction imposed in SR/343/2019 be activated. Subsequently, MTFC paid the Players' remuneration for February 2020 late and in stages – 50% on 11 March 2020, 15% on 20 March 2020 and the balance of 35% on 27 March 2020.
18. By a Procedural Order No 3 dated 19 March 2020 the Commission granted the EFL's application to consolidate the Non-Fulfilment and Non-Payment Charges in these proceedings, made further directions, and required MTFC, if it had any grounds to

seek an adjournment of the hearing on 2 April 2020, to apply to that effect by 26 March 2020.

19. On 23 March 2020, the Club formally admitted (a) the Non-Fulfilment and Non-Payment charges; (b) that compensation of £7,481.23 as claimed was due from it to Plymouth Argyle, for which it requested 28 days (i.e. until 20 April) for payment; and (c) that the 3-point suspended points deduction ordered in SR/343/2019 should come into effect according to its conditions (set out in paragraph 11 above).
20. On 24 March 2020, the Commission through Sport Resolutions wrote to the parties in an attempt to narrow the remaining issues. Prior to 30 March 2020 (a) MTFC paid the balance of the Players' salaries for February 2020 the subject of the Non-Payment Charges and (b) the parties agreed further directions including the adjournment of the hearing until 21 April 2020, which was to be conducted by videoconference in the light of conditions resulting from the COVID-19 pandemic.
21. On 15 April 2020, MTFC applied for a further adjournment of the hearing on 21 April 2020 for another 3 weeks. The Chair heard that application at a video hearing on 16 April 2020 when, following deliberation by the Commission as a whole, it was dismissed with reasons to be summarised in this award.
22. The principal grounds for such application were MTFC's alleged logistical difficulties in connecting to and participating in a video hearing and the strain on its financial and administrative resources in the light of the pandemic, its intention to disinstruct Mr Stubbs of counsel and self-represent at the hearing, and a lack of urgency given the suspension and uncertain restart or conclusion to the 2019/20 season.
23. The Commission considered that none of those grounds, together or alone, justified an adjournment of the hearing on 21 April 2020. It was not satisfied that (a) MTFC and in particular Mr Alkadhi (who lives in London and had represented the club previously before the Commission (in SR/343/2019)) might not be able to connect to and participate in a video hearing; or (b) that its choice as to whether or not to continue to instruct counsel for a hearing fixed to suit the parties, should carry any weight; or (c) that any administrative or financial reasons imperilled its right to a fair hearing; or (d) that an adjournment would serve any purpose other than further

delay, contrary to the needs of these proceedings and their resolution expeditiously and without causing further uncertainty in League Two (regardless of any prediction as to whether, when or how this season might “restart” or finish).

24. The final hearing accordingly proceeded by video on 21 April 2020, Mr Flynn and Mr Nick Craig Legal Director (and in part his assistant Mr Kevin Rimmer) attending on behalf of EFL, Mr Stubbs and Mr Alkadhi on behalf of the Club, and Ms Thomas of Sport Resolutions again assisting the Commission.
25. The electronic hearing bundle consisted of nearly 800 pages (without the decisions in SR/343/2019) and included witness statements from Mr Alkadhi and Ms Caroline Hall of MTFC and Mr David Cookson of EFL and Ms Jane Longley of Cheshire East Council’s SAG (regarding MTFC’s lack of a safety certificate for 21 December 2019). None of these witnesses were required for cross-examination. We were very grateful to counsel for their extensive written and oral submissions and to Ms Thomas and all others participating for the cooperative efficiency of that stage of the process at least.
26. At the hearing it emerged that MTFC had not paid Plymouth Argyle FC the compensation of £7,481.83 by 20 April the as required,(see paragraph 19(b) above), but that it had paid such sum that morning 21 April 2020. The EFL asked this Commission to retain conduct of any further charges against MTFC this season, which it said might include charges of non-payment of the March 2020 players’ remuneration. The Commission was told that, yet again, for the sixth time this season, MTFC had not paid the players’ March 2020 remuneration by the due date (i.e., by 31 March 2020), but had paid the March remuneration by 21 April, namely, the hearing date.

(4) Relevant rules

27. This Disciplinary Commission’s jurisdiction arises under the Articles of Association and Regulations of the EFL by which all members including MTFC are bound, and the parties expressly accepted the appointment of the Commission and its jurisdiction in Procedural Order No 1.

28. It is not necessary to quote extensively from the Articles and Regulations at this stage, save as follows. First, as regards non-fulfilment, Regulations 24 and 31 provide:

24.1 Each Club shall play its full strength in all Matches played under the auspices of The League unless some satisfactory reason is given. In the event of the explanation not being deemed satisfactory the Board shall refer the matter to a Disciplinary Commission which has the power to impose such penalties as it shall think fit...

31.1 Any Club failing to fulfil its fixture obligations in respect of any match under the jurisdiction of The League on the appointed date or dates or causing The League to suspend any fixture shall be deemed guilty of misconduct, unless the circumstances giving rise to such failure are outside the control of the Club and could not have been reasonably foreseen or reasonably anticipated and remedied prior to the match. Every Club shall carry out regular and appropriate maintenance and checks to ensure that its safety certificate is not suspended or withdrawn...

31.2 The Club failing to fulfil its fixture or causing The League to suspend such fixture shall be liable to pay compensation for any expenses actually incurred by the opposing Club as a direct result of the failure or suspension. The amount of compensation will be at the discretion of the Board who will consider every such case on its merits. The Board may refer the amount of compensation to be paid to the Disciplinary Commission dealing with the misconduct by the Club failing to fulfil its fixture or causing The League to suspend the same.

29. Appendix 1, Part 3, Paragraph 1.1 of the Regulations provides that ... *each Club shall hold a current safety certificate issued in accordance with the provisions of the Safety of Sports Grounds Act 1975.*

30. Schedule 12, Paragraphs 1, 4 and 5 of the "General Safety Certificate for a Designated Ground" required (a) MTFC to ... *arrange a detailed annual inspection of all structures, components and installations...;* (b) that ... *all barriers (including crash barriers) shall be subject to an annual risk assessment to determine the time period or periods at which all barriers will be tested...;* and (c) that ... *the risk assessment*

(which, in practice shall be carried out in a similar fashion to an annual inspection) shall be conducted and recorded by a chartered engineer, architect or surveyor of the appropriate skill and expertise... .

31. Secondly, as regards Non-Payment, under Regulation 63 and Article 48 respectively:

63.7 The terms of a Standard Contract between a Club and a Player shall be strictly adhered to...

48.1 Where a Member Club defaults in making any payment due to any of the following persons, the Member Club ('Defaulting Club') shall be subject to such penalty as the Board may decide and subject also to Article 48.2: ...

48.1.5 any sums due to any full-time employee or former full-time employee of the Member Club by way of ...

48.2 Subject to the provisions of Articles 48.3 and 48.4, the Board shall apply any sums standing to the credit of the Pool Account which would otherwise be payable to a Defaulting Club, in discharging the creditors in Article 48.1.

32. Thirdly, as regards sanctions, under Regulations 84 and 92:

84.1 The League has the power to bring disciplinary proceedings for misconduct against any Club ...subject to these Regulations by... 84.1.2 referring the matter to a Disciplinary Commission appointed under Regulation 89...

92.1 The Disciplinary Commission may at any time make a decision, and may make more than one decision at different times on different aspects of the matters to be determined...

92.2 A decision may... 92.2.5 order the payment of compensation to The League, any Club, any other club, Player or other person; 92.2.6 order a suspension of membership of The League; 92.2.7 order a deduction of points; 92.2.8 impose a financial penalty payable to The League; 92.2.9

recommend expulsion from membership of The League... 92.2.12 order any other sanction as the Disciplinary Commission may think fit...

92.3 These sanctions may be imposed immediately or may be deferred or suspended for such period and on such terms as the Disciplinary Commission shall decide.

(5) Submissions

33. The EFL contended that the appropriate sanctions for MTFC's admitted breaches, in addition to the bringing into effect of the suspended 3 point deduction imposed in proceedings SR/343/2019, were to treat each of the Non-Fulfilment and the Non-Payment Charges as aggravated misconduct and to deduct 4 points from MTFC for each charge.
34. MTFC, on the other hand, sought to explain the two offences (treating Non-Payment of the 18 Players as in effect one breach or concurrent breaches) and to mitigate the appropriate penalties to no more than 3 points each, also submitting in essence that a total deduction of up to 9 points, including the suspended deduction (or, even more so, the 11 points as contended for by the EFL) would be disproportionately harsh and contrary to the principles and interests of the EFL as a whole.
35. The following is a non-exhaustive summary of the main points made on each side as regards the two categories of charge. For the avoidance of any doubt, the Commission and this award take account of all the other points made and will address the principles and the arguments as regards totality in subsequent sections.

(A) The Non-Fulfilment Charge

36. The thrust of MTFC's mitigation as regards the Non-Fulfilment Charge was that it understood that its ground's safety barrier tests were due every two years and had not anticipated that the non-completion of the safety barrier test by 21 December 2019 would result in a zero-capacity rating.

37. The EFL submitted that there was no basis upon which MTFC could have considered that the safety barrier testing was due every two years, that it knew that the safety barrier test was due annually and that, in any event, there were many other failings that led to the SAG making its decision that the ground should be allowed “zero capacity” as at 21 December 2019.
38. According to the EFL, the key parts of the chronology supporting its submissions were:
- (a) MTFC had a Zero Capacity Rating applied to its Safety Certificate in November 2018 arising from similar circumstances to those in December 2019.
 - (b) MTFC attended meetings of the SAG on 12 February 2019, 7 May 2019 and (including Mr Alkadhi) 2 July 2019 at which meetings and among other things
 - (i) it was reminded that its testing obligations were annual and that these needed to be diarised;
 - (ii) it was specifically asked *...if there is a plan with dates to carry out annual testing...* to which it responded that it had *... this in a folder with dates for testing diarised in;*
 - (iii) it was recorded that MTFC was first *... to ensure all annual inspections/tests are valid, work booked into be completed – to be completed/status of certificates to be confirmed by next meeting...* and then *... to provide confirmation that appointments are booked in for clubs annual testing and inspection requirements...;*
 - (c) In further emails followed by another meeting in August 2019, the SAG again reminded MTFC of its obligations under the Safety Certificate and that tests were due shortly: *... Many of the annual inspections will be due shortly a request has been made that there is evidence that these inspections/tests are booked in (email confirmation would be acceptable) It would be useful to draw up a schedule detailing when the inspections are due. Copies of the inspection certificates need to be available for inspection... ;*

- (d) There was a further series of emails in November 2019:
- (i) on 11 November, Ms Longley emailed MTFC: ... *We have repeatedly asked for a schedule of works to provide evidence that all testing/inspections were planned and booked in with the relevant companies to carry out the work ...To date I have received no schedule of works or indication that any work has been carried out. It is not acceptable that I am once again chasing the Club... I am concerned that a number of your certificates have expired with the remainder expiring by December... ;*
 - (ii) on 13 November, Ms Hall responded by email on behalf of MTFC providing a schedule of works showing that barrier testing was due annually and had last been completed on 20 November 2018 and that other inspections were due or overdue;
 - (iii) on 14 November the Council emailed MTFC to emphasise that, amongst other things, Barrier Testing and a Structural Survey were due or overdue;
 - (iv) on 18 November, MTFC stated that it had previously believed that Barrier Testing was required only bi-annually, but it had "reviewed" its work schedule (which, in the hearing e-bundle showed annual inspections) and would arrange for immediate inspection, and acknowledged that a Fire Risk Assessment and Structural Survey were also overdue;
 - (v) on 19 November, the SAG again provided MTFC with a summary of its obligations under the Safety Certificate and what it needed to do; and
 - (vi) on 28 November 2019, MTFC received a contractor's' quote for works to be completed on 6 December 2019.
- (e) MTFC failed to arrange such works - it was required to pay for them in advance and did not do so – and on 19 December 2019, Mr Alkadhi himself acknowledged that the club was late in completing the barrier testing. The SAG on the same day issued its zero capacity decision, noting that MTFC had ... *been unable to provide the Council with a barrier testing report, a current fire*

risk assessment and fire strategy, electrical installation inspection report and emergency lighting test report...

39. Against this, MTFC asked for its guilty plea to be given credit, whilst continuing to maintain that it believed until mid-November 2019 that the safety test requirements were only biannual, as was the unchallenged witness statement evidence of Mr Alkadhi and Ms Hall. It also relied on its fulfilment of other safety requirements by 21 December 2019 and the provision of the outstanding barrier safety tests on 23 December, and seemingly on Mr Alkadhi's contentions at the time that the barrier safety tests were otiose and that the Plymouth Argyle game could have been played behind closed doors or by allowing only the seated West Stand at Moss Rose to be used for spectators.
40. Despite this, the EFL submitted that there are no mitigating circumstances that justify a reduction in or suspension of a points-deduction sanction. It contended that the change of plea was inevitable, and that the attempt to mitigate on false grounds discounts any credit for it.
41. The EFL regards the Non-Fulfilment as a very serious breach of the Regulations, undermining the credibility of the League structure, given (a) the difficulty in arranging fixtures (b) the inconvenience caused to the other team involved in the fixture and its fans and to broadcasters and (c) the pressure on the League to re-accommodate the fixture on another date (which may affect the other team's rest/training time in that alternative period).
42. The EFL contends that there were other aggravating features justifying an increase from a 3-point to a 4-point deduction, including (a) the fact that this was the second time that MTFC had failed to fulfil a fixture during the 2019/2020 season in breach of Regulation 31.1 (the first being the fixture against Crewe Alexandra on 6 December 2020, the subject of SR/343/2019); (b) MTFC's inaction in the face of repeated reminders from the Council; and (c) that Mr Alkadhi had made things worse on 20 December 2019 by issuing a public statement to the effect that the match would be played as scheduled, despite the Council having previously confirmed otherwise, thus causing unnecessary confusion for fans.

(B) The Non-Payment Charges

43. The EFL noted that at the case management hearing on 16 April 2020, the Club accepted that the starting point for each charge was a 3-point deduction, but submitted that the Commission should increase this to 4-points to reflect that (a) this is the Club's second breach of EFL Regulation 63.7 this season; (b) there was a significant delay of 4-weeks in paying the players their full remuneration for February 2020; (c) the players have not been regularly paid in accordance with their Standard Contracts since January 2019; and (d) little if any credit should be given for MTFC's guilty plea as it had no choice but to accept the charge.
44. MTFC advanced an explanation for its late payments of the players' remuneration to the effect that it had budgeted on the basis that it would receive instalments of the EFL's basic payments (and the Premier League's solidarity payments) but these payments has been withheld from the club. As at 14 January 2020, according to an email from the EFL, the total withheld was nearly £151,000. MTFC went so far as to claim that the EFL should not have withheld any or at least part of such payments.
45. As regards the grounds for withholding such distributions from it, it appears that MTFC was at the material time subject to claims for unpaid remuneration by a former manager, Mr Sol Campbell, whom it contended to have breached a settlement agreement of 23 August 2019 following the club's termination of his employment.
46. MTFC's argument was that EFL was not entitled to treat Mr Campbell as a football creditor under Article 48.1.5 (and thus was not entitled to impose a sanction on MTFC in the form of the withheld payments), first, because Mr Campbell was not claiming "*arrears of remuneration up to the date on which that contract of employment is terminated*" but rather was making "*claims ... arising out of the termination of the contract or in respect of any period after the actual date of termination*"; and secondly because his claims were disputed, first in an arbitration commenced by MTFC and then, when it abandoned that arbitration, by its solicitors

claiming that the debt was disputed and then issuing County Court proceedings for damages for breaches of the settlement agreement.

47. The EFL submitted against these contentions, among other things, that Mr Campbell was, or arguably was a football creditor within Article 48.1.5 as his claim was for arrears of remuneration, as expressly preserved in the settlement agreement; and that in any event, MTFC either lacked or had mismanaged its finances so as to be unsustainable absent financial support from Mr Alkadhi which, despite his assurances that he had some £3 million available for such contingencies, he had not provided.

(6) Principles

48. The principles applicable to the determination of the appropriate sanctions in this case should not be controversial. Both counsel proceeded on the basis that a sporting sanction would be appropriate and that the starting point should be a 3 point deduction on each type of charge. This was accepted both in SR/343/2019 and in a previous case cited by MTFC, EFL v Bolton Wanderers FC (SR/367/209 Decisions of Disciplinary Commission dated 21 November 2019, and on appeal dated 27 December 2019). However, this is not a prescribed guideline and each case is fact-specific.
49. Moreover, and for similar reasons, as Sir Wyn Williams stated in that previous case, examples of sanctions imposed in other awards may not necessarily be helpful. The deductions upheld by him (of 3 points and 2 points on two charges) followed a previous 12-point deduction against the club in that case, by virtue of its entry into an insolvency procedure. The specific context, reasoning, seriousness and effect of the sanction is key and in reality is bound to vary greatly from case to case.
50. The Commission read and listened carefully to MTFC's contention that the EFL was bound by the course it had advocated in SR/343/2019; namely that an immediate points deduction should only be imposed where there has been a series of increasingly late payments of players' remuneration over 3 months (as had been the case in SR/343/2019). Such argument is, however, rejected by the Commission.

It does not consider that consistency or any other principle means that this is, must be or can be made applicable to the present or any other case.

51. The central question in a case such as this should always be: within the range of available penalties, what is the least severe penalty reasonably possible which appropriately sanctions the club, whilst adequately serving the needs of the League and the protection of its structures and values. In that regard, the principles of deterrence, totality and proportionality are crucial. Should a club which has already breached the Regulations to similar effect, and which has already been punished with points deduction, suffer a greater sporting sanction or a lesser one, given that its fault may be regarded as greater but so too its vulnerability (and indeed the risk to its survival in the League)?
52. The regulation and discipline of the EFL, as with other sporting associations, is not on all-fours with the criminal law and policy for protection of society at large. Football and football leagues have their own special interests and those who participate do so by agreement and for the mutual good of players, fans and others who also choose to be part of the game. The imposition and assessment of sporting sanctions requires the Commission concerned to have regard to the aims, and the checks and balances, needed for successful sports associations.

(7) Merits

53. The Commission approaches this as did the parties, first by considering the appropriate points deduction on each type of charge and then by considering totality/proportionality, but first observes that neither side contended for a fine or a suspension of any part of the total points deduction. This award will later revert to that latter point.

(A) The Non-Fulfilment Charge

54. The Commission rejects the bulk of MTFC's grounds of mitigation but does not find, as the EFL submitted, that its contentions in that regard cancel any credit for its change of plea or aggravate the offence. MTFC was entitled to seek to explain its breach of Regulation 31.1. It eventually paid the compensation claimed by Plymouth Argyle and will pay the costs of the EFL and the Commission, as explained below.
55. It is not necessary to go into every argument in more detail, save for one point. Given the contemporaneous documents, the Commission accepts that it is possible that Mr Alkadhi and Ms Hall were (as asserted thereafter in their witness statements) mistaken in the belief, prior to mid-November 2019, that the safety tests were only required biannually, and that it is possible that they/the club were influenced by the statement to that effect in MTFC's emails of mid-November 2019. The Commission does not accept the unsupported contention that the works schedule showing the need for annual inspections did not exist prior to being "reviewed" at that time.
56. But this scarcely matters. If Mr Alkadhi or Ms Hall or anyone else responsible at MTFC was not aware of the need for annual inspections and tests annually before mid-November 2019 then, especially given all the SAG reminders, then there were no reasonable grounds for that belief. MTFC was egregiously negligent and in any event delayed for more than another month in having the tests carried out.
57. In the Commission's judgment, the breach of the Non-Fulfilment charge justifies, in the first instance, a 4-point deduction; that is one point more than the parties agreed to be the "standard starting point" but, as the Commission would prefer to put it, one point more than the win/loss single game difference. MTFC had already caused a previous game this season to go un-fulfilled albeit: for different but still financial reasons. The way that MTFC delayed the necessary safety tests, in order to avoid paying any costs for as long as possible, was manifestly irresponsible and contrary to the basic priorities of ground management in the EFL.

(B) The Non-Payment Charges

58. Again, the Commission must reject MTFC's attempts at mitigation but does not disregard its guilty plea nor increase the sanction as a result the hollow explanations advanced by the club. Again, at this initial stage, the appropriate sanction must be more than the "standard starting point", given MTFC's recidivist history of late payments of player remuneration this season.
59. MTFC appears to have demonstrated that it does not have the finance or the sound financial management to meet its most basic obligations; and that whilst Mr Alkadhi may present himself as underwriting its needs, he does not promptly perform and has arguably exposed the club more recently to further (and repeated) sanction in failing to do so. It was said on behalf of the club at the hearing that he is not obliged to, and that MTFC should stand on its own feet. That is a laudable hope, and Mr Alkadhi has in the past provided sterling support, but he cannot claim credit for this and so lend comfort as to MTFC's sustainability, whilst at the same time dragging his feet so as to put MTFC in breach of the Regulations again and again.
60. The Commission does not need to comment on the reasons which he gave for not being able to transfer funds when needed (industrial problems in Iraq, exchange control complications and the like), as it does not regard the proper regulation of the EFL as a matter of negotiation. The failure to pay players in accordance with the terms of their contracts is on any view (and whatever the reason) a serious breach, and particularly so when it is a repeat occurrence.
61. These breaches again call for a sanction of a 4-points deduction, subject to totality/proportionality, to which we next turn. At this stage there seems no purpose in imposing a fine as an alternative, although that may not be out of the question in the future if there are still further breaches by way of non-payment, depending on the circumstances.

(C) Totality of sanctions

62. As invited by both parties, the Commission now stands back and considers whether the points deductions proposed above properly reflect the seriousness and effect of MTFC's misconduct in the two types of breaches involved. The EFL did not make any

detailed submissions in this regard, other than to note that suspended sanctions previously imposed have not deterred further similar misconduct by MTFC.

63. Added to the activation of the suspended 3-point deduction from SR/343/2019, the Commission considers that the immediate imposition of an additional 8 points deduction (resulting in what would be a total 11-point deduction with the 3 points previously suspended) would be too harsh and would not serve the needs of the EFL at the current time. Such a deduction, if imposed, would mean that MTFC will have suffered a 15-point deduction this season so far, putting it in 24th place and ripe for relegation from the Football League altogether. In this regard, it is impossible – and would be wrong – to disregard the state of the League Two table and the suspension and possible cancellation of this season because of the COVID-19 pandemic.
64. The EFL and League Two is better served, in the Commission's judgment, by reducing the total "new" points deduction, in addition to activating the 3-points suspended deduction, from 8 points to 6 points and suspending 2 of those point deductions on the same conditions as in SR/343/2019. The Commission considers – having regard to MTFC's guilty pleas and the principles of totality and proportionality, viewed against MTFC's misconduct, the previous sanctions and the situation in League Two as a whole – that that is a sufficient sanction in the present case.
65. It must be recognised that the previous suspension did not serve its then purpose of preventing MTFC from again breaching Regulations 31.1 and/or 67.3. Indeed, the Commission also has in mind MTFC's failure to pay the Players' March remuneration on time. However, circumstances have now changed and it can still be hoped that MTFC have learnt some lessons and will still strive for survival in League Two, having now been placed in what might be termed the "last chance saloon".

(8) Conclusions

66. The Commission considers, as might be obvious from the above, that its duty is to assist in the enforcement of the Regulations in a sporting context and that it cannot be blind as to the sporting outcomes when assessing totality and proportionality.

67. It will therefore rule for the reasons now given, that the suspended 3 points will be activated and a further 6 points deducted, 4 points immediately and 2 points suspended on condition that they be activated if MTFC is found to have committed in this 2019/20 season any further breach of (i) Regulation 63.7 of the EFL Regulations by not paying its registered Players on time, and/or (ii) Regulation 31.1 of the EFL Regulations for failing to fulfil a League Two fixture.
68. It is to be hoped that this constitutes an unusual case (both as to MTFC's misconduct and the state of this season), that similar circumstances are unlikely to apply again, and that the particular solution in this case is not cited as precedent in other cases, which will necessarily be different on their facts.
69. The EFL asked that the Commission reserve any further matters of Misconduct alleged against the Club during the 2019/20 season to itself, in order avoid the need for another commission to acquaint itself with what is now a substantial history. This was not opposed, and the Commission is prepared to accede to that request.
70. However, before this is formalised the Commission should make it clear that it does not consider that MTFC's tardiness (yet again) to pay the players' remuneration for March on time necessarily requires a further charge. Given its reasoning and conclusions as above, it would require strong persuasion to impose a yet further points deduction for any such breach (albeit the sixth monthly failure this season to pay players promptly).
71. At the final hearing the Commission invited, and subsequently received written submissions as to publication of this award and costs. As regards the former, Rule 20.2 of Appendix 2 to the EFL Regulations provides that the decisions of a Disciplinary Commission shall be published unless otherwise agreed between the parties and subject to any appropriate redaction to protect third party confidentiality. Given the nature of the charges before the Commission, the EFL asked that the award be published and MTFC did not oppose this, so it will be ordered.
72. As for costs, Rule 14 of Appendix 2 of the EFL Regulations provides that the Commission has the power to award costs to include the costs of the investigation,

of the parties and of the Commission. In this case, there can be no doubt that MTFC should pay the costs of the EFL and of the Commission.

73. In the event, the EFL only claimed for its counsel's fees. It explained the stages of his work, and confirmed that his fees totalled £10,020 plus VAT. MTFC asked for more detail as to these costs, however, the Commission did not consider that necessary or appropriate. Such total, in the view of the Commission, is proportionate and reasonable in the circumstances and an award in this sum will be made without deduction. Of course, had it not been for the Club's admitted wrongdoing (not to mention its initial resistance on the Non-Fulfilment Charge, its application to postpone the hearing, and its failed grounds of mitigation) it is likely that these and no doubt other costs would not have been incurred.

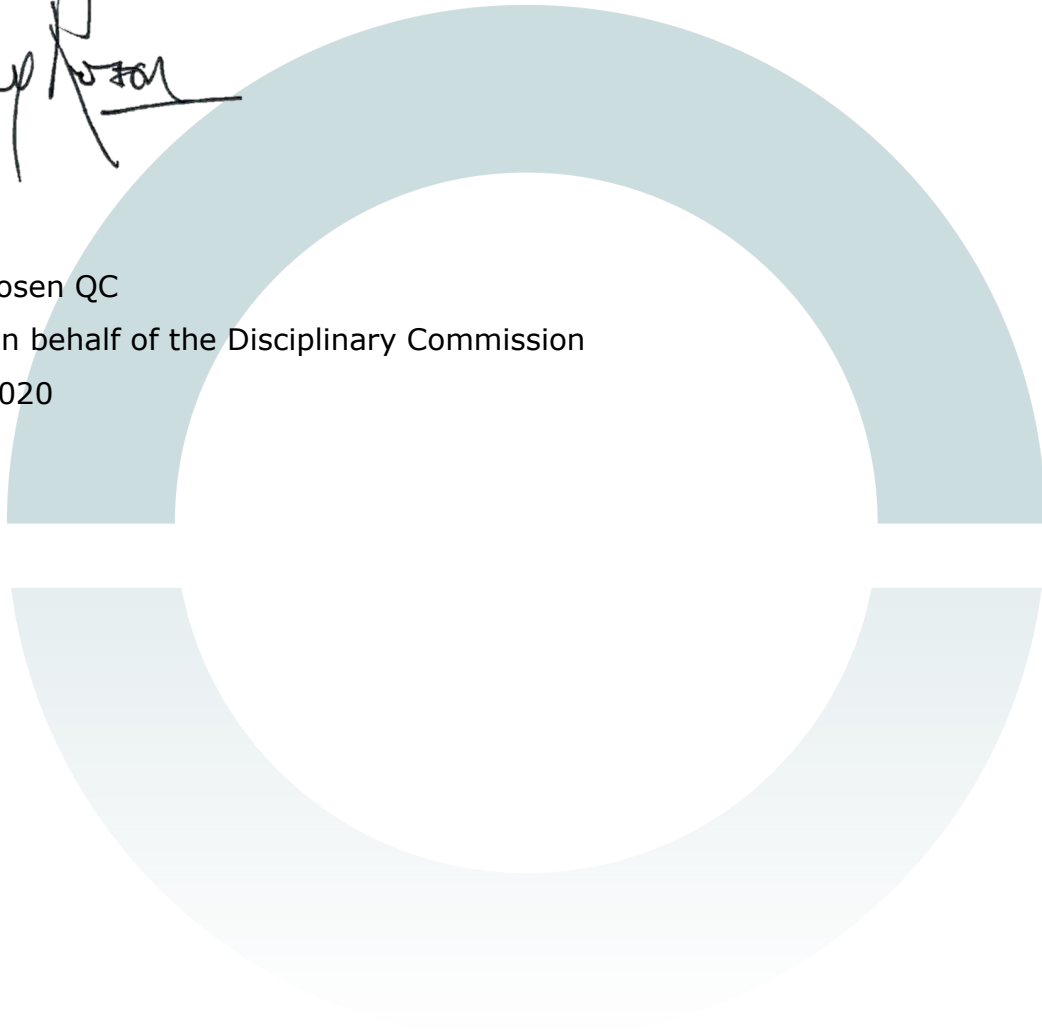
The Commission therefore hereby orders:-

- (1) That the Respondent Club MTFC is found in breach of EFL Regulations 31.1 and 63.7 as regards the Non-Fulfilment and Non-Payment Charges respectively and liable to suffer sanctions (and, as regards the former, is liable to pay compensation to Plymouth Argyle FC, which it has now done).
- (2) That the 3 points suspended deduction ordered against MTFC in SR/343/2019 be immediately activated and further deductions be now ordered totalling 4 points immediately, together with a further 2 points suspended until the end of this 2019/20 season to be activated if the Club is found to have committed any further breach of (i) Regulation 63.7 by not paying its registered Players on time, and/or (ii) Regulation 31.1 for failing to fulfil a League Two fixture.
- (3) That any further charges brought by the Claimant EFL against MTFC this 2019/20 season be reserved to the present Commission if and so far as available.
- (4) That MTFC do pay the costs (a) of the EFL in the sum of £10,020 plus VAT within 14 days of this award and (b) of the Commission within 14 days of being notified of the same in writing through Sport Resolutions.

(5) That this award be published, unless otherwise agreed between the parties and subject to any appropriate redaction to protect third party confidentiality.

A handwritten signature in black ink, appearing to read "Murray Rosen". The signature is written in a cursive style with a horizontal line at the end.

Murray Rosen QC
For and on behalf of the Disciplinary Commission
05 May 2020





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