

IN THE MATTER OF AN APPEAL BOARD  
OF THE FOOTBALL ASSOCIATION

BETWEEN:

JOSE MOURINHO

Appellant

- and -

THE FOOTBALL ASSOCIATION

Respondent

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DECISION AND WRITTEN REASONS  
OF THE APPEAL BOARD  
FOLLOWING THE HEARING ON  
30<sup>TH</sup> OCTOBER 2015

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**1. BACKGROUND**

1.1 On 3<sup>rd</sup> October 2015, Chelsea FC played Southampton FC in an FA Premier League match.

1.2 Following the match, the Chelsea Coach, Mr. José Mourinho, gave separate television interviews to BBC TV and to Sky Sports TV. In both interviews, he complained that the Referee ought to have given Chelsea a penalty when the score was 1-1. More specifically, in his interview with the BBC, Mr. Mourinho said this:

*“... it was a big penalty for us. Not small, not doubtful, big, huge, and the referee is 10 or 15 metres away and doesn't give the penalty and gives a free kick against us. I comment to the fourth official and I agree completely with what [he] told me. [He] told me “the referee is 10 metres away, he is in the best position so for sure he had the right decision.” And at that time [he] calmed me because I believe in him.*

*In the end of the game, I come to the dressing-room, he was right the referee was 10 metres away, but it was a penalty. Be honest with us and give us what you have to give, and it's a big penalty." (emphasis added)*

### **The Regulatory Framework**

#### 1.3 FA Rule E3(1) provides as follows:

*"A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour."*

#### 1.4 The FA's published *Guidance for Participants and Clubs for the 2015/16 Season* was prepared "... to provide helpful guidance to Clubs and Participants on the disciplinary procedures for the 2015/16 Season", contains the following guidance in relation to media comments:

*"Players and Club Officials should be aware that The FA sets standards in relation to public comments made by Participants. This means that the following types of comments by Managers, Players or Club Officials may lead to disciplinary charges:*

- *Any comment, whether positive or negative about an appointed match official made prior to the game.*
- *Implication of bias: any comment which alleges or implies bias on the part of a match official.*
- *Questioning integrity: any comment which questions the integrity of a match official.*

*[ ...]*

- *Detriment to the Game: the concepts of "disrepute" and "best interests of the game" are inherently broad and cannot be precisely defined. Charges may be brought where comments cause, and/or may cause, damage to the wider interests of football and/or to the image of the Game."*

- 1.5 Further reference to the *Guidance*, and how it should be interpreted and applied, will be made in due course.

### **THE CHARGE**

- 2.1 By letter dated 5<sup>th</sup> October 2013, The Football Association (“The FA”) charged Mr. Mourinho with misconduct contrary to FA Rule E3(1). It was alleged that his comments in the post-match interviews with Sky Sports and the BBC:

*“... constitute improper conduct in that they allege and/or imply bias on the part of a match official or match officials, and/or bring the game into disrepute, in contravention of Rule E3(1).”*

- 2.2 On 8<sup>th</sup> October 2015, Mr. Mourinho submitted the pro-forma Reply Form in which he admitted the charge contained in the letter of 5<sup>th</sup> October 2015. He did not request an opportunity to attend a Regulatory Commission for a personal hearing. Instead, he asked for correspondence attached to the Reply to be put before the Commission, which included a letter from him, explaining the context in which he had made the comments. His letter contained the following remarks:

*“I would like to make absolutely clear that I did not question the integrity of the match referee. Instead I spoke on a broader level about the impact I genuinely believe football pundits are having on referees at Chelsea matches. ... I would like to emphasise that I do not believe Mr. Madley is biased against Chelsea.”*

- 2.3 His accompanying written submissions argued that in none of the clips does Mr. Mourinho state or suggest that the match referee or referees are consciously making unfounded decisions against the Club, or question to the integrity of the match referee or referees in any way.

### 3. DECISION OF THE REGULATORY COMMISSION

3.1 On 13<sup>th</sup> October 2015, an Independent Regulatory Commission was convened for the purposes of considering the misconduct charge against Mr. Mourinho. The case proceeded upon a consideration of the papers only, which included:

- (i) The transcripts of, and hyperlinks to, the two media interviews referred to above;
- (ii) The Reply Form and attached documents, dated 8<sup>th</sup> October 2015, including the letter from Mourinho and written submissions referred to above. The submissions also confirmed that he admitted the charge, before proceeding to set out points of mitigation under three headings:
  - (a) The context of the comments;
  - (b) Mr. Mourinho's past disciplinary record; and
  - (c) Other relevant cases where charges have been brought under FA Rule E3 for media comments.

3.2 The main thrust of Mr. Mourinho's case is that his comments were directed at the media, and particularly football pundits, in the way that they reported Chelsea matches. He claims that such reporting is never fair, balanced or proportionate. According to him, the analysis of refereeing decisions involving Chelsea then creates "*hysteria*" amongst the written press, which sometimes goes on "*for days on end*". This is a source of significant concern to Mr. Mourinho because of the significant pressure it places on referees when making "*big decisions*." He contended that media reporting is creating a situation where referees are "*afraid*" to give big decisions to Chelsea for fear of being subject to harsh and continuous media scrutiny.

3.3 Mr. Mourinho also contended in both his letter and written submissions that getting a genuine and fair point across in the way that is intended can be even more difficult for foreign managers like him, and for whom English is not their first language.

3.4 Moreover, notwithstanding his admission to the charge, Mr. Mourinho made the qualifying remarks set out at paragraph 2.2 above. By clear inference, he disputed that he had questioned the integrity of the Referee or that he had alleged any bias on the part of the latter.

3.5 The Regulatory Commission identified the following issues that it had to determine:

- (i) Did Mr. Mourinho's comments question the integrity of the Referee?
- (ii) The relevance, if any, of the fact that English is not Mr. Mourinho's first language.
- (iii) The appropriate sanction(s) to impose having regard to the seriousness of the offence in question, and having regard to Mr. Mourinho's antecedents.

3.6 On the first issue, which was characterised in its Written Reasons as "*a key point*", the Regulatory Commission dismissed language issues as a defence and concluded that:

*"Mr. Mourinho's misconduct in breach of Rule E3(1) was proven as charged and included his questioning of the integrity of the referee by words which clearly implied that the referee had made a decision against Chelsea which he had not honestly believed was correct."*

That finding was made by reference to the final sentence of the passage from Mr. Mourhino's BBC interview set out at paragraph 1.2 above, namely:

*"Be honest with us and give what you have to give, and it's a big penalty."*

3.7 The relevance this "*key point*" to the Regulatory Commission's decision on sanctions can be found in the following statement in its Written Reasons:

*“A breach which did not include any aspersion on a match official’s integrity would be significantly less serious than one which did.”*

3.8 Based on its findings on the integrity issue, the Regulatory Commission imposed the following sanctions on Mr. Mourinho:

- (i) A fine of £50,000; and
- (ii) A one-match stadium ban, suspended for 12 months, but which would come into immediate effect if an FA Regulatory Commission decides at any time during that period that Mr. Mourinho has committed a further breach of FA Rule E3 by any comment or statement to or through the media.

#### **4. THE APPEAL**

4.1 Mr. Mourinho appeals against the decision of the Regulatory Commission on the following grounds:

- (i) The Regulatory Commission failed to give him a fair hearing and/or misrepresented or failed to comply with the rules or regulations relevant to its decision by proceeding on the erroneous assumption that Mr. Mourinho had been charged with having questioned the integrity of the match referee;
- (ii) Even if it had been open to the Regulatory Commission to consider whether Mr. Mourinho had questioned the integrity of the match referee, the Regulatory Commission came to a decision on this issue which no reasonable such body could have come to; and
- (iii) In any event, the Regulatory Commission imposed a sanction that was excessive.

4.2 An FA Appeal Board sat on 30<sup>th</sup> October 2015 to hear Mr. Mourinho’s appeal. He was represented by Ms. Kate Gallafent QC. The FA was represented by Mr. Dario Giovannelli of counsel.

4.3 Under FA Rules and Regulations for Appeals in Disciplinary Cases, the appeal before an Appeal Board takes the form of a review of the decision of the Regulatory Commission. It is not a re-hearing, unless it can be shown that the Regulatory Commission erred in any aspect of its decision in which case the Appeal Board has various powers, including allowing the appeal, or exercising any power which the Regulatory Commission could have exercised, or remitting the matter for a re-hearing (see Paragraph 3.2 of the Disciplinary Procedures relating to Appeal Proceedings). For the purposes of his appeal, the burden of proving his case rests with Mr. Mourinho.

#### **Ground 1 - The 'integrity' finding**

4.4 The first ground of appeal is that the Regulatory Commission erred by considering the (non) issue of whether, when he made his comments, Mr. Mourinho questioned the Referee's integrity. This error, it was argued, tainted the findings that were made, together with the sanctions that were imposed.

4.5 The Appeal Board acknowledges that as a basic principle of fairness and natural justice, a respondent to a regulatory charge alleging misconduct is entitled to know the case against him, both in terms of the nature and scope of the charge itself, and also the grounds that are relied upon in support of the charge by the regulatory body. In a criminal context, that principle is embodied in the case of *Pélissier and Sassi* (European Court of Human Rights, 25<sup>th</sup> March 1999, Application no.25444/94). For the purposes of this appeal, we do not need to consider whether Article 6 cases of the European Court are capable of binding a quasi-judicial panel that is convened by a sports governing body.

4.6 The charge against Mr. Mourinho set out in The FA's letter of 5<sup>th</sup> October 2015 did not allege that his comments constituted improper conduct under Rule E3(1) on the ground that he had questioned the Referee's integrity. Instead, he was charged with improper conduct in that his comments:

*“... allege and/or imply” bias on the part of a match official or match officials and/or bring the game into disrepute...”*

- 4.7 The Appeal Board received detailed written submissions and heard lengthy oral argument over whether the express charge of *“alleged or implied bias”* that was brought against Mr. Mourinho was also capable of including an allegation against the Referee’s integrity.
- 4.8 It was submitted on behalf of Mr. Mourinho that comments which on the one hand called into question the integrity of match official, and which alleged or implied bias on the other, were conceptually different. In support of that argument, Ms. Gallafent pointed to previous misconduct proceedings against Mr. Mourinho himself, where the charge alleged that he had used both ‘types’ of comments, and where the integrity element was dismissed. In the present case, Ms. Gallafent submitted that one could properly infer from the framing of the charge a conscious decision not to allege that Mr. Mourinho had called into question the integrity of the match officials.
- 4.9 The Appeal Board considered a number of previous decisions involving media comments allegedly in breach of Rule E3(1), including the two previous cases against Mr. Mourinho. We noted the following:
- (i) The charges in every case alleged that the comments brought the Game into disrepute (the so-called ‘catch-all’ allegation);
  - (ii) In some cases, a charge alleged that the comments called into question the integrity of the match referee and/or implied that the referee *“was motivated by bias”* (together with bringing the Game into disrepute);
  - (iii) In other cases, including the present one, the *“integrity”* allegation did not form part of the charge, although one was capable of being brought on the facts. Instead, the allegation was one of *“alleged or implied bias”*, together with the disrepute allegation tagged on; and



4.10 Although it was not possible to discern a consistent pattern to the charging of offences in such cases, they appeared to fall into two broad groups. With the assistance of Mr. Giovannelli, the most likely explanation for this difference in the way in which the charges are framed in media comment cases like this is simply the subjective 'style' of the prosecutor drafting the charge letter, rather than an informed decision to exclude an 'integrity' allegation because there is no realistic prospect of it being proved to the required standard of proof. When one has regard to previous decisions, the comments that are relied upon to make good the charge of improper conduct are the same, irrespective of how the charge is framed.

4.11 It was said on his behalf that Mr. Mourinho would not have admitted the charge if it had alleged that his comments called into question the integrity of the Match Referee. We cannot accept that submission. By implication, his letter of 8<sup>th</sup> October 2015, together with the written submissions in support, is an admission of the catch-all allegation of improper conduct on the basis that his comments brought the Game into disrepute. By clear inference, he denied questioning the Referee's integrity. He was somewhat opaque in his response to the express allegation of alleged and/or implied bias. His case before the Appeal Board is that he raised the 'integrity' point in his letter and submission simply in order to place his comments in context, and to emphasise that what he had said was at the lower end of the spectrum of breaches. Even if that is so, the fact that he was at pains to deny impugning the integrity of the Referee makes it difficult to see how he would have approached his defence to the charge in any materially different way even if it had been framed differently, or been amplified to expressly charge him with questioning the Referee's integrity. It seems reasonable to assume that he would have admitted that his comments brought the Game into disrepute in any event. Further, he declined the opportunity of a personal hearing despite facing a serious charge that his comments alleged or implied bias on the part of the Referee.

4.12 Nevertheless, before the Regulatory Commission could proceed to the stage of deciding what sanctions to impose, it had to make a finding as to whether it accepted the plea on the basis advanced by Mr. Mourinho (*i.e.* admitting some broad misconduct, but denying the more serious charge of alleging or implying bias), or whether it rejected the basis for his plea and found the charge to be proven in all respects. The Regulatory Commission was therefore right, in principle, to address that preliminary issue, but resolved it by asking itself and then answering a different question - *"Did Mr. Mourhino question the referee's integrity?"* - to the one that it should have asked, namely: *"Did Mr. Mourinho's comments allege and/or imply bias on the part of the Referee?"*

4.13 In the judgment of the Appeal Board, when one reads Mr. Mourinho's two lengthy interviews in their entirety, as we were invited to do, they do include the theme of match officials being influenced by pundits. That theme is discernible in particular from the Sky interview which was the first one in time that he gave. In a somewhat fatalistic manner, he admitted to the possibility that his comments might court disciplinary action against him. In doing so, he must therefore have realised that he was pressing a claim that he should not have been advancing so publicly. The recurring theme of match officials being *"afraid"* to give decisions to Chelsea implies at least unconscious bias on the part of officials, motivated by fear of criticism by football pundits.

4.14 By the time of his BBC interview, the general theme of referees as a group being *"afraid"* at Chelsea's expense was still present, but Mr. Mourinho's comments also included specific reference to the penalty decision that he was so aggrieved about. The Appeal Board concurs with the Regulatory Commission that an implication of the bias is clear from Mr. Mourinho's exhortation:

*"... be honest with us and give us what you have to give, and it's a big penalty."*

It is clearly not in the gift of the media to award penalties - only match officials can do that. Even when one reads the above comments in their wider context (*i.e.* the totality of both interviews), we reject the submission that they can only be understood to be referring to the media. Any ordinary, objective and fair-minded member of the public, hearing or reading this aspect of Mr. Mourinho's comments would have reasonably understood him to be saying that in failing to award Chelsea a penalty, the Referee made a decision which he did not honestly believe to be correct.

4.15 There may be some cases where comments that imply bias do not question a match official's integrity. Ms. Gallafent drew a distinction between conscious bias (a decision that is motivated by bias) and unconscious bias. In many other cases, though, comments will both impugn integrity and imply bias. The use of the word "*Guidance*" in its advice to Clubs supports The FA's submission that it is just that and represents a non-exhaustive list of the "*types of public comments*" which may lead to a disciplinary charge. As always, it is necessary to examine the facts on a case-by-case basis.

4.16 In this case, it was submitted that when Mr. Mourinho used the word "*honest*" he meant it in a more colloquial "*let's be honest with one another*" sort of way, rather than judgmentally. He stated later in the interview that he did not want to undermine the "*dignity*" of the Referee. Mr. Mourinho did not attend before the Regulatory Commission or the Appeal Board to give evidence in support of this aspect of his case, or any other. In any event, what he may have subjectively intended when he said what he did is a matter that is only capable of going to the question of mitigation. A Regulatory Commission (and any Appeal Board) is not required to second-guess the subjective intentions of a participant who has made media comments. It must look instead at the words that were used objectively, in their context, and judge how they are likely to have been interpreted and understood.

4.17 It is very difficult to reconcile Mr. Mourinho's use of the word "*honest*" in its context with an unconscious, unthinking decision on the part of the Referee not to give a penalty. An honest decision can only be reached by a conscious, thinking evaluation of all the relevant facts. Honesty is underpinned by adherence to moral principles and integrity. Although impugning the Referee's integrity was not formally alleged, comments that a decision lacks honesty seriously undermines his reputation and standing, as well as that of the Game itself. In terms of that reputational damage, an additional limb to a charge that alleges that the comments called into question the integrity of the Referee and/or were motivated by bias adds nothing to the charge that has been brought that the comments alleged and/or implied bias.

4.18 Finally, although it did not form part of his grounds of appeal, language difficulties appeared in his written submissions to the Regulatory Commission and we address them here for the sake of completeness. During his two spells in English Football, spanning approximately five years, Mr. Mourinho has demonstrated that his command of the English language and its nuances is extremely good and that he is adept at making the point that he wants to convey. He should have known from his vast experience of media interviews the permissible limits of criticism that may be made of match officials.

4.19 The significance of this lengthy analysis is that even if the Regulatory Commission had identified 'bias' rather than 'integrity' as the key preliminary question that it had to answer, the Commission is likely to have reached exactly the same conclusion in terms of the way in which the charge was actually framed, the seriousness of the comments, and how they should inform its approach to the question of sanctions. The unanimous judgment of the Appeal Board is that the concepts of "*alleged and/or implied bias*" on the one hand, and questioning the referee's "*integrity*" on the other, are inextricably linked on the particular facts of the case.

- 4.20 When the Regulatory Commission indicated that comments questioning the Referee's integrity cast a serious "*aspersion*" which would attract a higher sanction, the key words that it had in mind apply equally to the charge of bias which is based on the self-same words.
- 4.21 Accordingly, whilst the Regulatory Commission may have erred in the key question that it asked itself - a point which Mr. Giovannelli fairly concedes - the Appeal Board accepts his submission that it is unlikely to have had any material effect on the outcome. The same sanctions would have been imposed even if The FA had expressly alleged in the charge against him that Mr. Mourinho's comments called into question the integrity of the Referee and/or that his decision was "*motivated by bias*", or some such form of words.
- 4.22 Alternatively, if it is necessary to do so, the Appeal Board exercises the powers at its disposal and substitutes our decision on this issue for that of the Regulatory Commission. To remit the case back to the Commission for it to reconsider the matter afresh, and how it impacts upon the question of sanctions, would simply incur further unnecessary costs for both Parties.

### **Ground 2 - Unreasonable conclusion on the facts**

- 4.23 We have effectively addressed this ground of appeal in our foregoing reasons in connection with the first ground. The findings made by the Regulatory Commission on the key question made no difference to the conclusion that it reached regarding the seriousness of the comments and the sanctions that were consequently imposed.

## **5. SANCTIONS**

- 5.1 We propose to deal with Ground 3 of the appeal ("Excessive Sanctions") under its own heading.

5.2 A fair penalty should reflect all of the relevant facts and circumstances of a particular case, and attach appropriate weight to both aggravating and mitigating features. To that end, the Appeal Board agrees with and upholds all of the findings made by the Regulatory Commission, contained in paragraph 13 of its detailed Written Reasons, including the context in which the offending comments were made, Mr. Mourinho's previous record, and a consideration of previously decided cases involving a breach of FA Rule E3 for media comments.

5.3 In its Written Reasons, the Regulatory Commission noted brief circumstances surrounding earlier offences:

- (i) In May 2014, Mr. Mourinho was fined £10,000 and warned as to his future conduct by a Regulatory Commission for post-match media comments made by him in April 2014. An Appeal Board upheld those sanctions.
- (ii) In January 2015, he was fined £25,000 and warned as to his future conduct for media comments made following a match in late December 2014. Mr. Mourinho did not appeal against that decision.

In neither of those cases was Mr. Mourinho found to have questioned the integrity of the referee, or to have alleged/implied bias.

5.4 The following factors informed the decision of the Regulatory Commission:

- (i) In January 2015, Mr. Mourinho was fined £25,000 for a significantly less serious breach than the present one. The Regulatory Commission in that case reasoned that a substantially larger fine was justified for a further and more serious instance of misconduct committed less than a year later.
- (ii) The more than doubling of the January 2015 fine compared with the May 2014 fine had not deterred Mr. Mourinho from his latest and more serious breach.

5.5 The Regulatory Commission therefore decided on a fine of £50,000, a doubling of the January 2015 fine. Further, it appeared to the Regulatory Commission that increasing levels of fine are not, on their own, going to be a reliable deterrent for Mr. Mourinho against improper comments to the media. In this regard, the Commission again cited the size of the January 2015 fine compared with the one imposed in May 2014, and the fact that it had still not deterred him from committing his latest, and more serious, breach. The Commission considered whether a touchline ban was indicated. It decided against that option because the offence was not committed during the course of a game, or on or by the field of play. Instead, it decided that a suspended stadium ban was the appropriate and fair sanction to impose, together with the financial penalty:

*“18. In our judgment, the fair way to impose this deterrent is to suspend the ban so that Mr. Mourinho is able quite easily to avoid its ever coming into effect. The matter is in his hands. All he has to do is refrain from any further breach by media comments for the next 12 months, whereupon the ban will expire completely.”*

5.6 The two main planks of Mr. Mourinho’s arguments may be briefly summarised as follows:

- (i) That the fine of £50,000 was excessive and inconsistent with previous penalties; and
- (ii) That it was wrong in principle to impose a stadium ban, albeit a suspended one, when he had never been the subject of a touchline ban, actual or suspended, with or without any conditions attached.

5.7 The range of Penalties that are available to a Regulatory Commission in a standard case are set out in paragraph 8 of the Disciplinary Procedures. They include the power to impose any one or more of the following:

- (a) a reprimand and/or warning as to future conduct;
- (b) a fine;

(c) *suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of matches.*

[...] ...

5.8. The *Guidance for Participants and Clubs* assists an understanding of how the broadly drafted sub-paragraph (c) of paragraph 8 operates in practice and how the discretion available to a Regulatory Commission/Appeal Board in a non-standard case may be applied. The *Guidance* contemplates:

- (i) a 'simple' touchline ban;
- (ii) additional restrictions that may be applied where a touchline ban has been imposed on more than one occasion in a season (*i.e.* a touchline ban with further restrictive conditions attached); and
- (iii) a ground or stadium ban.

5.9 The Appeal Board considered a number of previous media comments cases and press reports, together with the Written Reasons in most, but not all, of those cases. The Regulatory Commission had fewer Written Reasons available to it for comparative purposes.

5.10 Mr. Mourinho's case was predicated on the basis that even if he failed on the first two grounds of his appeal, the severity of this particular offence did not merit a sporting sanction and that, if it did, to 'jump' straight to a stadium ban was unprecedented, unjust, and unfair.

5.11 For The FA, Mr. Giovannelli acknowledged that the imposition of a stadium ban in a case where there had not previously been a touchline ban of any kind was a 'novel' departure from any previous decision, but that the Regulatory Commission was justified in taking the course that it did for the reasons it gave.



5.12 In terms of their severity, the three so-called ‘sporting’ sanctions at the disposal of the Regulatory Commission can properly be ‘ranked’ according to the order in which they are set out at paragraph 5.8 above. The touchline ban with conditions attached (*i.e.* option (ii) above) contemplates that a ‘simple’ touchline ban has already been imposed during a season, but neither the Regulations themselves, nor the *Guidance to Participants*, impose any requirement provide that sanctions must be applied sequentially before a Regulatory Commission can move on to consider one that is more onerous. Whether a sporting sanction is indicated, and what form it should take, is a matter for a Regulatory Commission to consider in the exercise of its discretion, subject to the overarching requirement of fairness and proportionality.

5.13 In the present case, the Regulatory Commission explained why it considered a (suspended) stadium ban rather than a touchline ban “*to be the right order*” (see paragraphs 17 to 19 of the Written Reasons). Post-match media comments have been the subject of touchline bans in a number of previous cases, but suspending a participant from the touchline, even with conditions attached, would not prevent him or her from addressing the media within the stadium following a match. By contrast, a post-match interview that is conducted other than within the confines of a stadium is likely to appear artificial and removed from the events that the participant may be asked to comment upon.

5.14 In addition, the experience of the Appeal Board is that touchline bans, particularly ‘simple’ ones, can often be of limited value as a deterrent penalty. Some managers choose to spend at least part of a match watching from the directors’ box and use a telephone or ‘runner’ to get messages to touchline staff. Touchline bans do not restrict the latter practice. Accordingly, if the objective of a touchline ban is to make communication between coach and players more difficult, their effectiveness as a punishment or deterrent can be questionable. Their efficacy is undermined further if a team goes on to win all of its matches whilst its manager is the subject of a touchline ban, which has happened.

5.15 The Regulatory Commission was also entitled to take into account Mr. Mourinho's perplexing history and pattern of offending which was described as "*recidivist*" in nature in The FA's submissions. Following his return to English football in the summer of 2013, he has breached FA Rule E3(1) on five occasions: two relating to his on-field conduct, and three arising out of media comments.

5.16 This is the first occasion when Mr. Mourinho's media comments have been found to have gone beyond the catch-all allegation of bringing the Game into disrepute under Rule E3(1). Nevertheless, the Appeal Board shares the increasing concern expressed by both the Regulatory Commission in January this year, and the Commission in the present case. Previous sanctions that have been imposed appear to have had little if any effect, including the significant fine imposed earlier this year for media comments. In principle, therefore, an even more severe deterrent penalty than those that have previously been imposed was indicated for this latest transgression.

5.17 By inference, Mr. Mourinho denied the allegation of bias. This required the Regulatory Commission to make findings (albeit addressing a different question) before proceeding to consider sanctions. The Appeal Board has spent even more time considering detailed and lengthy submissions in relation to issues of integrity/bias and the way in which the misconduct charge is framed in this case. There was also no realistic prospect of Mr. Mourinho successfully defending the broad allegation of bringing the Game into disrepute. In those circumstances, the credit to which he is entitled for his guilty plea is limited.

5.18 In the unanimous judgment of the Appeal Board, the decision of the Regulatory Commission to impose both a significant financial penalty and a sporting sanction for this latest offence committed by Mr. Mourinho was correct in principle.

### The fine

- 5.19 The previous highest fine imposed by a Regulatory Commission for media comments was £30,000 in March 2011, where the charge was one of calling into questioning the integrity of the match referee (and bringing the game into disrepute). In that case, a previous suspended touchline ban was also activated, in addition to the imposition of a further touchline ban for the instant offence. For a subsequent offence, however, the participant received a much lower fine of £12,000, supporting the argument that fines should not simply increase on an upwards trajectory, even in cases of multiple antecedents.
- 5.20 Ms. Gallafent argued that to simply double the previous fine that had been imposed on Mr. Mourinho in January 2015 was arbitrary and wrong in principle. She had also calculated that both the average and median fine in a large sample of previous cases for adverse media comments was one of £8,000. Coincidentally, that figure represents the fine which the Regulations provide should be imposed in a standard case involving media comments.
- 5.21 It was also observed that the £50,000 fine imposed on Mr. Mourinho exceeded the fine in a standard case for a mass player confrontation. In our view, though, any attempt to compare and contrast the financial penalties imposed for other, unrelated, misconduct offences is fraught with difficulties. This is demonstrated by the fact that in a case where media comments were admitted to be insulting and abusive, a fine significantly in excess of £50,000 was imposed by The FA. There is a tolerably good argument that an allegation of bias, particularly one that is levelled at a match official whose independence and impartiality is crucial to both his reputation and that of the Game itself, is more damaging than simply shouting obscenities at him because you do not agree with a particular decision.

5.22 Ultimately, a majority of the members of the Appeal Board are of the view that the fine of £50,000 imposed on Mr. Mourinho was within the generous ambit of discretion available to the Regulatory Commission and was not excessive. In the context of a non-standard case, which this one is, the guidance provided by previous cases is instructive, but not binding. Consistency is desirable, but simply because a fine significantly exceeds any previous financial penalty does not automatically render it excessive and unfair. The fine in this case properly reflects all of the relevant aggravating and mitigating factors.

5.23 Additionally, whilst it was not cited as a reason by the Regulatory Commission, the prevailing view amongst the Appeal Board members is that the fine also reflects the significant inflation in football finance and revenues at the highest level that has taken place in the four-year period since the previous highest fine was imposed for media comments.

5.24 The contrary view is that if a stadium ban is imposed, particularly as a first sporting sanction, that factor should be taken into account and reflected in the level of any additional financial penalty, even where the ban is only of short duration and suspended. In order to assess whether they are reasonable and proportionate, or excessive, one must step back and consider the overall level of the sanctions, and the punitive and/or deterrent effect which they are intended to have on a participant in Mr. Mourinho's position.

#### The sporting sanction

5.25 The Appeal Board is unanimously of the view that the imposition of a suspended one-match stadium ban was a sanction which the Regulatory Commission was reasonably entitled to impose in principle, in all of the circumstances of the case. We reject the argument that in doing so the Regulatory Commission misinterpreted or failed to comply with the rules or regulations relevant to its decision and/or imposed a penalty, award, order or sanction that was excessive.

5.26 The Regulatory Commission clearly had at the forefront of its mind the need to focus Mr. Mourinho's attention even further than before when he makes media comments. To that end, the imposition of a suspended stadium ban represents a meaningful deterrent. The Commission properly considered whether to impose a touchline ban, but decided against that option, which it was entitled to do in the exercise of its discretion.

5.27 In also upholding this aspect of the sanctions imposed by the Regulatory Commission, the Appeal Board observes that a suspended one-match stadium ban is at the very bottom of the range, both in terms of the length of such a ban and whether it should be immediate, suspended, or part immediate/part suspended. We adopt and reiterate the following observation made by the Regulatory Commission:

*"In our judgment, the fair way to impose this deterrent is to suspend the ban so that Mr. Mourinho is able quite easily to avoid its ever coming into effect. The matter is in his hands. All he has to do is refrain from any further breach by media comments for the next 12 months, whereupon the ban will expire immediately."*

## **6. COSTS**

6.1 Although Mr. Mourinho has been partially successfully on Ground 1 of his appeal, he has failed to overturn the sanctions imposed by the Regulatory Commission. He is therefore ordered to pay the reasonable costs of convening the Appeal Board.

## **7. DECISION**

7.1 It follows from the foregoing reasons, that the decision of the Appeal Board is as follows:

- (i) The Appellant's appeal against the sanctions imposed by the Regulatory Commission is dismissed.
- (ii) The sanctions shall therefore continue to take effect in accordance with the terms of the Order made at paragraph 20 of the Written Reasons of the Regulatory Commission; and
- (iv) The Appellant shall pay the reasonable costs of and incidental to the convening of the Appeal Board.

2<sup>nd</sup> November 2015

Craig Moore, Barrister, Independent Chairman of the Appeal Board

Alan Hardy, Independent Member of the FA's Judicial Panel

Shaun Turner, FA Council Member

**Appearances**

For the Appellant

Ms. Kate Gallafent QC, instructed by Chelsea Football Club

For the Respondent

Mr. Dario Giovannelli, FA Counsel