

In the matter of a Regulatory Commission of The Football Association

Between:

The Football Association

and

Reading Football Club

REGULATORY COMMISSION DECISION AND REASONS

Introduction and background

1. These are the full reasons for: (i) the 6 July 2015 decision of this FA Regulatory Commission finding a charge of misconduct under FA Rule E21 for a breach of FA Rule E20 proven against Reading FC for a pitch incursion at an FA Cup 6th round replay on 16 March 2015; and (ii) our 5 August 2015 decision on the penalties to be imposed on Reading. We provided our written reasons for our findings of misconduct to the parties on 6 July 2015 and they are contained in paragraphs 3 to 43 below (with minor changes not affecting the substance). We then invited written submissions on penalty and costs and held a video/telephone hearing on Wednesday 29 July 2015 when counsel for The Football Association and Reading made supplementary oral

submissions. Paragraphs 44 to 83 set out our decision and reasons on penalties and costs. We are unanimous on everything in our decisions and reasoning.

2. We include references to the bundles of documents used before us as that may be helpful if there is any appeal to an FA Appeal Board.
3. Reading FC reached the semi-final of the FA Cup for the first time in 88 years when they beat Bradford City FC 3-0 in a replay on 16 March 2015. The match was played at their home ground the Madejski Stadium. The attendance was 21,977, which was slightly less than the stadium capacity of 24,242. There were 3,348 Bradford supporters at the game. The match was televised live on BBC1.
4. Reading scored two goals in the first ten minutes and a third goal in the 68th minute, so there was no extra time. Unfortunately, immediately at the end of the game there was a pitch incursion by many hundreds of Reading fans, who were naturally very excited at getting to a Wembley FA Cup semi-final. There was a line of police in front of the Bradford fans, who occupied the southern end of the stadium, and those visiting fans did not encroach on the pitch. There were no reported injuries and the pitch was cleared in about 8 minutes. Several of the Bradford players remained on the pitch for all or most of that time.
5. It was a criminal offence for fans to enter upon the pitch and a few fans were brought before the courts. The Football Association justifiably takes all such incursions very seriously and will always seek an explanation from the clubs concerned. Mr Chris Whalley, the FA's Senior Manager, Stadia Safety & Security, wrote to both Reading FC and Bradford City FC on the day after the match. The FA was not satisfied by Reading's response and by letter dated 15 April 2015 ("the Charge Letter") charged Reading with misconduct for breach of FA Rule E20. Bradford, as the away club, was clearly not responsible for what had happened and was not charged with any offence.
6. The members of this Regulatory Commission are Nicholas Stewart QC (chairman), Mr Chris Reeves and Mr Peter Fletcher. There was an oral hearing in London on Thursday 18 June 2015 at which Mr Tom Day of counsel appeared for the FA and Mr

Nick de Marco of counsel for Reading. At the end of that hearing the Regulatory Commission informed the parties that we should not be reaching a decision that day but would notify the parties when we had; and if we found the charge proven, we should then invite submissions on the question of penalty. We have found the oral and written submissions of both counsel extremely helpful.

FA Rules E20 and E21: The charge and the due diligence defence

7. FA Rule E20 states (as far as relevant here):

“Each . . . Club shall be responsible for ensuring:

(a)

(b) that no spectators or unauthorised persons are permitted to encroach onto the pitch area, save for reasons of crowd safety. . .”

8. Rule E21 then states that any Club which fails effectively to discharge that responsibility under E20 in any respect whatsoever shall be guilty of Misconduct (as defined in FA Rule E1).

9. The pitch incursion happened. Reading is guilty of misconduct under those provisions unless it can establish the specific defence provided by Rule E21, as follows:

“It shall be a defence in respect of charges against a Club for Misconduct by all spectators and all persons purporting to be supporters or followers of the Club, if it can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons for crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged.”

Reading does rely on that defence. It is accepted that the onus lies on Reading to establish the defence on balance of probability.

10. The Charge Letter realistically anticipated Reading’s reliance on the rule E21 defence and stated that in answer to that defence the FA would say that:

“the Club failed to discharge its duty in respect of due diligence in that, having identified a risk of pitch incursion at the end of the fixture, the Club failed:

- a. to put in place an appropriate strategy to prevent or deter a pitch incursion;
- b. to provide a sufficient number of stewards to prevent or deter a pitch incursion; and/or
- c. to protect players and/or match officials from the risk of harm in the event of a pitch incursion.”

The FA accepted at the hearing that if the other points failed against Reading, point 3 alone would not stand as a basis for finding the charge proven and rejecting the E21 defence. That concession correctly follows from the terms of rules E20 and E21: Whereas the risk of harm to players and/or match officials is clearly one of the reasons for preventing pitch incursions in the first place, the specific responsibility under E20 is to ensure no pitch incursion and the rule does not mention failure to protect players or match officials as a separate stand-alone responsibility.

11. Points a and b do go to the heart of the matter. Put more broadly, Reading must show that they engaged an appropriate level of resources to protect against a pitch incursion and that they deployed those resources with due competence. They were not required to eliminate all risks of a pitch incursion, as that would nullify the due diligence defence expressly provided by E21. Mr Day described the test of due diligence as a “shifting standard”. That is correct if understood in the sense that what is “due” is to be judged in all the circumstances that applied to that match in that stadium on that night, including the degree of risk which was known or should have been known to the responsible officers and employees of Reading FC.

The witnesses

12. The following witnesses made written statements:

Witnesses for The FA

Mr Chris Whalley (two statements A26 and C4) – Senior Manager, Stadia Safety & Security, The FA, who was not at the match.

Mr Barry Norman (A17) – FA Crowd Control Adviser, who was at the match in that capacity.

Witnesses for Reading (all at the match)

Mr Clive Doyle (B6) – Reading Safety Officer

Mr Ray Booth (two statements B1 and C8) – Reading Stadium Manager.

Mr Dave Parker (C11) – Chief Inspector, Thames Valley Police.

Mr Nigel Howe (B12) – Chief Executive of Reading FC.

All witnesses except Mr Howe attended the hearing and were cross-examined. We make no criticism of Mr Howe in saying that his statement added nothing useful to the evidence of others more directly involved in the safety and security aspects of the fixture.

13. Among other written material we also had brief Extraordinary Incident Report Forms from the Match Assessor Mr Michael Reed. The only one requiring specific mention is the last [A7], which stated:

“At the final whistle a large number of home spectators came on to the field of play to celebrate the FA Cup victory. The home stewards were expecting this and had suitable plans in place to ensure the safety of the players and the match officials.”

That brief report could cut both ways but in the light of the more detailed evidence from other sources it adds nothing of weight.

14. We shall not set out a detailed analysis of the evidence of each of those witnesses, which is unnecessary. We focus on the key findings in order to explain how we reach our conclusion that Reading has failed to establish a defence under rule E21 so that the charge is therefore proven.

15. We also viewed three video recordings from the match, which had been supplied to us before the hearing. Videos 1 and 3 showed events immediately after the final whistle, including the pitch incursion. Those were helpful to us. Video 2, which did not help us, showed an incident in the 75th minute when a home spectator ran on to the pitch and was removed by stewards. At the hearing we were shown videos of other matches where there had been pitch incursions, but we did not find them helpful either.

The risks at the match

16. Mr Doyle explained in his statement how before a meeting he and Mr Booth held with the police on 10 March 2015 the match had already been upgraded from category A to the higher security risk of category B and then at that meeting was further upgraded at the suggestion of Thames Valley Police to category C (the highest category). The reason for the category C was reports received that around 100 Bradford risk supporters might be coming, with the intention of seeking disorder with Reading risk supporters, and that they might also be supported by Chelsea risk supporters. It was therefore decided to double the number of response stewards normally used [for an event of this category: paragraph 7 of his statement [B6].

17. That was an identified risk from the Bradford supporters. On the Reading side, we note item 14 in the Stewarding Operation Order & Risk Assessment [B115] which includes the following:

“The likelihood of fans wishing to come on the pitch at the end of the game are high and although a friendly pitch invasion is not dangerous it may become so if fans go towards opposing fans still sitting in the stand. (Aston Villa situation). We will steward heavily on the pitch side with response stewards. We will prevent incursions during the game and aim to do so at the end of the game. We will be supported by the police.”

That was an entirely realistic assessment, especially if Reading achieved what would be a historic victory. We note the implicit recognition in that note that while Reading would aim to prevent incursions at the end of the game, they might fail. That is not an objectionable position for Reading to have adopted though we do stress that even

friendly, celebratory pitch incursions are a very serious matter and a club must err clearly on the side of caution in its preventative measures.

Due diligence: Did Reading engage enough stewards?

18. The level of stewarding, in combination with the police presence, needed to cope with both the Bradford supporters, who were known to include a troublesome hard core, and the serious risk of a pitch incursion.

19. It is necessary to be clear about the number of stewards who were engaged by Reading for this match and how many of them were available for prevention or deterrence of a pitch incursion. There was some initial confusion in the evidence on the basic numbers and Mr Whalley made adjustments between his first and second statements. We extract the following from all the oral and written evidence:

(1) The total number of safety staff, excluding police, was 234 (while we note that in paragraph 8 of his first statement Mr Booth refers to a document showing that Reading “intended” there to be 234 stewards, it appeared to be accepted that this was the actual total on the day even though Mr Doyle’s letter to the FA dated 22 March 2015 [A8] said that total safety staff deployed was 220).

(2) Mr Booth produced a breakdown of those 234 locations and functions [Document 4 @ B15 and Document 6 @ B17].

(3) 65 of those stewards (or possibly 63, according to Document 9 @ B79-80 as reviewed by Mr Whalley in his second statement at C5) were in fixed positions. (Just to avoid confusion, it is coincidence that the number of response stewards shown on Document 4 @ B15 is also 65.)

(4) Mr Booth, in paragraph 8 of his first statement [B1] refers to a figure of 169 stewards (i.e. 234 less the 65 fixed positions). That needs further scrutiny. The Document 4 breakdown shows 47 in other stewarding roles which could not sensibly be regarded as available for prevention/deterrence of incursions: customer service, car parks, cashiers etc. There is also a figure of 16 in

supervisor roles and we do treat them as available for prevention/deterrence. That ties in with Mr Booth's own explanatory note Document 6 [B17].

(5) Taking away those 47 from the 169 leaves a balance of 122 stewards. In our view that is a key number in judging the adequacy of stewarding resources in the light of the known high risk of Reading supporters wishing to come on to the pitch: see particularly paragraphs 28-32 below where we discuss the Green Guide.

(6) We shall work with that figure of 122 while noting that minor discrepancies of a few either way would not materially affect our overall conclusions.

20. Mr Whalley's first statement [A26] included two tables. The first, which was corrected in his second statement, set out steward numbers for this match and five other Reading home games since December 2007 observed by FA Crowd Control Advisers. The second sets out steward numbers from what is described as a selection of games, mainly in the Championship, at other grounds with a similar capacity to Reading's ground. There are seven matches in that second table, in a date range May 2008 up to and including the drawn 0-0 game at Bradford which triggered the replay on 16 March 2015.

21. The first table, as corrected, does support what Mr Whalley says in paragraph 45 of his first statement [A26], that Reading had previously deployed higher numbers of stewards, though it shows only one 2009 Championship and one 2007 Premier League where that was so. There were 198 stewards and 75 police for the May 2009 Birmingham game, which was a late season game where promotion had been at stake. We do not know details of the Liverpool game, where according to Document 9 [B87] (the basis of Mr Whalley's corrected table) there were 198 stewards and 46 police, compared with an apparently like-for-like figure of 187 stewards and 75 police for the Bradford replay – a police figure which does not match Mr Norman's report [A16] or clearly match Mr Doyle's 22 March 2015 letter to the FA [A8], though that discrepancy is not material to our overall conclusions. We gain limited assistance from that table, which shows only that the overall steward/police numbers for the Bradford replay were broadly in line with a handful of other big games at Reading over a 5 year period 2007-2012. The breakdown on Document 9 [87] shows that by

comparison with all other games at the Madejski Stadium in the season 2014-2015 the steward numbers were higher and the police numbers much higher for the Bradford game. It was simply incorrect for Mr Whalley to have asserted in paragraph 52 of his first statement that Reading FC did not appear to have increased their steward resources in preparation for this high-profile Cup tie.

22. The second table is no greater help. Five of the six non-Reading games were local derbies, which are always liable to raise special security concerns. We do not know details about those games and the grounds where they were played. Moreover, the table shows only crude overall steward numbers, without a breakdown and without any figures for police presence.
23. Mr Whalley's first statement [A26] posed the question in paragraph 38: Could Reading FC have done more to prevent the pitch incursion? Leaving aside for the moment that the apt question is whether Reading *should* have done more (because they, like any club, always *could* have done more), it is necessary to consider Mr Whalley's first statement in the light of his second statement [C4] and his oral evidence. He asserted that with no pitch perimeter fences in English football stadiums, a home club would have to ring the pitch perimeter with stewards and police officers – by which he meant they would have to do that in order to prevent or adequately deter a pitch incursion. Mr Whalley calculated that Reading would have needed in the region of 258 stewards to ring the pitch in that way.
24. That particular issue became confused by Mr Whalley's apparent initial view that ringing of the pitch in that way meant that the stewards should link arms. It appears that such linking is disapproved by the police as it is an unsafe technique (see paragraph 5 of Mr Parker's statement @ C11) and Mr Whalley resiled from that view anyway. He nevertheless stood by the notion that for effective surrounding of the pitch the stewards, though not linking arms, should be one per metre. That would have required about 258 stewards, which on the figures we are using as in paragraph 17 above would have meant a total number of at least 370 stewards (i.e. 258 + 47 + 65). That represents an increase of 136 on the number of stewards actually engaged by Reading for this match.

25. Mr Whalley's figures come out at 315 to 365 stewards needed by Reading if they were to have been able to place 258 around the perimeter. It makes no material difference whether we are looking at Mr Whalley's top figure of 365 or the figure of 370 which we extract from the evidence as explained above.
26. Mr Whalley observes in paragraph 41 of his first statement that Birmingham City FC (with a stadium capacity of 30,000) engaged 462 stewards for a Premier League derby against Aston Villa in 2011 and 402 stewards for a Carling Cup semi-final against West Ham United on 23 January 2011. That tells us very little, except that a number such as 365 stewards for a stadium like the Madejski is not so out of the way that it can be dismissed as unrealistically high. On this point, it should be borne in mind that although Reading's stadium has about 20% less capacity than Birmingham's, there is not a corresponding reduction in the resources needed to guard against the risk of pitch incursions as the pitch perimeters will be closely similar.
27. Mr Whalley then proceeded to ask himself, in paragraph 42, the consequential question whether it was reasonable to expect Reading to have engaged 315 to 365 stewards for this match. We put the question differently: Was it reasonable (in other words, was it due diligence) for Reading to engage only 234 stewards, including the 65 (or 63) in fixed positions and the 47 mentioned in paragraph 17(4) and (5) above who could not have been readily available for pitch protection/deterrence?
28. Both parties and their witnesses are agreed that weight is to be given to "the Green Guide", which is *The Guide to Safety at Sports Grounds*. There is also The FA's own *Good Practice Guide for Football Clubs on Crowd Management Measures*, issued to all clubs in 2010, which is quite evidently also a matter of weight in considering whether a club has shown due diligence.
29. Looking first at the Green Guide, Mr Booth cites that guide in paragraph 8 of his first statement [C8] and attaches an extract at Document 7 [B19], which states under the heading "3.15 Stadium Plan"

"Staffing numbers will vary considerably at each ground, according to its size and configuration, and the nature of the event. However, experience has shown that by ensuring the availability of staff for the following categories, management should meet the needs of most sports ground, matches or events:

- a. supervisory staff . . .
- b. static posts . . .
- c. mobile posts: typically a ratio of one steward per 250 of the anticipated attendance.

This ratio should be increased to up to one per 100 of the anticipated attendance when the risk assessment shows a need for a higher level of safety management, for example at a high profile event or where there are large numbers of children or where there is a likelihood that large numbers of spectators will not comply with safety instructions.

- d. specialist stewards . . .
- e. additional stewards: if needed for deployment in particular circumstances or for particular events.”

30. The anticipated attendance at the Reading v Bradford replay was 22,900, so that 169 stewards would give a ratio 1:135. However, we do not see that as the correct figure for the purpose of the Green Guide. The third paragraph of Mr Booth’s explanatory note Document 6 [B17] expressly indicated that the ratios in the Green Guide applied after disregarding the 65 fixed positions; and his section headed “Additional Safety Staff” clearly relates, if not to the exact number, to the 47 other positions we have mentioned.
31. It follows that Mr Booth’s ratio of 1:130 in paragraph 8 of his first statement (or 1:135 on the strictly correct basis of the expected attendance when assessing due diligence in match preparations) is fundamentally flawed as it is inconsistent with his own approach in Document 9. We calculate the correct ratio for comparison with the Green Guide as 122: 22,900, which is 1:187.
32. The figures in the Green Guide do not amount to a precise formula and they are not mandatory. Nevertheless, the Green Guide is sufficiently authoritative that where a club engages resources significantly below the guidelines levels, then in the absence of a compelling explanation it is unlikely to establish due diligence under E21.
33. Mr Whalley’s reliance on the FA’s *Good Practice Guide for Football Clubs on Crowd Management Measures* is weakened by his incorrect conclusion at paragraph 52 (as mentioned in paragraph 21 of this decision). Nevertheless, although at paragraph 28 of his first statement [B1] Mr Booth disputes Mr Whalley’s assertion

that Reading did not follow the guidance in that publication, in paragraph of Mr Whalley's first statement he cites the following from that guide:

“Steps that clubs should take to deal with any mass pitch incursion include, but are not limited to, the following:

- If there is intelligence or information regarding, or if during a match there are signs among the crowd that could signal, a potential pitch incursion, stewards should be deployed along the pitch perimeter to reduce the risk. The safety officer and police commander should jointly consider the additional deployment of police officers to assist the stewards.
- Stewards on pitch perimeter duty must do what they can to prevent any incursion.”

34. Neither that guidance nor the Green Guide say that there needs to be the one steward per metre perimeter cover suggested by Mr Whalley, but it makes plain that where (as in this case) there is a known serious risk of a pitch incursion, substantial stewarding of the pitch perimeter is expected.

35. We do not wish to catch Mr Booth out unfairly but it is reasonable to adopt his own view (in paragraph 8 of his first statement) that he and his colleagues felt that the higher, upper risk end of the Green Guide formula was what was required for this particular match. That strikes us as realistic in the light of the clearly identified risk of a pitch incursion. However, Reading then misapplied that formula in the way mentioned in paragraph 29 above. To have achieved a ratio of even say 1:135 for the expected attendance of 22,900 would have required 169 stewards in addition to the 65 fixed and the 47 others we have identified.

36. It is not necessary for this Regulatory Commission to say what would have been the minimum number of stewards or the minimum combination of mobile stewards, fixed stewards, other safety staff and police which would have amounted to due diligence by Reading in the preparations for this match. On the figures and other information alone, without recourse to the video recordings of the pitch incursions, we should have been unable to find that Reading had exercised due diligence in the preparations for this match. We do not have to decide how far they would have needed to go in

engaging additional resources. It is clear to us that in the light of the available authoritative guidance they took an unnecessary chance on a pitch incursion where the nature of the particular game made that a very high risk.

37. The video recordings 1 and 3 strongly reinforce that conclusion. Mr Whalley said in paragraph 50 of his first statement [A26] that although Reading appeared to have deployed stewards on the pitch perimeter, they were clearly not in sufficient numbers to prevent or deter the post-match pitch incursion. Of course, literally speaking that is a statement of the obvious, given that the pitch invasion occurred. But the thrust of Mr Whalley's complaint, which is that the numbers were unreasonably low, is correct. We do not accept at all Mr Doyle's assertion in paragraph 24 of his statement [B6] that Reading "did deploy stewards *en masse* to bolster pitch side security in particular in front of the east stand". That is not what we see in the videos. The combination of police and stewards was certainly strong and effective in front of the Bradford supporters along the south goal end of the stadium; and we see a sizeable contingent of stewards in front of the tunnel. However, even along the south-east end of the pitch, where the incursion did start (in line with Reading's expectations as to where it would start if it did happen) the stewarding was sparse. Along that part of the touchline there were large gaps where fans could easily jump on to the pitch. On the west side of the ground, from where it must have been obvious that fans would follow once they saw home supporters encroaching from the opposite side, there was no stewarding which stood any realistic chance of then deterring a pitch incursion. The video evidence does not fit the statement in item 14 of the Stewarding Operation Order & Risk Assessment that "We will steward heavily on the pitch side with response stewards".
38. If a club is to make good its defence under E20 it must show that it exercised due diligence both in the planning and preparation for the match and in the handling of the situation right up to the pitch incursion. Care must be taken to avoid unfairness to Reading by hindsight judgments when we can see that it went wrong, and particularly in judging deployment decisions which might have had to be taken rapidly under pressure during the game. It strikes us, for example, that perhaps slightly too many stewards were clustered around the tunnel but even if a few of those stewards had been moved to the pitch perimeter, it would have made no difference anyway. The

problem was that Reading never did engage sufficient resources to have any serious prospect of successfully deterring or preventing a pitch incursion which they knew was a high risk.

39. We do not say that there is no difference in the resources which a club would be expected to engage to guard against a hostile pitch incursion as opposed to a friendly, celebratory incursion. Somewhere in the overall assessment of due diligence and the balance to be struck in judging what resources should reasonably be engaged, the distinction is likely to be relevant. Nevertheless, we do consider that due diligence in steps to try to prevent even a friendly pitch incursion required significantly more than Reading did in this case. The evidence, including the tellingly clear evidence of the video recordings, shows that they stood no serious chance of fending off the very likely friendly incursion if Reading won the game and they ought to have done significantly more in their engagement of stewarding resources to deter and if possible prevent the incursion.
40. We received no evidence of the cost of additional stewarding but we should not particularly have expected it. While Reading was not expected to squander money on unnecessarily high levels of stewarding, the cost of extra stewards (even up to Mr Whalley's top figures, though without our saying that would have been necessary) would not have been high in relation to the revenue and other costs of this big televised FA Cup game.
41. Mr Parker spent the match in the control room, shadowing Mr Doyle as part of his NVQ level 4 Spectator Safety Management qualification. He had no operational role for the match. He gave evidence that there had been a failure by the police to deploy their resources as agreed, apparently by not using them along the south-east touchline. We are not impressed by that point, which was not raised in any of Reading's other statements. The police resources were heavily focused on the Bradford supporters' end, as it was crucial to prevent any contact between Reading and Bradford fans. It is not clear exactly what the police had agreed to do which they then failed to do and it is certainly not shown that it would have made any practical difference. There just were not enough stewards engaged by Reading and we do not consider that any realistic adjustments to the police deployment would have repaired the deficiency.

Conclusion: Charge proven

42. We have not overlooked the favourable comments made by Mr Norman and Mr Parker but our judgment is that Reading have failed to establish that they used due diligence for the purposes of their defence under rule E21.
43. The charge of misconduct is therefore proven for Reading FC's failure to discharge its responsibility under rule E20 of ensuring that no spectators or unauthorised persons were permitted to encroach onto the pitch area at the end of the match Reading FC v Bradford City FC on 16 March 2015.

Penalty

44. While we have noted in paragraph 39 above some distinction between hostile and friendly or celebratory pitch incursions, our starting point is that there is a heavy responsibility under Rule E20 to use due diligence for the prevention of any sort of pitch incursion, especially a mass incursion (as opposed to the occasional show-off clown such as seen on video 2 in this case, though that is not to be condoned or tolerated either). "Friendly pitch incursion" may be a useful shorthand, but whether celebratory or hostile and whether or not by home fans alone, all pitch incursions are inherently dangerous. Moreover, every time a mass pitch incursion is seen on television, it can only encourage future incursions. It is important to guard against any tendency for clubs to suppose that there is tolerance of so-called friendly pitch incursions and that the required due diligence is significantly lower than for potentially out-and-out hostile or aggressive incursions.
45. It should be clear from our finding and reasons on this breach of Rule E20, but to avoid any doubt we make it expressly clear here, that it is not just that Reading has failed to meet the onus of establishing due diligence on its part so as to amount to a defence under Rule E21. We consider that Reading came nowhere near the necessary

level in its engagement and deployment of resources to deter and so far as reasonably possible prevent any pitch incursion.

46. Reading's written submission on penalty contain (in paragraph 3) observations on our analysis of the stewarding numbers at the match, particularly in relation to: (i) our treatment of 47 stewarding roles which we have said in paragraph 19(4) could not sensibly be regarded as available for prevention/deterrence of incursions; and (ii) the 65 fixed positions which include 28 pitch positions. The submission notes that this was a matter not fully in evidence, or examined, at the hearing on 18 June 2015 (in which context we remind ourselves that the onus was on Reading to establish the defence of due diligence under Rule E21). Reading has suggested that we may wish to bear those further observations in mind in either reviewing our decision notified on 6 July 2015 or with respect to sanction.

47. Until we had reached a final decision on all matters including penalty and costs, it remained open to this Regulatory Commission to amend our 6 July 2015 decision and reasons in any way and to any degree we thought fit. However, we see no need to do so, but we do add these supplementary comments:

(1) We note paragraphs 30 and 31 of our reasons above: Reading's own stadium manager's explanatory note would exclude both the 47 and the 65 for the purposes of the Green Guide ratio.

(2) We are not satisfied that Reading have shown on the overall evidence that all or anywhere near all of the 29 stewards mentioned in 3.1, 3.2 and 3.3 of that Reading submission could or would have been moved in practice sufficiently quickly and flexibly to have made any material difference to the pitchside protection against incursion. It is also clear from the video evidence that it did not happen anyway.

(3) There are serious practical difficulties with that Reading suggestion. It would not have approached due diligence by Reading to plan on the footing that in the case of a threatened pitch incursion the number of stewards then needed around the pitch would leave the car park apparently bereft of stewards and supervisors (which must itself have safety implications) and the 11 customer service staff no longer available

for their primary allocated duties. We received no evidence that any of those people were deployed in any form of response to the pitch incursion.

(4) While the 28 pitch position stewards mentioned in 3.4 of that submission were already inside the stadium, there was a reason for their fixed positions. We are not satisfied that Reading have shown on the overall evidence that all or anywhere near all of those 28 stewards could or would have been moved in practice sufficiently quickly and flexibly to have made any material difference to the pitchside protection against incursion by joining a ring of stewards along three sides of the pitch as described by Mr Whalley (though without linking of arms). Again, it is clear from the video evidence that it did not happen anyway.

48. In any case, the penalty will be a fine and we are not approaching our decision on the appropriate level of fine by a calculation linked mathematically to a precise deficiency in steward numbers. Where we said in our 6 July 2015 reasons (see paragraph 19(6) above) that minor discrepancies of a few either way would not materially affect our overall conclusion, we had in mind that any discrepancies in our calculations could only be minor, as we still believe they would be. But even considerably larger discrepancies would not materially affect our overall conclusions either on the breach of Rule E20 or the appropriate penalty, as there is no analysis which gets Reading anywhere near due diligence under Rule E21.

49. We have taken it in Reading's favour that the total number of stewards engaged for the match was 234, despite the lower figure of 220 in Mr Doyle's letter [A8] mentioned in paragraph 19(1) above. With the most favourable adjustments possible even on Reading's own submissions (which would still leave 37 of the fixed position stewards somewhere other than in pitch positions) there were only 197 stewards available for pitchside protection, which is well short of the 258 which were needed to ring the pitch (though not linking arms) on the three sides not protected by the police in front of the Bradford supporters' end.

50. We have reviewed all the evidence for the purposes of our decisions on penalty and costs. As remarked in paragraph 42 above, in reaching our decision on the Rule E21 defence and the breach of Rule E20 we had noted the favourable comments made by

Mr Norman and Mr Parker and we have due regard to them again on the question of penalty, as well as to other positive steps such as noted in paragraphs 18 and 19 of Mr Whalley's first statement [A26].

51. Our decision is that Reading FC are fined £100,000. On any analysis of the overall evidence – written, oral and video – Reading engaged stewarding resources well short of what was realistically required to protect against the clearly recognised risk of a pitch incursion. The fact that there were no injuries or property damage as a result of the incursion was fortunate but Reading's culpability in allowing that risky and not only foreseeable but (note paragraph 17 above) practically foreseen incursion to arise was serious. Once the incursion had occurred, it is apparent from videos 1 and 3 that there were not enough stewarding resources to take sufficient steps to protect Bradford players and encourage them to leave the pitch without delay. Again, it was just good fortune that the players and the vast majority of the fans (though not every one of them, as we see in the video evidence) behaved in a non-aggressive and non-confrontational way. It was also good luck that the throwing of a flare from the pitch into the Bradford supporters did not hurt anyone or cause any extra trouble.
52. Our firm rejection of Reading's E21 defence, which is not a marginal decision, means that in our view Reading were clearly negligent in relation to this vital safety issue of prevention of pitch incursion.
53. We now explain why we have imposed a fine of £100,000.
54. First, we must deal with a submission by Reading's counsel Mr de Marco based on The FA's *Guidance for Participants and Clubs on Disciplinary Matters 2014-15 Season* ("the Guidance"). It is circulated to all clubs but is neither part of any FA rules or regulations nor mentioned anywhere in them, or anywhere in the 592 pages of the *FA Handbook Season 2014-2015*. The first paragraph of the Guidance states:

"These guidelines have been prepared to provide helpful guidance to Clubs and Participants on the disciplinary procedures for the 2014/15 season. This guidance does not alter or replace the actual FA Rules and Regulations which should be referred to for the full provisions relating to disciplinary matters. In the event of any inconsistency between this guidance and the Rules and Regulations, the Rules and Regulations apply."

55. While all Participants under the disciplinary jurisdiction of The FA are taken to know the rules and regulations which apply to them, reflecting the well-established wider principle that ignorance of the law is no excuse, the express reminder that it is the rules and regulations which have precedence is something which clubs are expected to have firmly in mind. Realistically, players are not likely to spend much or any time with the FA Handbook, but clubs (especially fully professional clubs who have sizeable and well-appointed stadiums) through their club officials are expected to be fully conversant with the rules which may affect them. We have no doubt that Reading has always responsibly informed itself of the relevant rules and regulations, and particularly FA Rules E20 and E21.

56. The Guidance consists of 22 pages and covers a wide range of matters. The pertinent section for Reading's submissions is at page 9 under the heading "Reminders to Clubs and Players" and is introduced by the words: "In recent seasons clubs have been reminded about the following three issues which have been and remain a cause for concern. In addition clubs and players are reminded of the need to show respect to the Match Officials at all times". Those three issues are then specifically addressed and they are: (1) Players approaching the Match Official in a confrontational manner; (2) Players in mass confrontation with other players; and (3) Players not leaving the field of play directly when they are dismissed. We leave aside the last, which could have no possible bearing on this Reading case.

57. As to the first two of those issues, Reading's submission is based on the Guidance stating for each of those issues that in non-standard cases "you are reminded of the maximum sanction available to a Regulatory Commission where a case has been found proven". Those maximums are then set out as:

- Premier League Clubs: £250,000
- Football League Championship Clubs: £50,000
- Football League One Clubs: £25,000
- Football League Two Clubs: £10,000
- Conference Premier & FA Women's Super League Clubs: £2,500

with the addition that:

- For serious cases the deduction of **two** points will also be considered

58. In the part relating to Players in mass confrontations with other players, there is a specific comment that clubs are responsible for the actions of individual players and will be liable to sanction as a breach of FA Rule E20. Although there is no equivalent comment in the part relating to Players approaching the Match Official in a confrontational manner, any sanction against a club would also be for a breach of Rule E20.

59. We are informed by the Judicial Services Department of The FA, acting as secretariat to this Regulatory Commission, that those maximum sanctions were agreed with “stakeholders” (Professional Footballers Association, League Managers Association, Premier League, Football League) some 6 years or more ago. We do question whether it is entirely satisfactory to set specific limits on the discretion of Regulatory Commissions by such an agreement without an amendment of the FA Rules by the required resolution of the Shareholders (which by article 157 of the current FA Articles of Association 2014-2015 requires a 75% majority). However, that wider question is not for us to pursue.

60. It is crystal clear that this Regulatory Commission is not *bound* by those maximum sanctions as if they were or were to be treated as part of the rules making a higher sanction unavailable to us. The Guidance is expressly given in relation to specifically identified types of offence under Rule E20 which do not include pitch incursions. It covers those other types of offence in detail, as it does a number of other matters throughout the document, but despite those particular parts being clearly focused on FA Rule E20 it includes no mention at all of pitch incursions. So for Reading’s purposes in this case, at best the stakeholders and the drafters of the Guidance did not address themselves to pitch incursions at all; and if they did (which we do not know and as to which we therefore make no assumption) then they actually decided those maximums should not apply to pitch incursions.

61. That still leaves the question whether we should apply or have close regard to those maximums by analogy, on the footing that they do indicate the fair limits of our discretion so that to step outside, or significantly outside, those figures would be an unreasonable and therefore improper exercise of our discretion.
62. In the light of our observations in paragraph 60 above, we do not consider that the Guidance itself and/or the stakeholders' agreement on which the relevant part was apparently based can be taken to have created any sort of legitimate expectation among clubs that the Guidance would be applied to pitch incursions so that it would be unfair to depart from that expectation. Any club official reading the parts of the Guidance relating to Rule E20 would have appreciated perfectly well that nothing whatever was said about pitch incursions.
63. The following points are relevant:
- (1) Pitch incursions are more serious than confrontations of match officials or mass confrontations with other players. While both those other types of offence are to be deprecated and are rightly treated as serious, they do not carry anything like the same risks of becoming dangerous so that people may be injured or property damaged. (We do not fail to recognise that all such incidents may inflame and trigger misbehaviour by fans and others, but the risks are still much less and much less direct than with mass pitch incursions).
 - (2) For those other types of offence, individual players are liable to be disciplined and punished as well as the clubs. In the more serious cases of those types of breach that would be expected, with a distinct possibility of player suspensions (which then also hurts a player's club, so that this possibility adds to any deterrent effect of the maximum sanctions in the Guidance).
64. We therefore do not consider that we should apply the limits in the Guidance either expressly or by some analogy. There would be no sensible reason for this Regulatory Commission to adopt the broad brush approach of the Guidance when we can use finer brushes in following the indisputably correct approach of taking account of all the circumstances of the case, including both the offence and the offender, giving

them due weight and exercising our judgment accordingly. In fact it would be wrong in principle for us to adopt any other approach.

65. We appreciate that the Guidance reflects the financial disparities between clubs at different levels as we go down through the leagues to the Conference Premier and FA WSL clubs. However, the relevant point for us is that we must have due and proportionate regard to the actual position of Reading FC, including its finances, which we do. Our discretion is not constrained by the fixed bands of the Guidance.
66. Even in the Guidance itself, note should be taken of the express addition that “for serious cases the deduction of two points will also be considered”. That is plainly contemplated as an *additional* part of the sanction. A two points deduction is nearly always viewed by a club as a most serious penalty and there are instances where its potential financial impact would be greater, and in some circumstances far greater, than a fine at even the maximum level in the Guidance. It would therefore be a misreading of the Guidance to regard fines at the specified top limits as the maximum penalties for the most serious cases of the offences to which the Guidance *does* apply.
67. We also recognise the principle that where there is an established range of penalties for broadly comparable offences of a particular type which can be seen from previous decisions of FA Regulatory Commissions and FA Appeal Boards, there need to be special circumstances to make it fair to go outside that range. There is no such established range in cases of this type.
68. Counsel did refer us to four decided cases of breaches of Rule E20. One 2014 case, against Banbury United FC, is so different from this case as to require no further comment.
69. The three other cases are *FA v West Ham FC* (Appeal Board decision 12 April 2006), *FA v West Ham FC & Millwall FC* (Regulatory Commission reasons 15 January 2010) and *FA v Aston Villa FC* (Regulatory Commission reasons 18 May 2015).
70. The reasons for the 2006 Appeal Board decision against West Ham are not available. The bare details of the decision tell us practically nothing about what had happened at

the match in question, which had been in October 2004, and do not help us at all in our decision.

71. We do have the full reasons of the Regulatory Commissions in the other two cases. West Ham was fined a total of £115,000 and Aston Villa fined £200,000 after an express credit of £50,000 for a guilty plea and mitigation. We are not going to set out the details or the specific points made by Reading's counsel based on those decisions and reasons. We have fully considered both the decisions and reasons and all those points made on Reading's behalf. Apart from that detail, which is all taken into account in reaching our own decision, we make the following observations:

(1) Our decision does not go outside any established range of penalties of the nature mentioned in paragraph 67 above.

(2) Working in a detailed arithmetical way from the fines in those cases, which is a distinct feature of Reading's submissions here, is not an approach which we find helpful. For one thing, we should not take the sanctions in those other cases as constituting a definitive yardstick. We take them as no more and no less than judgments somewhere within the reasonable range of discretion in those cases. Moreover, given the point we make in subparagraph (1) and in paragraph 67 above, while we should always respect cogent reasoning and judgments of colleagues deciding other cases, we are dealing with our case on its facts.

(3) We do note both the specific failings by West Ham and Aston Villa in those cases and that in both cases the consequences were worse than in the Reading case; and we also note some similarities to the Reading case.

72. Since the video/telephone hearing on 29 July 2015 the FA has published the written reasons of an FA Regulatory Commission on breach and sanction in a case *FA v Blackpool FC* for a pitch incursion during a Football League Championship match on 2 May 2015. We have read and noted those reasons but did not feel it necessary to invite further submissions from the parties, as any points which could be made on that Blackpool case are covered by the existing submissions. Nothing in the Blackpool case changes our views on Reading's case.

73. Our main reasons for our decision that Reading should be heavily fined can be summarised as:

(1) All pitch incursions are dangerous and all are serious. There should be no tolerance of so-called friendly pitch incursions. We note Mr Norman's comment in his report (at A21): "There appears to be an appetite from fans to create mass disobedience through pitch invasions at the end of the game. These may be motivated by celebration but inevitably will lead to a serious confrontation and injuries at some stage."

(2) We attach only slight weight to the fact that no serious harm occurred as a result of the pitch incursion. There was a flare thrown into the Bradford end from the pitch (see Mr Barry Norman's statement @ A20) and there was overt taunting of Bradford fans by at least one fan on the pitch, but fortunately neither led to anything worse. It is largely a matter of luck whether a particular pitch incursion leads to violence or damage. The culpability of a club for a breach of E20 by a pitch incursion lies very largely in its failure to use due diligence in the planning and execution of safety measures so as to deter and if possible prevent any pitch incursion in the first place. That is where Reading was at fault, especially in its pre-match planning which left it highly vulnerable to a pitch incursion.

(3) Reading knew well before the game that the risk of a pitch invasion at the end of the game was high: item 14 in the Stewarding Operation Order & Risk Assessment [B115]. It was not merely a "possibility", as Mr Doyle said in paragraph 8 of his statement @ B7.

(4) It was also stated: "We will steward heavily on the pitch side with response stewards". But the video evidence shows that they did not do so to any degree which we regard as approaching "stewarding heavily".

(5) This was a 6th round FA Cup game shown on free to air BBC1 television, so that any such invasion would be seen by a large television audience.

(6) Whatever the detailed analysis of the different types of steward and their precise positions and responsibilities, on any reasonable view of the evidence the number of stewards engaged by Reading was seriously short of what was needed to prevent or seriously deter a pitch incursion.

(7) While the pitch was cleared in about 8 minutes (not 15, as in Mr Norman's statement @ A20), the video evidence shows that this was more because of a general calming down and a willingness of fans to drift away than because of any significant stewarding activity.

(8) Very little was done to protect the Bradford players who remained on the pitch or to encourage them to leave quickly. Although, apart from the fact that they should have known themselves that they ought to leave the pitch straight away, those players were behaving responsibly, it was not acceptable for the stewarding simply to have allowed them to stay on the pitch as long as they did. We regard Mr Norman's comment (in his paragraph 3 at A20) that there was very little that could reasonably be done to change the situation as unduly generous to Reading.

74. We see limited mitigation. There is obviously none for any acceptance of the breach, as Reading have fought the charge to the finish. We do not attach significant weight to Reading's use of the PA system to discourage fans from being or remaining on the pitch, which strikes us as a minimum common sense step in the circumstances. We do not wish to be grudging about the steps which have drawn praise particularly from Mr Norman and Mr Parker, but we regard them as relatively ordinary steps which obviate suggestions of aggravation rather than as mitigation which goes to reduce the appropriate penalty. We were not generally impressed with Mr Parker's evidence anyway: paragraph 6 and paragraph 8 were simply wrong, as can clearly be seen from item 14 in the Stewarding Operation Order & Risk Assessment [B115], and we are not interested in his view of what was or was not prohibitively expensive.

75. Our rejection of the Rule E21 defence was not marginal and did not hinge on the burden of proof. It therefore amounts to a finding of negligence by Reading in the planning and execution of the stewarding for this match.

76. We now explain why we have pitched the fine at £100,000, noting that we are not adding either an immediate or a suspended points deduction.
77. We do not repeat points already made above, particularly in paragraph 73, which indicate how seriously we view the pitch incursion and Reading's failures. There is also a clear need for deterrence, which means only that we are putting the fine at the higher end of what could be a fair penalty for Reading for this offence: Clubs generally must realise that so-called friendly or celebratory pitch incursions are not remotely acceptable and that clubs must not take the sort of risks which Reading did take here. Mr de Marco's reliance, in Reading's submissions on penalty, on our having said (in paragraph 17 above) that Reading's assessment about a pitch incursion was "entirely realistic" and their position if prevention failed was not "objectionable" should not be misunderstood. The first point is a point of strong criticism, as we are saying that Reading then seriously failed to exercise due diligence in the light of that realistic assessment of the risk. The second point has been plucked out of context and was merely our acknowledgment that even with all due diligence prevention might not be 100% assured.
78. Reading is now a Championship club, having been promoted to the Premier League in 2012 but relegated back to the Championship at the end of its first Premier League season 2012-13. Reading was 7th out of the 24 Championship clubs in 2013-14 and 19th in 2014-15. The financial context of this case is:

(1) Reading's audited financial statements for the year ended 30 June 2014 (which are the latest we have) show:

Balance sheet

A deficit on shareholders' funds of £30,514,542

Accumulated deficit on profit and loss account £37,789,542

Net current liabilities £53,693,278

Creditors: amounts falling due within one year £59,235,156 including “other loans”
£46,883,182

Profit and loss account

Loss for the financial year £7,291,469

Loss for the previous financial year £2,338,832

Gross wages and salaries £30,104,669

(2) The gross wages and salaries figure had been reduced from £40,574,087 the previous year although the number of players was unchanged at 53. We were told by counsel for Reading that the annual wages bill for players was around £25,000,000.

(3) The *Reading v Bradford* replay itself produced match receipts for Reading of £85,596 after police and stewarding charges, travelling and hotel expenses of the visiting team and other direct costs as set out in a Statement of Receipts and Payments Form dated 24 March 2015 helpfully produced by Reading in response to the Regulatory Commission’s request for financial information.

(4) In addition, Reading received £131,000 from BBC television and radio coverage of the match.

(5) That total of £85,596 + £131,000 = £216,000 did not represent the net contribution to profits of Reading as there were substantial bonuses payable to players for this particular match. We were given a breakdown by Reading’s counsel of an overall figure coming out at around £80,000 plus an unspecified amount for extra individual bonuses including for goals. Without knowing those further exact figures we take it that the net figure after deducting all those bonuses from the £216,000 was of the order of £100,000.

(6) Reading would also have had earnings from the first 6th round match at Bradford and then from the FA Cup semi-final. We shall disregard the first entirely, as we have

no evidence of the amount and we could not safely assume they were anything like as much as the net earnings from the replay; and while the semi-final net receipts must have been significant, we do not attach weight to them except to note that they must have more than covered win and goal bonuses from the 6th round games that got them to the semi-final in the first place.

79. The reason we have gone into these financial figures in some detail is to show:

(1) The overall scale of the financial operation of Reading FC against which the level of the fine is to be assessed.

(2) The particular financial context of this match, which would obviously have been well above the level of a routine untelevised (or even a more important, televised) Championship match.

80. The figure for payments to Gatemmen/Stewards shown on the Statement of Receipts and Payments Form for the Reading v Bradford game is £15,083. That is one reason why we were unimpressed by paragraph 6 of Mr Parker's statement (see paragraph 74 above). It shows the relatively modest cost of increasing the stewarding to the requisite level to have amounted to due diligence under Rule E21 in the face of the known risk of a pitch incursion, i.e. the cost when viewed in the light of the other costs and the income from the match.

81. Mr de Marco's reference to the player wages bill of £25,000,000 was in support of a point he then made that the basic player wages costs attributable to each game over a season, or to each week of the year – whichever way one looked at it – was something we should have in mind when looking at the other financial aspects. That included the point that in the end the receipts from the *Reading v Bradford* game, as all other receipts, had to cover those wages costs. That is true, but we do not consider it helps on our decision as, leaving aside bonuses, those wages would have still been payable if Reading had never reached the FA Cup 6th round at all.

82. What we do draw from the financial context is strong reinforcement of our view that in exercising our discretion about the appropriate level of penalty by way of fine, we

are not tied to anything like the figures for Championship clubs set out in the Guidance for those other E20 offences.

83. The fine of £100,000 is our judgment, not reached by a mathematical calculation (and it is only coincidence that it is the same figure as the £100,000 mentioned in paragraph 78(5) above. However, we think it usefully illustrative to point out that, as one aspect of the scale of Reading's operations, the average annual pay of a Reading player is around £450,000. We consider that for a serious breach in the vital area of spectator safety, a fine which is less than one quarter of the annual pay of a single player and about 0.4% of the annual player wage bill is not disproportionate and is fair in all the circumstances of this case.

Costs and orders

84. The *Regulations for Football Association Disciplinary Action* expressly direct that the parties are to bear their own costs. There is power under regulation 8.8(b) to order any party to pay costs incurred in relation to the holding of the Regulatory Commission, as the chairman of the Regulatory Commission considers appropriate. Those costs exceed £4,000 and that is the sum which Reading FC is ordered to pay.

85. Reading's personal hearing fee is forfeit to The FA.

86. Reading must pay the fine of £100,000 and costs of £4,000 to The Football Association on or before Friday 4 September 2015.

87. Reading FC has the right of appeal under the *Regulations for Football Association Appeals*. Reading may also apply to this Regulatory Commission under regulation

8.11 of the *Regulations for Football Association Disciplinary Action* for a suspension or stay of our order pending the outcome of an appeal.

Nicholas Stewart QC

Chairman

Christopher Reeves

Peter Fletcher

5 August 2015