

**THE FA**

**-v-**

**MARCO SILVA**

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**DECISION AND REASONS**

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**Regulatory Commission constitution.**

Abdul S. Iqbal KC (Chair – Independent Legal Panel Member)

Faye White (Independent Football Panel Member)

Gareth Farrelly (Independent Football Panel Member)

Paddy McCormack (Secretary)

Date of hearing : 29<sup>th</sup> January 2024

1. This document sets out the written reasons for the decision in this independent Regulatory Commission (“the Commission”).
2. This document does not set out the entirety of the evidence and/or submissions considered by the Commission. It sets out the relevant evidence and/or submissions on the central relevant issues as considered by the Commission and assessed by the Commission in reaching findings of fact.
3. The Commission met by Microsoft Teams meeting on 29<sup>th</sup> January 2024 to consider

the issues the case raises.

### **(1) The charge.**

4. By charge letter dated 3<sup>rd</sup> January 2024<sup>1</sup> The Football Association (“The FA”) alleged that Marco Silva during the post-match media interviews after the Newcastle United FC v Fulham FC match on 16<sup>th</sup> December 2023 made comments that constitute improper conduct in that they imply bias and/or question the integrity of, and/or are insulting towards the Match Official (Referee) and/or the Video Assistant Referee, and/or bring the game into disrepute, contrary to FA Rule E3.1.

5. FA Rule E3<sup>2</sup> provides as follows:

*“E3.1 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.”*

6. The FA relied upon the following comments taken from the post-match media interviews:

#### **(i) BBC Sport interview, dated 16<sup>th</sup> December 2023**

1. *“Until the 21<sup>st</sup> minute of the game, all of the moments, the referee didn’t give one foul for Fulham Football Club, one foul, all the challenge everything, keep going. For Fulham was keep going, for Newcastle every time was a free kick or was a foul or whatever.*

*I understand and not, congratulations for Newcastle, they won the game. This type of ground, this type of game, these type of situations, where you put the referees, they have the ability to handle the pressure, or is always difficult to handle, because they go always with the home crowd, they go always with the pressure. This is Premier League, Premier League we should decide, of course it’s not for me to decide, referees with experience, with ability to handle the pressure, and today, this afternoon, is the best example for a referee who doesn’t have the ability and the experience to handle the pressure from a game with 50,000 people around. That is clear for me when during 20 minutes any ball any foul for us, he didn’t give once, one, even elbow in the face of Raul, and after came one moment, talking*

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<sup>1</sup> Pages 1 to 3 of the case bundle.

<sup>2</sup> Pages 143 and 240 of the FA Handbook 2023 – 24.

*about the red card, no sense the way Raul when in that ball, clear, no sense, he lost the moment to go in that ball, but is not really serious something, he didn't go in with the elbow, he lost the moment, he jump in the player but you don't see tackle really serious, you don't see something that was trying to do something wrong with the other player. For me, the yellow card is a good decision from the referee, and come again the VAR. The VAR now they are trying to found always, to find always moments to get red cards to give, I don't know, to justify their job, I don't know what they are trying to do. People with knowledge about the game, you see that moment, it's clear not. He lost the moment to go in that ball, clear Raul should do it in a different way, but to turn over, turn over one decision from the referee from a yellow card to go to a red card, for me, looks really strange. All the performance from the referee from the first minute until the last, the yellow cards from our players, was completely strange really the afternoon from the referee."*

2. *"That moment killed little bit our momentum, our organisation, again came yellow cards for our players, I have to take some players from the pitch because I was feeling that he was probably going to give more red cards for us, and I don't want to lose more players for the next game because, in my opinion, lost completely the concentration, lack of experience clear for me from the referee this afternoon."*

3. *"We are going to win games away from home. I don't have doubts. Of course, look through our schedule. If you keep going for some crowds, with this type of situations, lack of experience from referee to handle these type of grounds is going to be more difficult, but we are here to fight, no problem."*

(ii) Sky Sports interview, dated 16<sup>th</sup> December 2023

1. *"Really strange, until the 21st minute of the game, we didn't have one foul. All the tackles and challenges on the pitch, for us, was to keep going and, for Newcastle, was always free-kicks. Really strange. I think the pressure on the game with a not experienced referee was difficult for him. He was not capable to handle the pressure, in my opinion, from a game like this one at St James' Park. That is clear for me."*

(iii) The Athletic article, dated 16<sup>th</sup> December 2023

1. *"In my opinion it was strange and poor performance from the referee from the first minute until the last.*

*I'm not talking about the red card. But all the circumstances, the way he managed the game.*

*He gave the first foul for Fulham in the 21st minute. It was really strange. All the challenges until the red card, on Fulham, were to keep going. (Challenges on Newcastle), everything was a foul.”*

2. *“At the same time you need referees with experience. With ability to handle the pressure. In my opinion that didn’t happen.”*

Asked to clarify if he felt the referee was not experienced enough, Silva said: *“It’s clear. No doubts about it.”*

3. *“I can accept it if they decide it’s a red. What is difficult for me, and what I cannot accept, is that two minutes for me that the Lascelles elbow is not checked, not even a foul, nothing.*

*“Because it’s Fulham, it’s nothing.”*

7. Marco Silva admitted the charge by letter dated 15<sup>th</sup> January 2024<sup>3</sup>, and formally in his witness statement dated 15<sup>th</sup> January 2024<sup>4</sup>, and requested a paper hearing.

## **(2) The facts.**

8. The relevant facts<sup>5</sup> as to these charges are:

- i. The comments made by Marco Silva relied upon by The FA in support of the charge were made in press interviews held after the match between Fulham FC and Newcastle United FC at St. James’ Park on 16<sup>th</sup> December 2023;
- ii. Newcastle United won the Match 3-0. An important moment in the match was the match referee’s decision to upgrade a yellow card initially awarded to the Fulham player Raul Jiménez to a red card, following the intervention of the Video Assistant Referee (the “VAR”);
- iii. The comments that found the charge therefore were made by Marco Silva to the three separate media organisations referencing Marco Silva’s views as to the standard of officiating by the match officials during the match.

9. In addition to the above written evidence, the Commission viewed the two recorded

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<sup>3</sup> Page 18 of the case bundle.

<sup>4</sup> Pages 27 to 38 of the case bundle.

<sup>5</sup> This summary is extracted from the various documentary material within the case bundle.

post-match interviews of Marco Silva:

- i. BBC Sport interview (4 minutes 52 seconds in length);
- ii. Sky Sports interview (2 minutes 40 seconds in length).

### **(3) The sanction framework.**

10. Marco Silva has admitted a breach of FA rule E3.1 based upon his media comments.

11. The charge proceeds by way of “*Fast Track 2*” as it involves an allegation related to media comments defined<sup>6</sup> as “*Comments made in the media, to include social media, which constitute improper conduct and / or bring the game into disrepute*”.

#### **(i) The FA’s “Essential information for Manager, Owners and Directors” guidance.**

12. The FA’s “*Essential information for Manager, Owners and Directors*”<sup>7</sup> guidance is issued to relevant participants every season.

13. Within the guidance above, under the heading “*Media Comments and Social Media*” it is stated:

*“Managers should be aware that The FA sets standards in relation to public comments made by Participants.*

*This means that the following types of public 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 implies or alleges bias on the part of a Match Official.*
- *Questioning integrity: any comment which questions the integrity of a Match Official.*
- *Personal/offensive: comments which are personally offensive, particularly in relation to*

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<sup>6</sup> FA Handbook 2023 – 24, page 240.

<sup>7</sup> A copy of the guidance is at pages 14 to 17 of the case bundle.

*Match Officials.*

- *Threatening/Abusive/Insulting/Indecent: comments which fall into these categories may be subject to disciplinary action.*
- *Discriminatory: any comments which are improper or indecent, abusive or insulting and which include a reference to ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.*
- *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.”*

#### **(4) The submissions on sanction.**

14. The Commission read and considered all of the following written documents when considering the appropriate sanction in this case.

15. The contents of each of those documents and appendices are not repeated in this document save for where reference is necessary to explain whether a submission or factor was regarded as relevant or irrelevant to sanction.

#### **(i) The FA.**

16. The Commission read and considered:

- i. The FA's Response to Marco Silva's Reply, dated 18th January 2024 [Pages 62 to 74 of the case bundle];
- ii. Written Reasons - *The FA v Fulham FC, Marco Silva & Aleksander Mitrovic* (3 April 2023) [Pages 75 to 105 of the case bundle];
- iii. Written Reasons - *The FA v Frank Lampard* (3 April 2023) [Pages 106 to 115 of the case bundle];
- iv. Written Reasons - *The FA v Jurgen Klopp* (25 February 2019) [Pages 116 to 121 of the case bundle];

- v. Written Reasons - *The FA v Ralph Hassenhutti* (22 October 2021) [Pages 122 to 127 of the case bundle];
  - vi. Written Reasons - *The FA v Steve Cooper* (1 November 2022) [Pages 128 to 133 of the case bundle];
  - vii. Written Reasons - *The FA v Thomas Tuchel* (31 August 2022) [Pages 134 to 145 of the case bundle];
  - viii. Appeal Board Written Reasons - *The FA v Jurgen Klopp* (11 November 2022) [Pages 146 to 170 of the case bundle];
  - ix. Written Reasons - *The FA v Jurgen Klopp* (15 May 2023) [Pages 171 to 180 of the case bundle].
17. In summary, the submissions made by and contentions of The FA to the Commission in relation to the facts of this case and sanction are:
- i. The FA notes that Marco Silva admits the charge and apologises for the misconduct;
  - ii. The “*reasonable bystander*” would interpret Marco Silva’s comments as implying bias and questioning the integrity of the Match Referee or the VAR;
  - iii. Further, the reasonable bystander would find the comments to be insulting towards the Match Referee and the VAR;
  - iv. The “*reasonable bystander*” test is discussed in *The FA v Arteta* (11 December 2023) and *The FA v Lampard* (30 May 2022), wherein it is concluded that the reasonable bystander in this context is someone who has sports knowledge / knowledge of the sport;
  - v. In the case of Mr Lampard, it was suggested on his behalf that he had not meant to be personally critical of the Match Referee nor did he mean to question his integrity or imply or allege that he was biased against Everton FC;
  - vi. Mr Lampard sought to rely upon statistical analysis of penalties awarded during the COVID pandemic when games were played behind closed doors. The influence of the home crowd meaning that the home team are more likely to be awarded a penalty. Mr Lampard pointed to statistics showing that 61% of penalties were awarded to the home team over thirty Premier League Seasons;

- vii. The FA relied in these proceedings upon paragraphs 27 and 28 of the *Lampard* written reasons:

*27. In the view of the Commission, it is also clear that in the context of the totality of the comments in issue, Mr Lampard would not have left the reasonable bystander, or reasonable person, with the view that he was simply making a generic comment about the percentage of penalties awarded to away teams. That possibility, in the Commission's view, was destroyed by stating at the outset: "I don't think you get them here and, I think, probably if that's Mo Salah at the other end, I think he gets a penalty", as well as stating at the end "But we, you don't get them here."*

*28. Inherent in those words, in the Commission's view, is a specificity which clearly elevates the comments well beyond any form of generic comment. The words used refer to 'here', namely Anfield, and unquestionably in the view of the Commission would leave any reasonable person with the view that Mr Lampard was stating that if a similar challenge had been made on a Liverpool player in the penalty box, indeed specifically on Mo Salah, then a penalty would have been awarded, but because it was an Everton player, no penalty was awarded.*

- viii. The FA submitted that the comments made by Marco Silva include a specificity that elevates the comments beyond any form of generic comment about the influence of a home crowd.

- ix. That possibility is destroyed in the present proceedings when considering some of the comments made by Marco Silva, for example:

*"For Fulham was keep going, for Newcastle every time was a free kick or was a foul or whatever In my opinion it was strange and poor performance from the referee from the first minute ..... until the last. I'm not talking about the red card. But all the circumstances, the way he managed the game...He gave the first foul for Fulham in the 21st minute. It was really strange. All the challenges until the red card, on Fulham, were to keep going. (Challenges on Newcastle), everything was a foul"*

*"What is difficult for me, and what I cannot accept, is that two minutes for me that the Lascelles elbow is not checked, not even a foul, nothing. Because it's Fulham, it's nothing".*

- x. In relation to the Match Referee, Marco Silva repeatedly described his performance as "strange", and suggested that he was not capable or did not have the ability to handle



the pressure of the game stating “it was a strange and poor performance from the referee from the first minute until the last”;

- xi. The comments made in the BBC interview in relation to the VAR clearly questioned the integrity of, and are insulting to, the VAR:

*“For me, the yellow card is a good decision from the referee, and come again the VAR. The VAR now they are trying to found always, to find always moments to get red cards to give, I don’t know, to justify their job, I don’t know what they are trying to do. People with knowledge about the game, you see that moment, it’s clear not.”*

- xii. Insofar as Marco Silva contends there was a lack of malice in the comments, The FA drew the Commission’s attention to the observations<sup>8</sup> of the Regulatory Commission in *The FA v Jurgen Klopp (25 February 2019)* where the Regulatory Commission “accepted there was no malice in the comments but the question for the Commission is how the words used would be interpreted if heard by the “reasonable man”... It was clear to the Commission that the words, whatever Mr Klopp’s intention, did clearly imply bias by the referee.”
- xiii. Mr Klopp had no previous breaches at the time of that misconduct and was sanctioned by way of a fine in the sum of £45,000. His salary was a relevant factor in the determination of the level of fine imposed;
- xiv. Marco Silva has one analogous previous breach of FA Rule E3.1 and four non-analogous previous breaches of FA Rule E3.1;
- xv. The FA contends that the extent of the comments, their duration (transcending across three separate interviews) elevates the severity of the breach. The comments referenced in the cases of *The FA v Hassenhuttel*, *The FA v Cooper* and *The FA v Tuchel* were of much shorter compass;
- xvi. Each case turns on its own facts and must be approached from the basis of those facts. Further, whilst every case must be determined on its own facts, there should be a degree of consistency and uniformity of approach. However, this does not require a Regulatory Commission slavishly to follow the approach of an earlier Commission, but it does require that it should take into account the reasoning of an earlier decision and

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<sup>8</sup> Paragraph 13 of the written reasons.

to apply the wisdom to be gained from it<sup>9</sup>;

- xvii. *Even if* the Commission is prepared to accept that the comments were not made with malice, nevertheless, having regard to the guidance issued to managers, Marco Silva's managerial experience and, in particular, his previous experience of disciplinary proceedings for comments made in the media, he was *at least* highly reckless when making these comments;
- xviii. The Commission should note that Managers are routinely pressed for comments on the Match Referee's performance after a match. Whilst acknowledging that, in the immediate aftermath of a disappointing result, this will be a difficult situation to navigate, a manager with Marco Silva's experience should be capable of dealing with the situation without making the lengthy comments he did over the course of three media interviews;
- xix. The Commission is invited to conclude that Marco Silva went far beyond a merely generic statement that referees can be influenced by home crowds. A more appropriate approach would be for Marco Silva to raise such concerns privately with the relevant authorities, as opposed to publicly via the media;
- xx. The FA acknowledges that Marco Silva should be given credit for admitting the charge and an appropriate reduction in sanction applied;
- xxi. However, the FA contends that the suspension of any financial penalty is not appropriate in all of the circumstances;
- xxii. The FA contends that Marco Silva's reasons for admitting the charge set out in his witness statement indicate a degree of reluctance on his part to admit the charge;
- xxiii. Over the course of a ten page statement, Marco Silva sought to justify and explain his comments rather than simply expressing remorse for the admitted misconduct;
- xxiv. Marco Silva clearly believes the referee was biased and believes he should be able to say so publicly because the bias (in his view) stems from an unconscious bias derived from pressure or influence from the home crowd;
- xxv. Marco Silva states at paragraph 9 of his witness statement that he "*did not suggest (nor do I believe) that he deliberately set out to favour Newcastle United or disfavour*

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<sup>9</sup> The written reasons in *The FA v Jurgen Klopp*, 11 November 2022.

*Fulham. That was not what my comments were about and I believe that any reasonable person reading them would recognise that*". The Commission is invited to conclude that the comments plainly indicate Marco Silva's assertion of bias on the part of the Match Referee in favour of Newcastle United FC;

- xxvi. The FA contends that it is clear from Marco Silva's statement that he does feel the referee was favouring Newcastle United FC albeit he attributes this to unconscious bias. In other words, Marco Silva did intend to suggest the referee was biased, just not deliberately so;
- xxvii. Marco Silva outlines academic research concluding that professional referees are influenced by home crowds. *Even if* this was accepted by the Commission, The FA submits that Marco Silva was not speaking in generalities. His comments were specific to the Match Referee and made reference to specific incidents in the match and how "*strange*" his performance was whereby everything "*went against Fulham FC*". There is a significant distinction to be drawn between generic observations and the specific comments Marco Silva made to the media;
- xxviii. Insofar as Marco Silva raises the fact that English is his second language, The FA submits that he clearly has an excellent level of English, albeit this is a factor the Commission can properly have regard to. There does not, however, appear to be anything in particular that Marco Silva points to as being misunderstood due to his use of English;
- xxix. The FA submits that Marco Silva alleged unconscious bias on the part of the Match Referee and continues to do so in his witness statement. His observations on the particular interviews reaffirm his view that the referee was favouring Newcastle United FC;
- xxx. At paragraph 29 of his witness statement, Marco Silva suggests that his comments were not unfair or an attack on the referee. The FA submits that Marco Silva speaks about the Match Referee at length, describing his performance as "*strange*", questions his capabilities, highlights certain decisions and indicates that he was biased in favour of Newcastle United FC. The FA contends that on any sensible view that is an unfair attack on the referee and/or VAR;
- xxxi. The FA contends that the tenor and tone of the witness statement indicates that Marco Silva is keen to convince the Commission that his view is correct, as opposed to acknowledging that he should not make comments of this nature. As well as mentioning

specific incidents, Marco Silva compares decisions made in relation to incidents involving Newcastle United FC players and the different outcome in relation to similar incidents (in his view) involving Fulham FC players. He seeks to mitigate the breach by demonstrating his belief was right, when that is clearly an entirely subjective assessment of certain incidents. The FA contends that such an approach does not amount to mitigation at all;

- xxxii. The FA contends that Marco Silva actually spoke specifically about the performance of the referee in a manner that clearly suggested bias, and questioned the integrity of the referee and VAR in a manner insulting to both the Match Referee and the VAR;
- xxxiii. The FA welcomes the fact that Marco Silva has elected to admit the charge and acknowledges this as a mitigating factor that can serve to reduce the level of sanction imposed by the Commission;
- xxxiv. However, the breach transcends three separate interviews where Marco Silva repeatedly made comments that imply bias, attack the integrity of the Match Referee and VAR and are insulting to the Match Referee and VAR. The comments in the BBC interview in particular are lengthy;
- xxxv. The totality of Marco Silva's misconduct therefore may be considered to be graver than other comments made by Managers that resulted in similar charges. Clearly, however, every case will turn on its own facts and circumstances;
- xxxvi. The previous record of Marco Silva has high relevance and is a significant aggravating factor;
- xxxvii. Bearing in mind the fact that Marco Silva has a previous analogous breach within the last twelve months, the submission on his behalf that he should be sanctioned with a reprimand and/or fine not exceeding the range of £10,000 to £20,000 (with potentially some or all of such fine to be suspended for the period of one year) is entirely unrealistic and should be rejected by the Commission;
- xxxviii. The Regulatory Commission considering the previous breach of FA Rule E3.1 by Marco Silva, in relation to media comments, considered a reasonable starting point to be a fine in the sum of £30,000 (taking into account the declared net football income for Marco Silva ██████████). This was reduced to £20,000 to reflect the five mitigating factors set out in the written reasons;
- xxxix. At that time, an important mitigating factor was that Marco Silva had not previously

been sanctioned for a similar offence. Clearly, that important mitigating factor no longer exists;

- xl. It is respectfully submitted that, having regard to the facts and circumstances of this case, and Marco Silva's declared currently weekly football income, the starting point for sanction should be well in excess of the range of £10,000 to £20,000 if it is to have any meaningful impact upon Marco Silva and so as not to be so unduly lenient as to be unreasonable;
- xli. It is noted that the Regulatory Commission, sitting on 3<sup>rd</sup> April 2023, considered a £30,000 starting point for sanction to be appropriate when having regard to all the circumstances, including the fact Marco Silva "*is an experienced manager who must know that it is not permissible to make such comments and having regard to Mr Silva's salary, details of which were provided..*"<sup>10</sup>;
- xlii. The Commission is invited to consider the fact that Marco Silva is now an even more experienced manager, who also has the experience of a previous FA Charge in relation to media comments. The Commission will also have regard to Marco Silva's currently declared net weekly income [REDACTED];
- xliii. The Commission is invited to note that the previous sanction of £20,000 imposed on 3 April 2023 has demonstrably failed to deter Marco Silva from further breach of FA Rule E3.1 when making the comments he did on 16<sup>th</sup> December 2023;
- xliv. It is submitted by The FA that a significantly higher fine is therefore necessary, reasonable and proportionate, in all of the circumstances;
- xlv. When considering the appropriate sanction, The FA respectfully invites the Commission to adopt a similar approach to that taken in *The FA v Jurgen Klopp (15 May 2023)*, where the Regulatory Commission stated:

*"21. This charge therefore requires a penalty that has a number of elements. First, it must punish Mr Klopp for the seriousness of the breach, reflecting Mr Klopp's history of breaches. Second, it must demonstrate to Mr Klopp that if he commits further breaches he will be subject to yet more disciplinary sanction. Third, it can stand as a warning to others in Mr Klopp's position of the consequences of breaches*

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<sup>10</sup> Paragraph 86 of the written reasons in *The FA -v- Fulham FC, Marco Silva, Alexander Mitrovic* 3 April 2023.

*of this nature. (We approach the deterrent element of the sanction on the basis that a Regulatory Commission is perfectly entitled to recognise that a sanction will have a deterrent effect but the overriding principle must be that the sanction must be proportionate to the facts of an individual case. A sanction cannot be increased beyond a proportionate level in order to achieve the otherwise legitimate aim of deterrence”.*

- xlvi. The sanction imposed upon Jurgen Klopp was a sporting sanction of a two-match standard touchline ban, of which one was suspended until the conclusion of the 2023/24 season. The suspended element was in recognition of Mr Klopp’s expression of remorse and to act as a continuing reminder and deterrence to him that further breaches will result in a further sanction. Jurgen Klopp was also fined the sum of £75,000;
- xlvii. Accordingly, the Commission is invited to impose a significant financial penalty upon Marco Silva and a sporting sanction of an immediate one-match suspension. Following the rationale applied in Klopp, the Commission is asked to consider the exercise its discretion and suspend the sporting element of the sanction for a substantial period in the hope that this will deter Marco Silva from committing any further breaches of FA Rule E3.1;
- xlviii. In conclusion, The FA respectfully invites the Commission to impose a sanction comprising of the following elements:
  - (i) an immediate sporting sanction of a 1 match suspension to be suspended until the end of 2024; and
  - (ii) a fine representing a significant portion of MS’s weekly football income.

(ii) Marco Silva.

- 18. The Commission read and considered:
  - i. Reply Form – Marco Silva [Page 18 of the case bundle];
  - ii. Participant's Reply to the Charge, dated 15th January 2024 [Pages 19 to 26 of the case bundle];
  - iii. Signed Witness Statement of Marco Silva, dated 15th January 2024 [Pages 27 to 38 of the case bundle];

- iv. Exhibit MS1 [Pages 39 to 60 of the case bundle];
  - v. Video Evidence - Marco Silva's Reply [Page 61 the case bundle];
  - vi. Further Submissions by Marco Silva in Response to The FA's Submissions, dated 24th January 2024 [Pages 181 to 189 of the case bundle].
19. In summary, the contentions of and submissions made by Marco Silva to the Commission are:
- i. The charge concerns comments made by Marco Silva in press interviews held after the match between Fulham FC and Newcastle United FC that Newcastle United FC won 3-0;
  - ii. A decisive moment in the match was the referee's decision to upgrade a yellow card initially awarded to Fulham player Raul Jiménez to a red card, following the intervention of the Video Assistant Referee (the "VAR");
  - iii. Speaking in the immediate aftermath of the match, Marco Silva expressed his concerns about the officiating of the match, describing the referee's decision-making as "*strange*" and expressing his belief that the referee had found the match difficult to officiate because of his relative lack of experience and the hostile atmosphere of St James' Park, Newcastle United FC's home ground;
  - iv. In particular, he emphasised the fact that "*until the 21<sup>st</sup> minute of the game, all of the moments, the referee didn't give one foul for Fulham Football Club*".
  - v. Marco Silva admits the charge and apologises to The FA for his conduct;
  - vi. Marco Silva did not intend to imply bias or question the integrity of the Match Referee or the VAR by his comments. However, he has accepted that a "reasonable bystander" might read his comments in this way, in particular because they describe the influence exerted on the Match Referees by the home crowd at St James' Park;
  - vii. It is submitted there are numerous mitigating factors in this case which should be taken into account by the Commission when determining the appropriate sanction;
  - viii. In particular, Marco Silva's comments were made without malice and in undeniably challenging circumstances, following a disappointing loss after which he had been unable to converse with the referee about decisions he felt were adverse to Fulham;

- ix. Marco Silva was attempting, admittedly imperfectly, to describe his frustration at the result of the Match alongside his genuine belief that the experience of a referee can and does dictate the degree to which that referee is able to resist the pressure exerted by home crowds on key match decisions. That belief is supported by well-known statistical research;
- x. Further, Mr Silva has apologised for his comments and admitted the charge at the earliest opportunity. In a spirit of co-operation with The FA, and in the interests of the swift resolution of these proceedings, Marco Silva has also consented to the charge being dealt with at a paper hearing rather than in person;
- xi. It is submitted that the appropriate starting point for any sanction in this case (before considering mitigation) is a reprimand and/or a fine not exceeding the range of £10,000 to £20,000;
- xii. Any financial penalty that the Commission is initially minded to impose should be reduced significantly by the mitigation available to Marco Silva;
- xiii. Further or alternatively, it is submitted that any such fine that is imposed should be suspended in whole or in part for the period of one year and only activated in the event of a further similar breach;
- xiv. In determining whether FA Rule E3.1 has been breached, a Commission will apply an objective “*reasonable bystander*” test<sup>11</sup>. The ‘reasonable bystander’ is to be a hypothetical “*typical follower of English Premier League football (if there is such a thing)*” and taken as being “*appraised of all relevant facts and circumstances relating to the conduct / utterance, including the context of the conduct / utterance*”;
- xv. In *The FA v Lampard (Regulatory Commission, 31 May 2022)*, a Regulatory Commission found that Frank Lampard, then the manager of Everton FC, had breached FA Rule E3.1 by stating that a penalty should have been awarded to his side during their derby match against Liverpool FC, and that it was “*just a reality of football*” that “*probably if that’s Mo Salah at the other end, I think he gets a penalty [...] but we, you don’t get them here*”;
- xvi. The Commission found<sup>12</sup> that these words were not “*generic*” remarks about the

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<sup>11</sup> As per the written reasons in *The FA -v- Arteta* (11 December 2023) at paragraph 28.

<sup>12</sup> See paragraph 28 of the written reasons in *The FA -v- Lampard* (31 May 2022).



likelihood of home sides being awarded penalties but had a “*specificity*” which gave rise to an implication of bias against the Match Officials. The Commission acknowledged that it was “*difficult*” for managers to articulate nuanced views about home side advantage following games, concluding that there was “*a very fine line between discussing the influence of a crowd on ‘match officials’ without, for example, implying bias, even if it is unconscious bias on the part of the Match Officials*”<sup>13</sup>;

- xvii. Although Frank Lampard unsuccessfully contested the charge (and so could not benefit from a guilty plea), the Commission found that substantial mitigation was available to him, including the fact that his views concerning home side advantage were supported by statistical research<sup>14</sup>. The Commission ultimately reduced the sanction it had been minded to impose by one-third<sup>15</sup>;
- xviii. In his witness statement, Marco Silva has accepted (at paragraph 7.1) that, objectively interpreted, his comments can be said to imply bias and therefore constitute misconduct under FA Rule E3.1. He has also expressed his desire (at paragraph 7.2) to co-operate with The FA and resolve these proceedings promptly, in order that he can fulfil his duties as manager of Fulham FC and help his team to the greatest extent possible;
- xix. As such, he has admitted the charge and falls to be sanctioned by the Commission;
- xx. It is accepted that Marco Silva has previously been sanctioned for one similar breach of FA Rule E3.1 (see *The FA v Fulham FC, Da Silva and Mitrovic (Regulatory Commission, 6 April 2023)*). He will therefore be sanctioned on that basis;
- xxi. It is submitted that, in determining the appropriate sanction in this his case, the Commission should take account of the following five relevant mitigating factors;
- xxii. Firstly, Mr Silva’s comments were, by their nature, on the lower end of the spectrum of misconduct which amounts to a breach of FA Rule E3.1. The Commission has referred to this spectrum in numerous cases;
- xxiii. In *The FA v Hassenhuttl (Regulatory Commission, 27 October 2021)*, Mr Hassenhuttl had stated in interview that Southampton FC had “*not a good history*” with referee Mike Dean and that he therefore knew in advance that a match refereed by him would be

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<sup>13</sup> Paragraph 29 of the written reasons in *The FA -v- Lampard* (31 May 2022)..

<sup>14</sup> Paragraph 34 of the written reasons in *The FA -v- Lampard* (31May 2022)..

<sup>15</sup> Paragraph 38 of the written reasons in *The FA -v- Lampard* (31 May 2022)..

“difficult for us”. This was described as conduct at “*the lower end of the range*” of misconduct (at paragraph 19 of the written reasons);

xxiv. In *The FA v Cooper (Regulatory Commission, 3 November 2022)*, Mr Cooper stated to the media that “*the less said about the referee’s performance today the better*” because he was “*pretty sure there would have been a different decision if [a penalty decision] was at the other end*”. The FA and the Commission accepted that these comments were “*low-level*” (at paragraph 19 of the written reasons);

xxv. By contrast, in *The FA v Tuchel (Regulatory Commission, 2 September 2022)*, the Commission was “*unanimously of the view that this case falls nowhere near the lower end of any sanction range*” (at paragraph 20). Mr Tuchel had stated that he “*absolutely*” had a “*problem with the referee*”, that decisions were made “*without any explanation*” during the relevant match, and proceeded (unprompted) to list numerous refereeing decisions said to be made incorrectly. He noted that he might be punished for his comments and stated “*Good. I cannot coach but the referee can whistle the next game*”. For wrongdoing of that greater severity, Mr Tuchel was warned as to his future conduct and fined £20,000 (see paragraph 20 of the written reasons);

xxvi. It is submitted that Marco Silva’s comments were plainly more akin to those of Mr Cooper and Mr Hassenhuttl than those of Mr Tuchel. He drew attention to a factual disparity in the number of fouls awarded against each team and explained that this made the Referee personally, he criticised the Premier League for appointing an inexperienced referee for a challenging fixture. In so doing, it is accepted that he crossed the “*fine line between discussing the influence of a crowd on ‘match officials’ without, for example, implying bias, even if it is unconscious bias, on the part of the Match Officials*”;

xxvii. However, it is submitted that any sanction imposed should reflect the factual and reasonably held nature of some of the views he expressed during the interviews. The sanction should clearly not be found to constitute misconduct at the middle or higher end of the range of wrongdoing;

xxviii. Marco Silva draws attention to the range of similar comments made by managers which have attracted no charge whatsoever (at paragraphs 22 to 24 of the witness statement). Whilst that is not determinative of the charge brought against Marco Silva, it demonstrates that his comments were not out of keeping with the kinds of remarks which managers typically give in response to media questions, and indeed which fans

and others are accustomed to hearing from them;

xxix. Secondly, Mr Silva's comments were made without malice. In his witness statement, he has explained his respect for all referees, and indeed has expressed his sympathy with the difficulties faced by referees adjudicating matches in front of large and hostile crowds such as those at St James' Park (see witness statement at paragraphs 8 to 9);

xxx. It is submitted that on a fair reading of Marco Silva's comments that they were not intended as a personal attack on the referee or a criticism of his abilities;

xxxi. Thirdly, Marco Silva's comments were made immediately after a disappointing defeat for Fulham which he felt had been caused in part by incorrect decisions made by the referee. Marco Silva explained in the first Interview, and has reiterated in his witness statement, that he attempted to speak to the referee following the match but was unable to do so (witness statement at paragraph 25). He was thus required to address the media while his concerns about the match remained at the forefront of his mind. He then received numerous questions specifically about the standard of refereeing and particular refereeing decisions;

xxxii. In those circumstances, Marco Silva has explained that his aim was simply to speak *"honestly and directly about how [he] felt the match had been officiated"*, rather than refusing to answer questions (witness statement at paragraph 25). This was it is submitted a perfectly proper intention in the difficult circumstances he faced;

xxxiii. Fourthly, as was the case in Lampard,, the Commission should take into that there is objective statistical support for the views which Mr Silva was attempting to express following the match;

xxxiv. In this regard, Marco Silva relies on the evidence set out in Exhibit MS1 at pages 1 to 19. The study included there demonstrates, on the basis of comparative evidence collected before and during the Covid-19 pandemic, that *"home crowds are able to influence all but the very best referees' behaviour"*, that *"decision-making variability of officials has been linked to expertise, with the importance of game/situation based opportunities for decision-making practice identified as essential"* and that for referees below the Premier League level *"it is difficult to train and prepare for high profile fixtures"* in which crowd pressure is greatly increased;

xxxv. Marco Silva's view that the Match Referee would have faced difficulties in ignoring the pressure exerted by the home crowd, being relatively inexperienced and faced with the

hostile environment of St James' Park, was therefore not unfounded. It is supported by academic research;

- xxxvi. As the Commission accepted in Lampard, it can be difficult for managers to discuss nuanced matters such as these in a balanced way immediately after the conclusion of a contentious and high stakes match. That difficulty was no doubt compounded for Mr Silva, who was addressing the media in a second language, a mitigating factor accepted as relevant to sanction in Da Silva and Mitrovic (see paragraph 87 of the written reasons);
- xxxvii. It is submitted the Commission should address Marco Silva's sanction on the basis that, as he puts it in his statement (at paragraph 12) that managers should not be deterred from "*commenting on matters which are either factual, or which would be accepted as such by a reasonable person*";
- xxxviii. A major theme running through Mr Silva's comments is his concern that the Premier League should appoint referees "*with experience, with ability to handle the pressure*";
- xxxix. The sanction should reflect that statements such as these were both factual and made in the best interests of the game;
- xl. Fifthly, Marco Silva has apologised for his comments and admitted to the charge at the first opportunity. He has co-operated with the FA at all times and consented to the charge being dealt with on the papers so as to avoid requiring the FA to incur additional time and costs beyond those required to fairly determine these proceedings;
- xli. Accordingly, it is submitted that any financial penalty that the Commission is initially minded to impose should be reduced significantly and/or suspended in whole or in part by the mitigation available to Marco Silva;
- xlii. Marco Silva should be sanctioned with a reprimand and/or a fine not exceeding £10,000 with some or all of such fine to be suspended for the period of one year and only activated in the event of a further similar breach;
- xliii. In response to The FA's written submissions on sanction, Marco Silva makes eight submissions;
- xliv. Firstly, that the facts of this case are not analogous to the facts in The FA v Klopp (Regulatory Commission, 15 May 2023) because the facts in Klopp were particularly unusual, and the imposition of a sporting sanction on a manager for media comments

was wholly exceptional. The analogy drawn by the FA to the facts of that case is misguided. As explained in Klopp (at paragraph 18) Mr Klopp had an unusually poor record for disciplinary offences, “*having appeared before Commissions on three occasions in the past five years*”. Mr Klopp had also made “*allegations of persistent bias against a blameless referee*”, targeting his comments specifically at referee Paul Tierney and describing personal animosity between himself and Mr Tierney in his comments to the media;

- xliv. In the sanctioning decisions in *The FA v Benitez (Regulatory Commission, 8 October 2018)* or *The FA v Warnock (Regulatory Commission, 25 March 2021)* no sporting sanction was imposed even though it is submitted the facts of those cases are more severe than Marco Silva’s case and both Mr Benitez and Mr Warnock had relevant disciplinary records;
- xlvi. The imposition of any sporting sanction (including a suspended sporting sanction) would be inappropriate and unprecedented in this case. In FA Rule E3 cases concerned with managerial media comments, sporting sanctions are reserved for the most severe misconduct and the most persistent wrongdoers. Neither is present here;
- xlvii. Secondly, even if the Commission is minded to impose a sporting sanction, it would be disproportionate for any sporting sanction imposed on Marco Silva to take effect immediately rather than for it to be suspended;
- xlviii. In circumstances where the FA itself, as regulator, does not say that an immediate (as opposed to a suspended) sporting sanction is necessary, to impose one would be clearly contrary to principles of proportionality. Thus, even if the Commission is minded to impose any sporting sanction (contrary to Mr Silva’s submissions) it should suspend that sanction until the end of 2024, only activating it in the event of a further breach;
- xlix. Thirdly, the FA has submitted that Mr Silva’s previous disciplinary record represents “*a significant aggravating factor*”. The FA’s statement that Marco Silva “*has breached FA Rule E3.1 on five occasions*” in the past year is somewhat misleading. All of those breaches relate to his conduct during and immediately after one fixture, held between Fulham FC and Manchester United FC on 19 March 2023;
- I. In respect of four of those breaches, the Regulatory Commission which heard Marco Silva’s case found that they should not be treated “*as if they were separate incidents and without regard to their, effectively, being part of the same course of misconduct*”, describing Mr Silva’s four charges as “*different facets of one course of misconduct*”

(see *The FA v Da Silva and Mitrovic (Regulatory Commission, 3 April 2023)* at paragraph 77);

- ii. The Commission should have regard to the fact that four of those breaches do not relate to managerial media comments and concern one course of conduct. They should not be given disproportionate weight in the determination of sanction;
- iii. The fifth breach of Rule E3.1 did concern media comments made by Marco Silva, again arising from the same fixture between Fulham FC and Manchester United FC. It is accepted that this breach will be relevant to the Commission’s determination of sanction;
- iiii. Fourthly, the FA’s Response requests that the Commission impose a “*significant financial penalty*” on Marco Silva and that the Commission should “*have regard to [Mr Silva’s] salary* [REDACTED]”;
- liv. It is accepted that the relevant weekly salary may provide a reference point for the Commission as regards sanction. However, it is submitted that any financial penalty imposed should be proportionate in its own right and determined in a manner similar to that employed in previous cases;
- lv. As explained by the Appeal Board in *Hartlepool United FC and others v The FA (Appeal Board, 21 September 2018)*, penalties should be imposed by the Commission “*having regard to how others in a like position are punished so as to ensure a proper measure of parity and proportionality*”;
- lvi. Attention is drawn to the financial sanctions imposed in the cases of *Lampard* (£30,000), *Tuchel* (£20,000) and *Hassenhuttl* (£20,000) albeit it is acknowledged that the weekly salaries of those managers were not publicly disclosed;
- lvii. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED];
- lviii. Fifthly, The FA has submitted that “*the extent of the comments, and duration of the same, transcending across three separate interviews, elevates the severity of the*

*breach*” or “*transcends three separate interviews*”;

- lix. It is acknowledged that matters such as the extent and duration of comments is capable of aggravating the relevant misconduct. For example, in *The FA v Espirito Santo (Regulatory Commission, 6 January 2021* at paragraph 17) the Commission considered that there was a “*serious breach of Rule E3*” where Mr Espirito Santo made comments which were “*a gratuitous and opportunistic attack on the professional competence of [a referee]*” and “*wholly unsolicited by the interviewers*” There, the duration of the comments was deemed relevant;
- lx. However, on the facts of this case it is simply unrealistic to treat Marco Silva’s comments as “*transcend[ing]*” multiple interviews. Marco Silva performed his mandatory post-match press interviews immediately after the match across a short time period, essentially moving from one interviewer to the next without pause. He was asked similar questions by each interviewer, and accordingly gave similar responses. In the circumstances, that is almost inevitable and should not be viewed as aggravating his misconduct.
- lxi. Further, it is clear upon listening to Marco Silva’s comments in their entirety that they were not part of an extended and unsolicited rant. Marco Silva gave one relatively lengthy answer, in which he discussed a number of particular officiating decisions from the match. His other comments repeated his previous answers more briefly;
- lxii. Sixthly, Mr Silva’s submission concerning the fact that his comments “*were made immediately after a disappointing defeat*” is said by the FA to be “*of limited value*” by way of mitigation. The FA suggests instead that “*a manager with [Mr Silva’s] experience should be capable of dealing with the situation without making the lengthy comments he did over the course of three interviews*”. Belatedly, the FA has submitted that Mr Silva should, given his concerns following the match, have sought to “*raise such concerns privately with the relevant authorities, as opposed to publicly via the media*”;
- lxiii. The FA appears, however, to have misunderstood Mr Silva’s evidence in this respect. As explained in his witness statement (at paragraph 25) Mr Silva did seek to speak to the Match Referee “*immediately after the match*”. When this proved impossible, he was “*required to carry out [his] press responsibilities, during which [he] was asked a number of questions concerning the match, the performance of the Referee and particular refereeing decisions*”;
- lxiv. Despite the FA’s contrary submission, the Commission is invited take into account the

precarious nature of this position by way of mitigation. As explained by the Regulatory Commission in *Hassenhuttl*, a “Premier League manager is constantly under incredible scrutiny”, being required to be “precise in their speech when challenged by an insatiable media”. This is frequently taken into account by way of mitigation in cases of this kind. For example, in *Warnock* the Commission stated in relation to mitigation that it was “sympathetic to the difficult situation that a Manager is placed in when he is obligated to face the media immediately after losing such an important match with incorrect decisions being a significantly contributing factor” (at paragraph 14). It is submitted the same conclusion should be drawn in this case;

- lxv. Seventhly, many of the FA’s submissions invite the Commission to make findings which relate to the issue of liability rather than that of sanction;
- lxvi. For example, The FA invites the Commission “to conclude that the comments made by [Mr Silva] include a specificity that elevates the comments beyond any form of generic comment about the influence of a home crowd”. That conclusion, taken from the decision of the Regulatory Commission in *Lampard* would be appropriate had Mr Silva contested liability on the basis that his words were generic rather than specific comments (as Mr Lampard did). However, he has done nothing of the sort. The submission is therefore misplaced;
- lxvii. Similarly, The FA invites the Commission to interpret Marco Silva’s words from the perspective of the reasonable man rather than by considering his subjective lack of malice. In making this submission The FA relies on a passage from *The FA v Klopp (Regulatory Commission, 25 February 2019)* which relates to determining liability, not assessing sanction;
- lxviii. There is no doubt that lack of malice is a relevant matter which can and should be taken into account by the Commission in relation to sanction. This can be seen in numerous previous cases including *Lampard* (at paragraph 34.1, where it was accepted “by way of mitigation” that the comments were made “without any malice”) and *Da Silva and Mitrovic (Regulatory Commission)* (at paragraph 87.1, where it was stated that “there are a number of mitigating factors” including that “the comment was a comment that was said without malice”);
- lxix. Indeed, and notwithstanding its subsequent submission, The FA appears to accept elsewhere that Marco Silva’s comments were not malicious;



- lxx. Eighthly, The FA has made the submission that the Commission should find that Marco Silva's reasons for admitting the charge "signal a degree of reluctance on his part", and, even more strikingly, that Mr Silva has sought to "*justify and explain his comments rather than "fall on his sword" so to speak and express his remorse*";
- lxxi. It is submitted this is a wholly inappropriate submission which, it is respectfully submitted, should not have been made. It misrepresents Marco Silva's evidence and requires him to display an impossible degree of contrition in circumstances where he has admitted the charge, apologised, and sought to explain (quite properly, and by way of mitigation) the reasons for his words. It is unclear what more the FA expects of Mr Silva. For the avoidance of doubt however, the Commission should give Mr Silva full credit by way of mitigation for admitting the Charge and apologising for his misconduct;
- lxxii. Marco Silva has stressed in his witness statement that he has a "*great deal of respect for all referees, and [appreciation of] the very difficult job they have*" (at paragraph 8). He has apologised "*unreservedly*" for his comments and admitted the charge (at paragraph 38). This should be taken into account as significant mitigation by the Commission. It would be unprincipled to treat Marco Silva's evidence as failing to "*fall on his sword*" sufficiently, as suggested by the FA;
- lxxiii. In support of its assessment of Mr Silva's evidence, The FA suggests that Mr Silva "*seems keen to convince the Commission that his view is correct, as opposed to acknowledging that he should not make comments of this nature*" and has sought "*to mitigate the breach by demonstrating that his belief was right*";
- lxxiv. It is submitted that is a mischaracterisation of Marco Silva's evidence, which consistently seeks to explain, rather than to justify, the basis for his media comments. Mr Silva has acknowledged that he has "*strong feelings*" (witness statement at paragraph 40) in relation to the matters set out in his statement, but that should not prompt criticism or detract from the various mitigating factors relevant in his case;
- lxxv. Further, as demonstrated in *Lampard* (at paragraphs 29 and 34), it is open to the Commission to take into account both: (i) that it can be "*difficult [for managers] to articulate*" objective commentary concerning the impact of "*human factors such as the presence and influence of the home crowd*" without crossing the "*fine line*" and implying bias of match officials; and (ii) that a comment which implies bias may have "*some support for debate*" in "*statistical analysis*";

- lxxvi. Those are acknowledged matters of mitigation, in relation to which Mr Silva has provided evidence in his witness statement. That does not mean, however, that Mr Silva has sought to “*convince the Commission that his view was correct*” rather than apologising. Mr Silva has apologised. He has, however, also sought to assist the Commission by explaining the objective and statistical basis for various comments he made, which should be taken into account as relevant to mitigation (as occurred in Lampard);
- lxxvii. Accordingly it is submitted that Mr Silva should not be sanctioned with any form of sporting sanction. The Commission should impose a reprimand and/or a reasonable and proportionate fine.

**(5) The Commission’s factual findings and legal conclusions as to sanction.**

20. Where it is necessary for the Commission to come to any conclusion(s) as to the relevant facts, the burden of proof is borne by The FA to prove the fact(s) upon the balance of probability.

21. The test to be applied is that the Commission is satisfied as to a relevant fact if the Commission considers that, on the evidence, the fact is more likely than not.

**(i) The nature of the comments.**

22. The offending comments make specific reference to the fact that Marco Silva was of the view that the Match Referee and the VAR was biased in his decision making in favour of Newcastle United FC.

23. The offending comments were consistent to each media organisation that Marco Silva asserted the Match Referee and/or the VAR lacked sufficient experience to officiate a Premier League match, lacked sufficient ability to officiate such a match, lacked sufficient ability to handle the pressure from the large crowd, and made “*strange*” decisions throughout the match.

24. The Commission is satisfied that the hypothetical “*reasonable bystander*” would (as opposed to might) interpret Marco Silva’s comments as implying bias and questioning the integrity of the Match Referee and the VAR in this match.

25. In any event, the Commission notes that Marco Silva is an experienced manager who has a relevant misconduct record for media comments that have breached FA Rule E3.1.

26. The Commission is satisfied that Marco Silva was well aware at all material times of the specific guidance issued by The FA entitled “*Essential information for Manager, Owners and Directors*” guidance. He chose to disregard it.

27. That guidance makes it abundantly clear that such media comments are inappropriate and any assertion of bias (whether express or implied) on the part of match officials is very likely to amount to a breach of FA Rule E3.1.

28. The Commission concludes that Marco Silva made a positive decision to air his frustrations by these inappropriate media comments.

29. This was therefore a positive decision by Marco Silva to make the points he wished to make. It may have been borne out of frustration, but the comments were consistently made during each separate media interview.

30. The Commission is satisfied the media comments were intended to make Marco Silva’s assertion of bias on the part of the Match Referee and/or the VAR clear to those that read or heard his comments.

31. Although the Commission notes that English is a second language for Marco Silva, he plainly possesses a reasonably good command of the English language.

32. Further, it is not submitted by Marco Silva that any of the comments that he made to the three media organisations were comments that he unintentionally made due to a lack of understanding of those comments.

33. The Commission reiterates that any such critical comments, whether justified or unjustified, ought properly to be made in an appropriate confidential forum where those contentious decisions can be properly scrutinised and assessed by all relevant parties.

34. Such comment in a public forum to media organisations is plainly not an appropriate forum for such discussion by participants such as managers.

(ii) The duration of the comments.

35. The offending comments were made to three separate media organisations.

36. In addition, the Commission notes that Marco Silva made a positive decision to make such comments to each media organisation. He was under no compulsion to do so.

37. Although it is asserted on his behalf that he “*attempted to speak to the referee*” after the match, it is not clarified as to whether there was any such private discussion as to relevant issues prior to the three media interviews.

38. In any event, it must have been plain to Marco Silva that the appropriate forum to make comments that expressed bias on the part of the Match Referee and/or the VAR was not in public media interviews.

39. The Commission acknowledges that a manager of a professional football team that has just lost a competitive match with contentious refereeing decisions is likely to be faced with an emotional and frustrating situation.

40. However, it must be plain to any competent manager that The FA’s guidance specifically dealing with media comments is designed to ensure that there is clarity as to the boundaries of acceptable conduct on the part of participants.

41. The FA contends that the fact the comments were repeated separately to three media organisations is a significant aggravating factor.

42. After Marco Silva had made the comments to the first media organisation, it is accepted by the Commission that the subsequent media interviews must have occurred relatively quickly thereafter.

43. However, it was open to Marco Silva to reflect upon what he had just said to the previous media organisation so as to desist from further such behaviour or to continue with further similar comments to the next media organisation. He chose the latter course. This was a positive decision on his part.

44. Marco Silva took such decisions with the backdrop of a recent finding of misconduct relating to inappropriate media comments.

45. The Commission is satisfied therefore that the fact that the offending comments were repeated to three separate media organisations sequentially is a significant aggravating factor in this case.

(iii) The specificity of the comments.

46. It is correct that Marco Silva made specific reference to the Match Referee and the VAR who officiated this match.

47. The FA contends that the specificity of the comments is relevant to the assessment of culpability.

48. Plainly the fact that the offending media comments have a degree of specificity categorises them as comments that offend FA Rule E3.1.

49. However, the Commission does not conclude that the specificity of the comments have any or any significant relevance to assessment of sanction beyond categorisation of the offending media comments as in breach of FA Rule E3.1.

(iv) Malice.

50. The Commission gives due regard to the fact that the comments were made by Marco Silva at a time when he remained frustrated by the result of the match and his own subjective assessment of the officiating by the match officials.

51. The Commission accepts the submission that the comments do not display malice directed at any particular individual due to past encounters with any of those individuals.

52. Indeed, the Commission is satisfied that the offending comments related simply to the subjective perception of Marco Silva that the match officials had not conducted themselves to an adequate standard.

53. However, it is accepted by Marco Silva that his comments breach FA Rule E3.1. He thereby accepts that he asserted bias on the part of the match officials thereby questioning their integrity.

54. It is that express assertion of bias that renders Marco Silva culpable for this breach of FA Rule E3.1.

55. The lack of malice in the comments that were made is nonetheless relevant to the assessment of culpability and therefore the assessment of sanction.

56. The Commission concludes that lack of malice amounts to the lack of an aggravating factor rather than the presence of a mitigating factor in such cases of offending media comments.

(v) The acceptance of the misconduct.

57. Plainly Marco Silva is entitled to credit for his acceptance of this misconduct at a relatively early stage of proceedings.

58. The level of credit due to a participant for acceptance of misconduct will vary from case to case depending upon the stage at which the allegation of misconduct is formally accepted and genuine insight and remorse on the part of the participant.

59. A participant who accepts the misconduct immediately, genuinely apologises for the misconduct, and shows genuine insight as to why the offending behaviour was inappropriate will be entitled to a high degree of credit for the acceptance of the misconduct.

60. It is plain to the Commission that Marco Silva has emphasised repeatedly, and relied upon the fact of, independent academic or other research that may support some of the contentions that he made to the media organisations when he made these offending comments.

61. Whether or not such academic research properly supports a contention that there may be subconscious bias on the part of any particular individual cannot significantly mitigate or mitigate at all the fact that an express assertion of bias on the part of match officials was made by Marco Silva to these media organisations.

62. Plainly each case must necessarily turn on its own facts. The Commission does not regard any asserted justification or explanation by Marco Silva relying upon the cited academic research as mitigating to any degree the misconduct that he has admitted.

63. Nonetheless, significant credit is due to Marco Silva for the fact that he admitted this misconduct at a relatively early stage and has apologised for the misconduct.

64. The Commission affords significant credit to Marco Silva for that early acceptance of this misconduct.

(vi) The previous disciplinary record of Marco Silva.

65. Within the previous twelve months, Marco Silva had breached FA Rule E3.1 on five occasions.

66. However, the Commission is acutely mindful that all five breaches arose from the FA Cup fixture against Manchester United FC at Old Trafford on 19<sup>th</sup> March 2023.

67. Four of these breaches took place *during* the FA Cup fixture against Manchester United FC at Old Trafford on 19 March 2023.

68. The fifth breach was an analogous breach of FA Rule E3.1 to the present breach, relating to comments made to the media *following* the same fixture.

69. That previous breach relating to media comments was the expression by Marco Silva of bias on the part of match officials thereby questioning their integrity.

70. Marco Silva was fined £20,000 for those offending media comments. That financial sanction was assessed taking into account all aggravating and mitigating factors and with a background at that time of no previous relevant misconduct.

71. It is acknowledged on behalf of Marco Silva that the previous breach of FA rule 3.1 is an aggravating factor.

72. However, it is submitted on his behalf that the fact there are four other dissimilar breaches of FA Rule E3.1 should not be overemphasised when assessing their impact globally as an aggravating factor.

73. The Commission accepts this submission on behalf of Marco Silva and regards the fact of the previous breach of FA Rule E3.1 relating to inappropriate media comments as a *significant* aggravating factor but not as a *serious* aggravating factor.

74. Of course, should Marco Silva face further such misconduct proceedings in the future, the fact that there are now two such instances of misconduct on his record is likely to render their cumulative effect as a very significant or perhaps serious aggravating factor.

(vii) A sporting sanction.

75. The Commission considered very carefully the aggravating and mitigating factors set out above.

76. The Commission noted that a sporting sanction for such breaches of FA rule E3.1 has been the exception rather than the rule in previous cited cases.

77. Although each case will necessarily turn upon its own facts, every participant is entitled to a degree of appropriate consistency and approach as between different Regulatory Commissions that deal with such misconduct.

78. The Commission regards any such implication of bias on the part of match officials as a serious instance of misconduct because of its inevitable negative impact upon the reputation and integrity of football generally.

79. However, balancing all of the aggravating and mitigating factors, most particularly the fact that there is only one previous instance of such misconduct on Marco Silva's record, the Commission concluded that it was not necessary or proportionate in all of the circumstances of this case for there to be a sporting sanction.

80. The Commission notes that should Marco Silva appear before a Regulatory Commission in the future facing similar misconduct charges, with his documented history of such offending media comments, that a sporting sanction will inevitably become increasingly necessary and proportionate.

(viii) A financial penalty.

81. A financial penalty is undoubtedly merited, necessary and proportionate for this misconduct.

82. In assessing the necessary and proportionate financial sanction in this case, the Commission takes into account all of the aggravating and mitigating factors set out above.

83. The Commission also takes into account the disclosed net weekly income of Marco Silva in assessing the necessary and proportionate financial sanction that should apply.

84. [REDACTED]  
[REDACTED]  
[REDACTED].

85. The Commission notes the submissions made on behalf of Marco Silva in relation to the financial sanction that was imposed in various other cited Regulatory Commission cases of similar misconduct.

86. However, each case must turn on its own specific facts and the Commission is not informed of the disclosed net income of the various participants in those other cited cases at the time that the financial sanction was imposed.

87. Balancing all of the aggravating and mitigating factors above, including appropriate credit for the acceptance of the misconduct by Marco Silva, the Commission unanimously



concluded that the appropriate financial sanction is a fine of £80,000.

88. The Commission considered whether any part of the financial sanction should be suspended.

89. Regulation 44 of the FA disciplinary regulations<sup>16</sup> provides (our emphasis):

“44. When considering imposing a suspended penalty, a Regulatory Commission must:

a) Determine the appropriate penalty for the breach, irrespective of any consideration of it being suspended; and

**b) Consider whether there is a clear and compelling reason(s) for suspending that penalty; if so**

**i. Set out what the clear and compelling reason(s) are; and**

ii. Decide the period of the suspension, or event, until which the penalty will be suspended; and

iii. Upon what other terms or conditions, if any, the penalty will be suspended.

90. Having considered the regulations, the Commission concludes there is no clear and compelling reason for suspending the financial penalty. Therefore, the financial sanction is not suspended.

91. Accordingly, Marco Silva is fined the sum of £80,000.

## **(6) Sanction.**

92. The total sanction in this case is therefore as follows:

i. Marco Silva is fined £80,000;

ii. Marco Silva is formally warned as to future conduct;

iii. Marco Silva will pay the costs of the Regulatory Commission.

93. The above sanctions are formally imposed.

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<sup>16</sup> Page 177 of the FA Handbook 2023 / 24 under “A – General Provisions – Section One: All Panels”.

94. There is the right to appeal these decisions in accordance with FA Regulations.

ABDUL S. IQBAL KC

FAYE WHITE

GARETH FARRELLY

29<sup>th</sup> January 2024