**BEFORE THE REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION**

**B E T W E E N:-**

**THE FOOTBALL ASSOCIATION (The FA)**

**-and-**

**MICHAEL STANDING ('MS')**
**FIRST TOUCH PRO MANAGEMENT LTD ('FTPM')**
**GARETH BARRY ('GB')**
**LEE POWER ('LP')**
**SWINDON TOWN FOOTBALL CLUB ('STFC')**

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**DECISION OF THE REGULATORY COMMISSION**

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## Introduction

1. As explained in paragraph 1 of The FA's Case Summary, Michael Standing, First Touch Pro Management, Gareth Barry, Lee Power and Swindon Town Football Club are each charged with breaches of the Football Agents Regulations and Working With Intermediaries Regulations (collectively 'the Intermediaries' Regulations'). These charges were issued on 8th November 2021.

2. The FA's case, as introduced in its detailed Response to the Respondents' submission (and we quote from paragraph 2 thereof), is that

> *"....the charges arose from the clandestine ownership and / or funding arrangement behind STFC between 1 January 2013 and 31 December 2019. In short, MS, FTPM, GB and LP were party to an on-going agreement that MS, FTPM and GB provide millions of pounds in funding to STFC via LP and his companies. The arrangement was hidden from football's governing bodies. As a result of the funding, The FA allege that MS and FTPM each held interests in STFC, and GB in MS and FTPM's intermediary businesses, which were prohibited under the WWI Regulations governing conflicts of interest".*

3. The essence of The FA's case focuses on the nature and structure of that agreement and on the fact that it was not disclosed to The FA. In the introductory summary in the Case Summary, it is put as follows:-

> *"2. The charges arise from an agreement between the parties, pursuant to which funding was provided to STFC. In summary, FTPM an Intermediary's Organisation (and from January 2015 an Intermediary), MS, a director and shareholder of FTPM (and, from January 2019 an Intermediary) and Lindene, a company belonging to GB, providing funding to STFC through Power Bloodstock ('PBS'), a company belonging to LP, the STFC chairman.*
>
> *3. Between March 2013 and August 2019 ('the relevant period') STFC received approximately £6m of [sic] from this secret funding. In so doing, FTPM and MS influenced the financial affairs of STFC. Similarly, GB influenced the financial affairs of FTPM and MS by virtue of the funds he provided to, and / or on behalf of both, at least in part pursuant to the funding agreement. The funding agreement was kept from the football authorities, and only came to light following press reports of litigation relating to MS's disputed interest in STFC."*

4. The charges are as follows

| Charge | Particulars | Regulation | Party |
|---|---|---|---|
| **1** | Between 1 January 2019 and 31 December 2019, Michael Standing had a prohibited interest in Swindon Town Football Club, by holding a beneficial interest of more than 5% in the Club or the company through which the activities of the Club are conducted, and / or providing funding to the club, directly or indirectly, and so being in a position that may enable the exercise of a material, financial, commercial, administrative, managerial or any other influence over the affairs of the Club whether directly or indirectly and whether formally or informally. | E4 of the Working with Intermediaries Regulations | **MS** |
| **2** | Between 1 January 2015 and 31 December 2019, First Touch Pro Management, an Intermediary, held a prohibited interest in Swindon Town Football Club, by providing funding to the club, and so being in a position that may enable the exercise of a material, financial, commercial, administrative, managerial or any other influence over the affairs of the Club whether directly or indirectly and whether formally or informally. | E4 of the Working with Intermediaries Regulations. | **FTPM** |
| **3** | Between 1 January 2013 and 31 December 2019, Gareth Barry had a prohibited interest in the business or affairs of First Touch Pro Management, an Intermediary's Organisation / | E4 of the Working with | **GB** |

| | | | |
|---|---|---|---|
| | Intermediary, by providing funding to First Touch Pro Management, and so being in a position that may enable the exercise of a material, financial, commercial, administrative, managerial or any other influence over the affairs of First Touch Pro Management whether directly or indirectly and whether formally or informally. | Intermediaries Regulations | |
| **4** | Between 1 January 2019 and 31 December 2019, Gareth Barry had a prohibited interest in the business or affairs of Michael Standing, an Intermediary, by providing funding on his behalf to Swindon Town Football Club, and so being in a position that may enable the exercise of a material, financial, commercial, administrative, managerial or any other influence over the affairs of the Michael Standing whether directly or indirectly and whether formally or informally. | E4 of the Working with Intermediaries Regulations | **GB** |
| **5** | Between 1 January 2013 and 31 December 2019, Lee Power, a Club Official, failed to disclose to the FA any contractual or customary arrangement, whether formal or informal, that existed between Lee Power and First Touch Pro Management, an Intermediary's Organisation, whereby any money was paid by or on behalf of First Touch Pro management to Lee Power within ten days of the contractual or customary arrangement having been entered into. | E8(i) of the Working with Intermediaries Regulations | **LP** |
| **6** | Between 1 January 2013 and 31 December 2019, Swindon Town Football Club failed to disclose to the FA any contractual or customary arrangement, whether formal or informal, that existed between the club and First Touch Pro Management, an Intermediary's Organisation, whereby any money was paid by or on behalf of First Touch Pro Management to the club, within ten days of the contractual or customary arrangement having been entered into. | E8(i) of the Working with Intermediaries Regulations | **STFC** |
| **7** | Between 1 January 2013 and 31 December 2019, Michael Standing, First Touch Pro Management, Gareth Barry, Lee Power and Swindon Town Football Club were parties to an agreement by which First Touch Pro Management, an Intermediary's Organisation, and / or Michael Standing, a person with an interest in an Intermediary's Organisation / Intermediary, provided funding to Swindon Town Football Club, and so placed First Touch Pro Management and / or Michael Standing in a | FA Rules E1, E9 and Regulation E4 of the Working with Intermediaries Regulations | **All** |

| | | | |
|---|---|---|---|
| | position that may enable the exercise of a material, financial, commercial, administrative, managerial or any other influence over the affairs of the Club whether directly or indirectly and whether formally or informally. | | |

5. Those charges are admitted/denied as follows:-

- MS admits charge 1 but denies the other charge he faces (charge 7).
- FTPM admits charge 2 but also deny the other charge it faces, (that is charge 7).
- GB denies all three charges he faces (charges 3, 4 and 7).
- LP denies the two charges he faces (charges 5 and 7).
- STFC admits the two charges it faces (charges 6 and 7).

6. After a delay of around two years[1] arising from the fact that some key factual issues as to the beneficial ownership of STFC were the subject of High Court litigation (to which we refer further below), this personal hearing of these charges did not take place until June 12th and 13th June 2024 when the Commission heard the case remotely[2].

7. At that hearing, The FA's case was presented by Mr Will Martin of Counsel. The first three Respondents (MS, FTPM, GB) were represented by Mr Nick de Marco KC and LP by Grahame Anderson of Counsel. All parties provided written submissions and although STFC was not represented at the hearing, the Club did provide written submissions.

8. There was no issue taken with the composition of this Regulatory Commission.

9. In advance of and at the hearing we were provided with a very substantial volume of written material including interviews, questions and answers in writing and witness

[1] The relevant parties offered an undertaking not to take part in any footballing activities during this period. This stay was sought by the first four Respondents and granted by the Chair despite The FA's opposition. The undertaking offered was accepted by the Chair (constituting the Regulatory Commission at that stage).

[2] Although that litigation in the Chancery Division is not yet concluded, there was no request by any party to postpone this hearing any further notwithstanding that many of the factual issues surrounding the true nature of the ownership arrangements in relation to STFC arise would fall to be determined in that claim.

statements. This material was contained in three bundles: first, the main Hearing Bundle; second, an Evidence Bundle and, third, a Bundle of Supplementary Material including the parties' written submissions[3].

10. There was no oral evidence called on behalf of The FA. That is unsurprising. Rather more unusually, perhaps, there was no oral evidence called by or on behalf of MS, FTPM, GB and LP notwithstanding the diametrically opposed factual accounts offered by GB and MS on the one hand as to the purpose of the loans and the ownership arrangements of STFC as contrasted with that of LP on the other hand.

11. The FA invited us to draw adverse inferences against parties who relied on factual assertions by witnesses who have not given oral evidence but have provided written witness statements in these or in the Court proceedings. The FA argues that is the right approach given that those individuals must have an obvious interest in seeing their account prevail against a contradictory version.

12. We shall not draw any such inferences in the present case. The relevant witnesses – particularly, MS, GB and LP - may have any number of reasons, good bad or indifferent, for not giving evidence. For example, they may consider or be advised that the case against them is so weak that they have no 'case to answer'. Or they may consider giving evidence an unpleasant as well as unnecessary exercise and that they have better things to do with their time[4] - though that is the least persuasive explanation. Or they could be concerned about any implications for the HC litigation which is not yet resolved[5].

13. The point here, of course, is that all those witnesses have taken exactly the same course. In those circumstances, it would hardly be fair to draw and adverse inference against – say – MS in relation to the merits of his claim to be the beneficial owner (in part at least) of STFC when the other party – LP – who challenges that account has not given evidence either.

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[3] As a comment, this is not what had been provided for in earlier Directions nor does it bear much resemblance to the '*comprehensive, streamlined bundle* that the FA promised (in its Case Summary) to provide "*in due course, and in good time before the* hearing".

[4] Although MS and GB were represented, neither offered themselves as witnesses giving oral evidence. LP was apparently present during the hearing, but he did not give evidence either.

[5] We were told that an agreement had been reached 'in principle' which would settle the litigation, but we know no more than that.

14. The upshot of this is that we treat the lack of oral evidence as neutral. More important, in our view, is to consider where the burden of proof lies in relation to any positive case advanced by The FA as regards any proposition of fact.

15. And generally, as we explain below in relation to our factual findings, we look at and decide matters (in so far as we can) on the balance of probability according to the written evidence. Where we can, we decide such issues which are obviously important as regards the factual context for these charges and any sanctions which may follow a finding of breach of The FA's Rules and/or regulations.

**Relevant Rules and Regulations**

16. These have varied over time as explained by The FA in its Case Summary which we shall quote[6] and which, save as regards the analysis in sub-paragraphs [8] to [12] below, is wholly or largely uncontroversial.

> "**B. APPLICABLE RULES & REGULATIONS**
>
> [5]. During the relevant period – March 2013 – August 2019 – eight versions of The FA Handbook were issued. Although changes were made to the FA's rules and regulations[7], throughout the relevant period specific conflicts of interest have been prohibited. These include Intermediaries[8] or Intermediary's Organisations[9] having interests in the affairs of a Club, and, similarly, players from having an interest in the business or affairs of an Intermediary or Intermediary's Organisation. Further, throughout the relevant period Clubs and Club Officials (including directors) have been under a duty to disclose conflicts of interest, including any formal or informal arrangements between a Club or Club Official and an Intermediary or Intermediary's Organisation whereby money is paid by the Intermediary or Intermediary's Organisation to the Club or Club Official[10].
>
> [6]. With reference to The FA Handbook 2019-20 (i.e. the Handbook in force at the end of the relevant period), Regulation E4 of the Intermediaries' Regulations provides:
>
> *'Restriction on Conflict of Interest*

[6] We quote from paragraphs 5 to 11, including footnotes.
[7] Principally the replacement of the Football Agents Regulations with the Working with Intermediaries Regulations for the 2015/16 season.
[8] Previously known as 'Authorised Agents'.
[9] Previously known as 'Authorised Agents' Organisations'.
[10] The relevant provisions, from 2012/13 to 2020/21 are set out at MB/1-39

*4. An Intermediary, [any individual or legal person with an interest in an Intermediary's Organisation[11]] or an Intermediary's Organisation[12] shall not have an interest in a Club. Similarly, a Player, Club, Club Official, Manager or any individual or entity with an interest in a Club shall not have any interest in the business or affairs of an Intermediary or an Intermediary's Organisation.*

*Such interest shall be defined as:*

*a. beneficial ownership of more than 5% of any entity, firm or company through which the activities of the Club or Intermediary (as applicable) are conducted and/or*

*b. being in a position or having any association that may enable the exercise of a material, financial, commercial, administrative, managerial or any other influence over the affairs of the Club or Intermediary (as applicable) whether directly or indirectly and whether formally or informally.*'

[7]. Regulation E4(b) (and its predecessor regulations) defines 'interest' broadly. It is intended to encompass a multitude of possible factual scenarios. However, some forms of prohibited influence are specified: for example, financial influence over the affairs of a Club or Intermediary: a form of influence particularly relevant to this case. The definition of interest does not require that influence has been exerted, only that the Intermediary (or other party specified in the regulation) was in a position where they may exercise influence. Inevitably, the provision of significant funding or investment to a Club by an Intermediary, or to an Intermediary by a Player, must amount to a financial interest for the purposes of the regulations.

[8]. Regulation 8 of the Intermediaries' Regulations provides:

*'**Duty to Disclose***

*8(i) A Player, Club, Club Official or Manager must disclose to The Association any agreement or contractual or other arrangement whether formal or informal that exists between any Player, Club, club Official or Manager and any Intermediary (or an Intermediary's Organisation) whereby any money is paid by or on behalf of such Intermediary (or such Intermediary's Organisation) to such Player, Club, Club Official or Manager. Such disclosure must be made within ten days of the Intermediary entering into such a contractual or customary arrangement with the Player, Club, Club Official or Manager.*'

[9]. Regulation E8(i) (and its predecessor regulations) defines the arrangements that must be disclosed broadly. It includes any existing

[11] Inserted for 2017/18 season, see p.25

[12] An "Organisation" is defined as: an agency, person, firm or company retaining, comprising, employing, or otherwise acting as a vehicle for one or more Intermediaries and not registered as an Intermediary itself'.

arrangement where a Player, Club, Club Official or Manager is paid money by an Intermediary or Intermediaries Organisation. In other words if, as a matter of fact, money is being paid by (for example) a Club Official to an Intermediary, then that is an arrangement we must be disclosed to The FA. The regulation requires disclosure of any arrangement that exists, not only new arrangements entered into between parties.

[10]. FA Rule E1 provides:

*'The Association may act against a Participant in respect of any Misconduct, which is defined as being a breach of the following:*

*...*

*E1.2 the Rules and regulations of The Association and in particular Rules E3 to E28 below;'*

[11]. FA Rule E9 provides:

***'ATTEMPTS AND AGREEMENTS TO BREACH***

*E9 An attempt by a Participant or any agreement with any other person (whether or not a Participant) to act in breach of any provision contained in these Rules shall be treated for the purposes of these Rules as if a breach of the relevant provisions had been committed.*'

[12]. FA Rule E9 and E1.2 allow The FA to bring charges of misconduct for inchoate breaches of any FA Regulations, including agreements to breach the Intermediary Regulations."

17. During the course of the hearing, some further definitions to be found in other iterations of the Rules/Regulations were drawn to our attention. We quote the highlighted provisions in the extracts which were forwarded to us

- *"Intermediary" means any natural or legal person who carries out or seeks to carry out Intermediary Activity and has registered with The Association in accordance with Appendix II and/or III*;[13]

- *"Organisation" means an agency, person, firm or company retaining, comprising, employing, or otherwise acting as a vehicle for one or more Intermediaries and not registered as an Intermediary itself pursuant to Appendices II and III*;[14]

- "*Authorised Agent" means, where the context so demands, a Licensed Agent and/or a Registered Agent. Licensed Agents are licensed by The Association in accordance with Appendix II. Registered Agents are, under Appendix III, either*

[13] FA Regulations on Working with Intermediaries 2015-2016
[14] FA Regulations on Working with Intermediaries 2015-2016

*Registered Overseas Agents, Registered Close Relations, or Registered Lawyers.*[15]

- "*Organisation" means an agency, person, firm or company retaining, comprising, employing, or otherwise acting as a vehicle for one or more Authorised Agent.*[16]

- *An Authorised Agent (or an Authorised Agent's Organisation) shall not, save as set out in Regulation H8 and subject to the transitional provisions in Regulation K6, have an interest in a Club. Such interest shall be defined as:*

  ...

  *(b) being in a position or having any association that may enable the exercise of a material financial, commercial, administrative, managerial or any other influence over the affairs of the Club whether directly or indirectly and whether formally or informally*.[17]

**The parties and other individuals/bodies**

18. The Evidence Bundle contains an 'Appendix 1' which we shall include as Annex One to this Decision.

**Chronology of Key Events and roles of relevant individuals**

19. The Evidence Bundle also includes a useful Chronology which is annexed to this Decision. It is referred to as Confidential Annex Two because it includes confidential information which is not needed to explain our reasoning to a wider audience and should not be published save to the parties to this decision or to those engaged in any appeal in these proceedings or in any other FA proceedings We offer only a short narrative summary of the key events.

20. They begin with a meeting in March 2013 when MS, LP and GB met at GB's home to discuss funding arrangements for STFC. There are two versions of that meeting which are diametrically opposed to each other. The FA declares itself to be neutral as to which of them is to be preferred.

[15] Football Agents Regulations
[16] Football Agents Regulations
[17] Football Agents Regulations 2013-2014

21. In GB's High Court witness statement dated 27 April 2020, he says that the meeting with LP and MS was about the funding agreement but only to give him some reassurance about the fact that he was lending a substantial sum of money to MS for the purpose of MS purchasing 50% of STFC and was interested to gain an impression of the person (LP) with whom MS was going, or going to be, doing business.

22. The meeting lasted approximately 30 minutes, and, according to his statement "*consisted essentially of [LP] telling me, in very broad outline, why he thought the acquisition of [STFC] was a good move and one that he and [MS] could make a success of*".

23. Essentially, then, the only point of the meeting (as far as MS and GB were concerned) was for GB to get a sense of whether he liked and trusted LP. He says he had some misgivings as a result of the meeting but nevertheless, GB says he subsequently loaned money to MS for the purposes of investing in, and funding, STFC.

24. LP, on the other hand, suggests that the deal with MS/GB and the purpose of the meeting were very different. In his High Court witness statement dated 26 Feb 2020, he describes meeting MS, and telling MS that he wanted a co-investor in STFC. MS informed LP that he was a friend, agent and business advisor to GB, and that GB was interested in investing in the club. That, he says, is why the meeting was arranged in March 2013 at GB's house.

25. According to LP's account of the meeting, the three men "*discussed the English Football League/Football Association Rules including the 'fit and proper' test applied to owners and directors under those rules. [GB] made it clear that whilst he would be the one funding any investment, he could not be involved in the ownership of or any shareholding in a professional football club*".

26. It was for that reason, according to LP[18], that it was made a condition of the agreement that GB would not own any shares in the Club directly or indirectly and that the funding would be provided by GB through Lindene and FTPM (in which he understood GB had an interest), in part to keep his involvement confidential).

[18] In a witness statement dated 26 February 2020, given in the High Court proceedings

27. To the same effect, LP says in his witness statement in these proceedings, dated 25 October 2022, he recalled that it was in order to protect GB's anonymity, that the funding was not provided directly to the Club. Accordingly, he provided banking details for himself and "*an account of a company owned by me, PBS Ltd into which the funding payments could be made, and from which I could then transfer them onto the Club".*

28. Shortly after the meeting, SR20 was established (on 26 March 2013) as a vehicle for LP's purchase of STFC. LP and SC[19] were appointed as directors.

29. Certain other events followed which are probably equally consistent with either of those two very different versions of events.

30. LP became chairman and owner of STFC in November 2013. He did so through a holding company (Swinton Reds). Originally, LP owned 100% of the shares but in June 2018 he sold 15% of the shares to a company called Axis, owned by Clem Morfuni.

31. In July 2021, as a result of Court proceedings brought by Axis against LP (to which we refer below), LP was compelled to sell his 85% share to Mr Morfuni who thereafter became the sole owner of STFC.

32. FTPM (first incorporated in 2008) operates as what is still known (at least colloquially) as a footballing agency. That is, it acts as an agency on its own account and includes amongst those who work for it individuals who are themselves football agents. Technically, agents are now known as 'intermediaries' and from April 2015 FTPM was registered with The FA as an Intermediary in 2015 for the purposes of the Intermediaries Regulations. It was also an Intermediary's Organisation[20].

33. Both MS and his brother, John (JS), have been directors of FTPM since August 2012. MS was a registered intermediary (but carried out no actual business in that capacity) for a period of one year from January 20018. He was, however, a shareholder (with 23% of the company) and director until April 2021 when, following the present disciplinary

[19] SC – Stephen Crouch – was a co-director of Swinton Reds with LP. SRC Ltd operated as company secretary for Lindene and FTPM. SC acted as the accountant for MS, Lindene and FTPM.
[20] These titles are explained at paragraph 5 of The FA's case Summary.

proceedings, he resigned his directorship and divested himself of his shares in FTPM. JS remains a director, but FTPM is now wholly owned by Elite Management Agency.

34. GB is a long-standing and close friend of MS and is, of course, a well-known and well-respected but now retired international footballer. He signed his final contract (with West Bromwich Albion) in October 2019. FTPM acted for him when he signed that contract. There are other business links between them in so far as GB is a director of Lindene GB Promotions (Lindene) JS is also a director) and Lindene shares a business address, company secretary and accountant with FTPM.

35. That is relevant because MS, FTPM and GB (through Lindene) each paid money to STFC via LP's company, Power Bloodstock (PBS) as can be seen below when we deal with 'Payments Made'.

**Facts recorded as agreed**

36. Pursuant to Directions made earlier in the history of this case, the parties have generated a document containing a limited number of agreed facts.

> "The following facts are agreed between the parties:
>
> [1]. Appendices I to III to the case summary (people and organisations, chronology, and payment schedule) are agreed as accurate, save where the contrary is demonstrated during the course of the evidence.
>
> [2]. In relation to the total payments made in accordance with the funding arrangement:
>
> a. The combined amount received by PBS from MS, FTPM and Lindene was£5,429,500
>
> i. MS sent PBS £615,000
>
> ii. FTPM sent PBS £3,502,500
>
> iii. Lindene sent PBS £1,312,000
>
> b. The combined amount sent by PBS to MS, FTPM and Lindene was £1,393,249.40
>
> i. PBS sent MS £430,000
>
> ii. PBS sent FTPM £300,000

iii. PBS sent Lindene £663,249.40

c. Lindene sent FTPM £516,402.63

d. Lindene sent IPS £487,925

e. FTPM sent IPS £150,000."

**The High Court litigation**

37. Within the chronology, we have referred to the judgment of Michael Green KC in *Standing v Power* [2020] EWHC 1173 (Ch)[21]. It contains a useful summary of the parties' respective positions which we shall quote in full

> *"3. The assets and business of the Club are owned by a company called Swindon Town Football Company Limited (STFC). Prior to the acquisition in 2013 described below, STFC was wholly owned by a company called Seebeck 87 Limited (Seebeck). Following the acquisition, Seebeck became wholly owned by a company called Swinton Reds 20 Limited (Swinton).1 Swinton was incorporated by Mr Power to acquire Seebeck and therefore the Club. Swinton and Seebeck are Defendants in the Axis proceedings.*
>
> *4. At all material times, Mr Power has been the legal owner of 100% of the shares in Swinton. He is also currently the sole director of Swinton, Seebeck and STFC.*
>
> *5. The Club was acquired by Mr Power in 2013. The main dispute between the parties in the Standing proceedings concerns the terms of his acquisition of the Club and whether he holds 50% of the shares in Swinton on trust for Mr Standing. Mr Power does not deny that there was another person involved in the acquisition but extraordinarily he says that it was not Mr Standing, but his, Mr Standing's, very good friend, the well-known England international footballer, Mr Gareth Barry. Mr Power disputes that Mr Standing and/or Mr Barry have a 50% interest in the Club but he does accept that Mr Barry has certain contractual rights.*
>
> *6. The rival contentions are as follows:*
>
> *(1) Mr Standing says that there was an oral agreement on or around 20 March 2013 between him and Mr Power whereby they would purchase the Club on a 50/50 basis on these terms:*
>
> *(a) Mr Standing would provide the initial £800,000 of the funding required for the acquisition. This was understood to be made up as to £300,000 for the cost of the shares in the Club to be*

[21] There is a related claim and decision in *Axis v Power* [2020] EWHC 1171 (Ch)

*acquired from the former owners and as to £500,000 for working capital by way of a loan to the Club.*

*(b) Mr Power would be the legal owner of all the shares in Swinton, the ultimate holding company of the Club, but 50% of such shares would be held on trust for Mr Standing.*

*(c) Mr Power would be a director of the Club and would run it on a day to day basis. However all important decisions including in particular in relation to any possible sale of the Club would be discussed with Mr Standing and would require his consent. On any sale of the Club, the proceeds would be split 50/50 between Mr Standing and Mr Power in accordance with the beneficial interests in the shares in Swinton.*

*(d) The Club's working capital requirements from time to time would be met 50/50 by Mr Standing and Mr Power. Likewise, any "surpluses" arising from time to time would be shared 50/50 between Mr Standing and Mr Power and would go to repaying any outstanding loans they had made.*

*(e) Mr Standing's beneficial interest in the Club would be kept confidential.*

*(2) Mr Power says that there was a meeting in March 2013 at Mr Barry's house attended by him and Mr Standing. At that meeting, Mr Power says he reached an oral agreement with Mr Barry in the following terms:*

*(a) Mr Barry would be allowed to invest in the acquisition of the Club and to that end Mr Barry, through a corporate vehicle, would provide the initial £800,000 required with the same split of £300,000 for the shares and £500,000 as working capital.*

*(b) Mr Barry would not own any shares in the Club whether directly or indirectly but he would be entitled to 50% of the profits arising from any increase in value of the Club, including 50% of net profits arising from sales of certain players.*

*(c) Mr Barry and Mr Power would fund 50/50 any ongoing working capital requirements of the Club. They would also have equal responsibility for discharging a debenture over the Club's assets held by Mr Andrew Black, a former owner of the Club, in the sum of £2 million in the event of a sale of the Club.*

*7. Even though the terms are similar the crucial term that is not is in relation to whether the investor, whether that is Mr Standing or Mr Barry, owns beneficially 50% of the shares in Swinton. The reason why there had to be confidentiality about the beneficial interest, if there was one, or the fact*

*of Mr Standing's or Mr Barry's involvement, was because of the Football Association's rules concerning the ownership of football clubs. Mr Standing has an interest in a company called First Touch Professional Management Ltd (FTPM) which is involved in the football agency business. Its main client is Mr Barry. The FA's regulations are now contained in the FA Regulations on Working with Intermediaries and they prohibit football intermediaries/agents from owning or having interests in football clubs. Mr Barry remains as a professional footballer, currently playing for West Bromwich Albion FC, and he too was unable to hold shares in any football club.*

8. *Mr Standing says that he did not think it necessary to put the agreement into writing as he had trust and confidence at the time in Mr Power. There is substantial evidence of the performance of the agreement and it is not disputed by Mr Power that £800,000 was put up initially by whoever the other investor was and that, until September 2019, both parties have been making equal contributions towards the Club's working capital requirements. Mr Power says that he thought Mr Standing was at all times acting on behalf of Mr Barry.*

9. *Following the acquisition, Mr Standing's accountant, Mr Stephen Crouch, was appointed as a director of Swinton. He kept Mr Standing informed of all relevant financial matters relating to the Club. Furthermore, Mr Standing was given the Club's online banking log-in details so he could monitor the Club's bank statements. However, in 2019, this access was removed as was Mr Crouch as a director."*

38. The FA became aware of the MS / LP litigation in May 2020 following reports in the media and began its investigation in May 2020. LP was interviewed LP in October 2020 but initial attempts to obtain observations from MS and FTPM, and to contact GB were not successful. However, in May / June 2021, The FA obtained, via the High Court, the witness statements, exhibits, statements of case and skeleton arguments served by MS and LP during the High Court proceedings.

39. According to The FA, the accounts given by MS, LP and GB in their High Court witness statements as to their respective roles the provision of funding to STFC *"amount to admissions that they (along with FTPM and STFC) agreed to, and did in fact, breach the Intermediary Regulations*"[22].

40. We would prefer to say that they certainly gave rise to a case to answer.

[22] See paragraph 22 of the Case Summary.

41. In June 2021 GB agreed to provide written answers to The FA's questions. Following further correspondence, he provided those answers on 29 July 2021 and 1 September 2021 FTPM similarly provided written answers to The FA's questions.

42. As we noted at the beginning, The FA issued its charges in November 2021

**Payments made**

43. The FA has helpfully provided both a narrative account and a schedule of all relevant monies passing between the relevant individuals and organisations in the present case. We annex that to this decision as Confidential Annex Three (again, confidential for the same reason as applies to Confidential Annex Two).

44. We shall adopt The FA's account of the nature and extent of that funding as taken from the Case Summary (omitting descriptors included in the original text such as referring to this as a 'disguised' route).

45. The relevant passage which we otherwise quote in full are at paragraphs 31 to 34:

> "[31]. …The scale of the funding provided was substantial, totalling £6,276,250[23]. A payment schedule summarising the evidence of payments made by the parties can be found at Appendix 3[24].
>
> [32]. In March 2013, following the meeting between the three men, initial payments were made by Lindene and FTPM - £450,000 and £150,000 respectively – to IPS solicitors, who were instructed by SR20 in the purchase of STFC.
>
> [33]. Following that initial outlay, between July 2013 to September 2019, the total funds paid to PBS under the agreement were as follows:
>
> i. MS - £615,000
>
> ii. FTPM - £3,502,500; and
>
> iii. Lindene - £1,312,000

[23] The true sum may be more: in his High Court witness statement dated 26 February 2020, LP stated that he provided MS and GB with his personal account details for funds to be provided. The FA is not in possession of LP's personal, or other business, accounts.

[24] All parties will be invited to agree the payment schedule in due course. The schedule is limited to the extent that STFC's bank statements obtained by The FA (through the High Court papers) only cover the period 18 June 2018 to 31 July 2019.

[34]. It is not disputed by MS or LP that the investor (whether it be MS, GB, or both) was required to provide 50% of the funding to STFC, with the other 50% met by LP. The payment schedule reflects the same: funds sent by FTPM and Lindene to PBS were then forwarded by LP to STFC, with LP (generally) matching the amount provided[25]. By way of example:

i. On 20 June 2018 FTPM paid £25,000 to PBS. The same day, £25,000 was transferred by PBS to STFC. The next day, LP paid £25,000 to STFC.

| Transaction | Date | Sum (£) | From | To |
|---|---|---|---|---|
| **103** | 20.6.18 | 25,000.00 | FTPM | PB |
| **105** | 20.6.18 | 25,000.00 | PB | STFC |
| **106** | 21.6.18 | 25,000.00 | LP | STFC |

ii. On 26 and 29 October 2018, FTPM made two payments of £50,000 (totalling £100,000), in four £25,000 tranches, to STFC. LP then paid £100,000 to STFC, matching the FTPM contribution.

| Transaction | Date | Sum (£) | From | To |
|---|---|---|---|---|
| **114** | 26.10.18 | 50,000.00 | FTPM | PB |
| **115** | 29.10.18 | 50,000.00 | FTPM | PB |
| **116** | 30.10.18 | 25,000.00 | PB | STFC |
| **117** | 30.10.18 | 25,000.00 | PB | STFC |
| **118** | 30.10.18 | 25,000.00 | PB | STFC |
| **119** | 30.10.18 | 25,000.00 | PB | STFC |
| **120** | 30.10.18 | 100,000.00 | LP | STFC |

iii. On 21 December 2018, FTPM paid £50,000 to PB. On 24 December 2018, Lindene paid £30,000 to FTPM. The same day, FTPM made a payment to PBS for £50,000. This payment (transaction 128) is marked in the High Court documentation as "(borrowed 30k from Lindene"[sic] in documents provided by MS in High Court proceedings"[26]. Having received a total of £100,000 to the STFC on the same day PBS paid that amount to STFC in four tranches of £25,000. LP paid £100,000 to the STFC on the same day. In other words, Lindene helped FTPM to meet its obligations to fund STFC. Once PBS received the money, LP matched FTPM's contribution.

[25] The FA only has in its possession STFC accounts from 18 June 2018 to 31 July 2019 to show the onward transmission of the funds to STFC, and the funds received by STFC from LP's personal or other business accounts.
[26] MB/361 bundle

| Transaction | Date | Sum (£) | From | To |
|---|---|---|---|---|
| 127 | 21.12.18 | 50,000.00 | FTPM | PB |
| 128 | 24.12.18 | 50,000.00 | FTPM | PB |
| 129 | 24.12.18 | 30,000.00 | Lindene | FTPM |
| 130 | 24.12.18 | 100,000.00 | LP | STFC |
| 131 | 24.12.18 | 25,000.00 | PB | STFC |
| 132 | 24.12.18 | 25,000.00 | PB | STFC |
| 133 | 24.12.18 | 25,000.00 | PB | STFC |
| 134 | 24.12.18 | 25,000.00 | PB | STFC |

iv. On 28 May 2019 Lindene paid £75,000, and FTPM £25,000 (totalling £100,000) to PBS. PBS that amount to STFC in four

tranches of £25,000. LP paid £87,500 to STFC on the same day. The sequence shows Lindene and FTPM contributing jointly STFC, with LP making a broadly similar payment.

| Transaction | Date | Sum (£) | From | To |
|---|---|---|---|---|
| 144 | 28.5.19 | 75,000.00 | Lindene | PB |
| 145 | 28.5.19 | 25,000.00 | FTPM | PB |
| 146 | 28.5.19 | 25,000.00 | PB | STFC |
| 147 | 28.5.19 | 25,000.00 | PB | STFC |
| 148 | 28.5.19 | 25,000.00 | PB | STFC |
| 149 | 28.5.19 | 25,000.00 | PB | STFC |
| 150 | 28.5.19 | 87,500.00 | LP | STFC |

v. On 29 July 2019 Lindene and FTPM each paid £50,000 to PBS (totalling £100,000). Lindene's payment (transaction 161) – is marked in High Court documents provided by MS as "This was all FT's [FTPM's] money though"[27]. The same day, LP paid £125,000 to STFC. On 30 July 2019, FTPM sent an additional £25,000 to PBS, bringing the joint Lindene and FTPM contributions to £125,000 over the two days. PBS then sent £125,000, in five £25,000 tranches, to STFC.

| Transaction | Date | Sum (£) | From | To |
|---|---|---|---|---|
| 161 | 29.7.19 | 50,000.00 | Lindene | PB |
| 162 | 29.7.19 | 50,000.00 | FTPM | PB |
| 163 | 29.7.19 | 125,000.00 | LP | STFC |
| 164 | 30.7.19 | 25,000.00 | FTPM | PB |
| 165 | 30.7.19 | 25,000.00 | PB | STFC |
| 166 | 30.7.19 | 25,000.00 | PB | STFC |
| 167 | 30.7.19 | 25,000.00 | PB | STFC |
| 168 | 30.7.19 | 25,000.00 | PB | STFC |
| 169 | 31.7.19 | 25,000.00 | PB | STFC |

**Written evidence that we have considered**

[27] MB/361 bundle.

46. The Hearing Bundle contains a considerable number of witness statements, some given in these proceedings and some in the High Court. In very short summary, we have statements from:

- Stephen Mytton, Chair of the Swindon Town Community Mutual Limited, the STFC football supporters' trust and a registered society under the Co-Operative and Community Benefit Societies Act 2014. He explains how Mr Morfuni is fully engaged with that trust and expresses his intention that they work together "*to make Swindon Town one of the best governed and transparent football clubs in the country*". It may be obvious but we emphasise that this new structure has nothing to do with the previous ownership, whatever that may be.

- Robert Angus, CEO of STFC, who joined the supporters' trust in 2015 and who first met Mr Morfuni when he was in dispute with LP, a dispute which ended with Mr Morfuni obtaining complete control of STFC in July 2021 following which Mr Angus was appointed CEO.

- Mr Clem Morfuni.

- GB.

- LP.

- MS (and some powerful character references for him).

- Paul Nicholls, himself an FA registered intermediary and director of Elite Management Agency which, he explains, acquired FTPM in March 2020.

- Neil Pugh and David Matthews, The FA Integrity Investigators, exhibiting (amongst other material) interviews and written questions/answers with various individuals.

47. We do not consider it necessary to recite the detail of that evidence and, elsewhere in this decision, have preferred to summarise what those witnesses say about the issues with which this Regulatory Commission must be concerned.

**Our findings of fact**

48. There can be no doubt that, if MS is correct, GB enabled him to acquire a share of STFC by lending him substantial sums of money, albeit without any formal record or on any particular terms. Further, if MS and GB are correct, the even more substantial funding which was for the purposes of STFC was provided on a similar basis. That is, of course, why on his own case MS is in breach of and has admitted Charge One.

49. On the other hand, if LP is correct, such provision of money was all directed towards enabling GB to acquire an interest in STFC and to hide this acquisition from the relevant authorities, particularly, The FA.

50. Given the conflict of evidence to which we have already referred and the absence of any scrutiny through oral evidence, it would be reasonable were we to conclude that we are neutral as to whether the accounts of MS/GB are to be preferred to that of LP or *vice versa*.

51. Nevertheless, we have concluded that, on the written evidence we read and have examined, it is more likely than not that GB lent money – albeit large sums of money – to his long-standing friend, MS as an act of generosity and on no particular terms but without GB thereby acquiring any interest in the affairs of STFC and did so to fund/support the proprietary interest of MS in the Club.

52. Similarly, and again on balance, we also accept that was also the reasoning behind GB's support towards the funding of FTPM. As far as GB was concerned, it was his friend's – MS's - business and needed substantial assistance with its cash flow. We think GB, a very wealthy man by the standards of most people[28], was both willing and able to help.

[28] He earned c £100k per week at Manchester City and around £70k a week when he transferred to Everton in 2019

53. Most significantly (in our view), he had done a similar thing before, lending MS over £600k to help fund the purchase of a house without any supporting paperwork and with no terms as to repayment. That such trust was justified was demonstrated when the money was repaid in full.

54. Our conclusion is that this was not a clandestine arrangement to disguise the true interest of GB as beneficial owner of STFC. On balance, we accept that MS was probably the beneficial owner on his own account and that GB provided the funding for that acquisition as an act of friendly generosity which was the same motivation for GB's provision of money to MS for the purposes of operating FTPM.

55. In short, therefore, we think these were genuine loans, albeit in very substantial amounts However, whatever was the true nature of the arrangement between MS, LP and GB, between MS, GP and LP and FTPM, that true nature was not disclosed to The FA.

56. In reaching that conclusion, we have not disregarded the various factors that have been relied in support of LP's version of events. But we consider that they are adequately explained by reference to the long-standing and continuing friendship between GB and MS and we do not think they are particularly supportive of one version as against the other.

57. We do not attach particular importance to the fact that the GB/LP/MS meeting in March 2013 took place as, when and where it did. It could be supportive of either version but, on balance, a short meeting is probably more consistent with the GB/MS version than with LP for whom he was, on his account, meeting someone (GB) with whom he was going to be doing business personally as opposed to someone who would be doing business with the friend (MS) to whom he would be lending money.

58. The lack of any written record of the agreement reached at that meeting, whatever it may have been, is another consideration of marginal probative value. Again, on balance, we think that this also tends to favour the GB/MS version not least because it is not

doubted that, similarly, there was no written record of the sizeable loan (over £600k) which GB made to MS to fund his house purchase[29].

59. We also think that if the deal had been intended to create some sort of proprietary interest in STFC for GB, it is more likely that it would have been written down. But we reject any suggestion that the absence of any paperwork or other record is indicative of a 'clandestine arrangement' to disguise the fact that GB was actually acquiring some proprietary interests in STFC.

60. LP (and to some extent The FA) argue that the sums of money involved (over £1m in relation to the STFC purchase and a total of over £6m if one includes the rest of the FTPM funding) are so huge that it is inconceivable that they would be lent on a friend-to-friend basis particularly with no agreed terms or written record.

61. We do not agree. We have already commented on the lack of a written record. As to the sums involved, GB, like other footballers in his exalted and privileged position, was earning very substantial amounts of money. It is clearly established that GB and MS were long-standing friends and that GB trusted MS with money and, in the light of the experience of the house loan, had good reason to do so. We do not therefore think it incredible that the arrangement was as they say.

62. We do not attach any particular significance to the fact that the monies were paid via Lindene and/or through a firm of solicitors and through LP's company, Power Bloodstock. We consider this financial arrangement is broadly consistent with both versions of events.

63. We do not consider it appropriate nor is it necessary that we make any further findings of fact. However, whether the arrangements that we have accepted as likely and which we find were probably based on the terms described by MS and GB constituted a breach of any FA Rules or Regulations, particularly if not disclosed to The FA, is the point to which we now turn.

[29] This was prior to the Swindon deal. We have already said that the fact that GB had made that previous loan and in the circumstances described was a persuasive consideration when we concluded that we preferred the GB/MS account of events.

**The FA's broad submission as to the charges**

64. In its Case Summary, at paragraphs 35-6, The FA put the matter very much as it did in its Response of 4th June and in opening the case to us. Those paragraphs read as follows:-

> *[*35] The provision of such substantial funding by FTPM and MS influenced the financial affairs of STFC. MS, FTPM and Lindene provided funding that STFC otherwise would not have had or would have had to source from elsewhere. There is no dispute that the funding provided was used to as working capital to finance the day to day operations of STFC. In that connection, SC – MS, FTPM and Lindene's accountant – was appointed as a director of SR20, and access to the company bank accounts was granted to MS and Daniel Drury, a director of FTPM (and Intermediary[30]). The positions of influence occupied by FTPM's personnel and associates reflects the influence MS and FTPM had.
>
> [36] Further, it appears that the working capital provided by MS, FTPM and Lindene was essential to the running of STFC during the relevant period. MS claims that LP told him that, "without [MS's] financial contribution, [STFC] would go into administration". LP has stated that, once his relationship with MS had broken down, and the money from MS / FTPM / Lindene was no longer forthcoming, "without the agreed contribution I would really struggle and would have to make immediate, short term arrangements for substantial amounts of money and I would need to proceed with the sale [of STFC] … or try and raise capital. If this could not be done, [STFC] would go into administration"

65. On that basis, The FA says (at paragraph 2 of its 4 June response to the Respondents' submissions[31]) that "As a result of the funding, The FA allege that MS and FTPM each

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[30] Following the hearing (that is to say after we had heard the parties' submissions and the hearing had concluded) the Judicial Services Manager received a communication from The FA which reads '*Dear All, Please find enclosed confirmation from Senior Player Status Officer at The FA, Michael Tavarone that Mr Daniel Drury was an FA Licensed Agent, acting on behalf of First Touch Pro Management Ltd from 15th May 2009 up until April 2015 (when the agent regulations ceased). A statement can be produced if required. Notwithstanding its late service, given that Mr Drury's authorised agent status is a matter of record, The FA submits that the Regulatory Commission ought to take this evidence into account*'. Since Mr Drury's status as an agent is already implicit in the reference here to him as an 'intermediary', and he is referred to as such in Annex 1, we doubt that this information is telling us something we did not already know. However, sending material through in this way after the evidence had been heard and submission had concluded, and inviting us to take account of it because (presumably) the author of this message thought it relevant, is a thoroughly unsatisfactory way to deal with such matters. If this is said to be new evidence and relevant, then The FA should have applied to introduce it after the hearing had concluded. The same would apply if this was just an afterthought reference to existing evidence and/or was a point The FA wished it had made sooner. It is simply not acceptable for any party to think it can add some supplementary point or material at that late stage of the process without seeking permission. If there is an application to introduce/rely on this material, then The FA must make its application in the usual way. However, as we have indicated, we doubt if, in the present case this material advances The FA's case (or otherwise). Nevertheless, if when the parties have had a chance to consider this draft The FA wishes to rely on this evidence or make some new point about it, we shall determine their application on paper in the light of The FA's application and any response from the Respondents.

[31] Referred to by Mr Martin as his 'skeleton argument' though it might better be characterised as written opening.

held interests in STFC, and GB in MS and FTPM's intermediary businesses, which were prohibited under the WWI Regulations governing conflicts of interest".

**Breach or No Breach? Analysis and Discussion**

66. Having set out our findings of fact in relation to any matters in issue in this case, it is next appropriate to look at and provide our answers to the seven charges.

**Charges One and Two**

67. These require no further analysis in this decision as they are admitted by MS and FTPM.

**Charge 3**

68. Although we have rejected The FA's argument that GB's funding was not an act of mere altruism, that does not provide a complete defence to the charge which is widely drafted and covers the period between 1st January 2013 and 31st December 2019. From April 2015, FTPM was registered as an Intermediary[32] and operated as an Intermediary's Organisation and MS was a shareholder in the business.

69. It is clear that GB provided substantial funds to FTPM between January 2015 and December 2018 at a time when[33] FTPM's average turnover as only just over £1m and its profit before tax only £342,889. According to MS and GB, a further £1,312,000 was transferred directly to PBS from GB's company (Lindene) for the benefit of MS.

70. Mr de Marco KC, on behalf of GB, submits – as is clearly correct and is accepted by The FA - that the mere fact of one party providing money to another in these circumstances, particularly if it was at a *de minimis* level, will not create a prohibited interest. As he says, A can lend money to B with 'no strings attached' and without wishing or being able to influence B's business.

[32] MS himself was a registered intermediary only in 2019 although the unchallenged evidence is that he did no intermediary's business on his own account
[33] As is noted in The FA's Response submissions

71. That is so, but the amount of the loans here, the way in which and period during which they were paid, for the acknowledged purpose of helping that business survive (the cash flow requirement) lead us to conclude that (in the words of the charge as framed) he (GB) was ' *... providing funding to First Touch Pro Management and so* (was) *in a position that may enable the exercise of a material, financial, commercial, administrative or any other influence over the affairs of First Touch Pro Management whether directly or indirectly and whether formally or informally".* [our added emphasis].

72. To give but two obvious circumstances in which some influence might have been exercised, it is foreseeable that the loan might have been called in and/or the business of FTPM might have failed had such support not been forthcoming or continuing. In any case, at the level of funding involved here, it could easily have arisen that MS might seek or receive advice or encouragement/direction from GB which could amount to a material influence, even if that did not happen in fact.

73. From April 2015 FTPM was a registered Intermediary, as GB, a player and Participant, must have known, not least because FTPM represented him in that capacity (his friend MS becoming an Intermediary on his own account in 2019 which is the focus of Charge 4). It follows that we accept he is in breach of E4 of the Working with Intermediaries Regulations.

**Charge 4**

74. As we have already noted, MS was a registered Intermediary in 2019. The funds provided by GB, which continued to be paid during 2019[34], enabled MS to continue his funding of STFC and, as such, constituted a prohibited interest.

75. We therefore find GB in breach of this charge also albeit we consider the charge adds nothing to charge 3 but is just another way of reflecting his wrongdoing in loaning substantial sums of money to MS whether for the purposes of keeping FTPM going or for STFC or both.

[34] See Confidential Annex 3 and the breakdown which can also be found at p15 of the Hearing Bundle.

**Charge 5**

76. There can be no doubt that there was a financial arrangement between FTPM and LP and that, pursuant to that arrangement, FTPM sent Power Bloodstock (PBS) £3,502,500 between July 2013 and August 2019[35].

77. We accept there is no reason to distinguish between LP and PBS. However, at the inception of the arrangement, probably prior to March 2013 when payments were first made by Lindene and FTPM to IPS solicitors who had been instructed by Swinton Reds to act in the purchase of STFC, with the first payments to PBS beginning in July 2013[36], LP was not a Club Official. He did not acquire that status until he became chairman and owner in November 2013[37]. Similarly, FTPM did not become registered as an Intermediary until April 2015.

78. The FA argues that the relevant provision (E8(i) of the Working with Intermediaries Regulations) obliged LP to disclose the existence of those existing arrangements and not just new arrangements entered into. It is on that basis that The FA invites us to interpret the provision which imposes the obligation to disclose such an arrangement to The FA "*within ten days*[38] *of the contractual or customary arrangement having been entered into*"

79. Mr Anderson has submitted on behalf of LP that this charge fails on two bases. First, he says that The FA have not established that there was a relevant 'arrangement' between LP and STFC. However, we think that the financial structure already described probably does constitute a relevant 'arrangement' for the reasons that The FA has given. Nevertheless, we decline to offer a firm decision on this issue since we are satisfied that the charge must fail anyway.

80. That is because we consider that the natural meaning of the relevant provision(s) is that the time limit – be it 5 or 10 days – is directed to disclosing such arrangements within

[35] See also paragraph 41 of The FA's Response.
[36] See paragraphs 31-33 of the Case Summary in the Hearing Bundle at p13. The payments to IPS solicitors were made by Lindene and FTPM and those to PBS were made by MS, FTPM and also by Lindene.
[37] He remained as such until July 2021
[38] The predecessor of the provision had imposed a similar obligation to disclose within 5 days.

that period of time after the arrangement has been entered into. Indeed, that is quite clearly what the provision actually says. It follows that LP is correct to say that, however we characterise the 'arrangement', it was nevertheless entered into at a time when he was not (and would not become for another 9 months) a Club Official.

81. Nor was FTPM an Intermediary's Organisation at the time; there was no such thing in 2013 and FTPM did not become registered as an Intermediary until April 2015, more than two years after the arrangement had been reached.

82. Our approach, which accords with Mr Anderson's analysis, is that such an interpretation of the provision is supported by the fact that Regulation E9, by contrast with Regulation E8(i), does make express provision for arrangements that were not previously disclosable to become so[39].

83. In short, we think that Regulation E8(i) means what is says and that if The FA had wished – or now wishes – to create an ongoing duty to report pre-existing arrangements (that is, ones more than 10 days old) then the Rules/regulations can and should be written so as to say so in terms.

84. It follows that we dismiss Charge 5 in relation to LP.

**Charge 6**

85. This charge is admitted by STFC and, accordingly, we say nothing more about it.

**Charge 7**

86. This charge, as we have seen, focuses on FA Rules E1, E9 and Regulation 4 of the Working with Intermediaries Regulations.

87. It may be open to question whether this charge adds anything to the other substantive charges that we have considered but The FA submits that is appropriate because[40]

[39] See paragraphs 7-8 of the written submissions of LP.
[40] We quote from The FA's Response at paragraph 32*ff.* This is in the Submissions Bundle at pages 12-13

[32]. The FA Rules permit The FA to charge any Participant who attempts or agrees with others to breach The FA's regulations ('inchoate breaches'), including the WWI Regulations.

[35]. The effect of FA Rule E9, read with FA Rule E1.2, is that Participants are liable for agreements or attempts to breach FA Regulations. Such breaches amount to misconduct.

[36]. Rule E9 permits The FA to bring charges of misconduct for inchoate breaches of *"any provision contained in the Rules"*. Rule E1.2, in turn, provides that breaches of FA regulations amount to misconduct. Accordingly, Rule E9 incorporates inchoate breaches of FA Regulations by virtue of a *"provision contained in*" Rule E1.2. Such a common-sense interpretation is clear on the basis of the natural and ordinary use of the words used.

[37]. Further, the purpose of FA Rule E9 is to ensure that attempted misconduct, and agreements between Participants to commit misconduct, are subject to The FA's disciplinary remit. The FA clearly intended its jurisdiction to extend to all inchoate misconduct, not just that specified under the FA Rules. There is no hierarchy of misconduct between the FA Rules and FA Regulations; it would be entirely contrary to common sense for The FA to deliberately limit its jurisdiction in such a way.

[38]. E9 is a classic secondary liability type rule under which the agreement itself which constitutes the misconduct, distinct from, but related to, the underlying substantive misconduct. Contrary to the submissions made on behalf of LP - and as The FA v Reading FC & Ors makes clear - Rule E9, when particularised as an agreement to breach FA Rules of regulations, does operate in a manner akin to a conspiracy charge: all Participants that are party to the agreements commit misconduct. That includes Participants who could not themselves commit the substantive breach.

[39]. As with a conspiracy, an agreement under Rule E9 will be ongoing. Participants may join and leave the agreement at different times. Their roles may be of varying levels of importance. The agreement is not akin to a contract entered into at a particular date, and, generally, a Participant's liability will not be determined by the date upon which the agreement was first entered into. Rather, an individual will be liable if they were a Participant – i.e. subject to the FA's jurisdiction – at any stage during which they were a party to the agreement. In this case, the evidence shows the funding / ownership agreement that breached the WWI Regulations was operational from March 2013 until August 2019, and all of the Respondents were Participants at some stage during that period.

[40]. Further, the ordinary and natural interpretation of Rule E9 does not restrict Participant's liability for inchoate misconduct only to cases where the agreement does not come into fruition. This is not what the Rule says, nor is there is a good reason to interpret Rule E9 in such an unusual way that would be contrary to its purpose. Had such a severe restriction on its ambit been intended – as suggested by LP – then that would have been clearly expressed in terms either within the Rule itself, or in the surrounding Rules.

88. On this issue of interpretation, we prefer the opposing analysis contended for by Mr de Marco KC and Mr Anderson. They note that Rule E1 therefore provides that The FA can bring proceedings against a Participant (as defined) in respect of any Misconduct which includes a breach of any of the 'Rules or regulations of the Association' [our added emphasis].

89. However, as Mr de Marco KC points out (and again we quote the submission as opposed to paraphrasing it),

> [29] The word *"Rules"* is capitalised and is a defined term. FA Rule A2 provides that *"Rules means these rules of the Association".*
>
> [30]. The word *"regulations"* is not a defined term. It is accepted that it must logically refer to the various regulations made by The FA, supplemental to and separate to the Rules. Those regulations include the WIR.
>
> [31]. Thus, in this case where any of the Participants **themselves** breach Reg. E4 WIR, The FA may bring proceedings against them for Misconduct.
>
> [32]. However, FA Rule E9 is drafted differently. As set out at para. 9 of the FA Case Summary, it provides as follows (emphasis added*):*
>
> *"ATTEMPTS AND AGREEMENTS TO BREACH*
>
> *E9 An attempt by a Participant or any agreement with any other person (whether or not a Participant) to act in breach of any provision contained* ***in these Rules*** *shall be treated for the* ***purposes of these Rules*** *as if a breach of the relevant provisions had been committed."*
>
> [33]. The Rule is a classic "secondary liability" type rule. It provides that where a Participant attempts to breach **the Rules**, or agrees with other people to breach the Rules, then the Participant shall be in breach of Rule E9 (and therefore shall also have committed Misconduct as defined by Rule E1) whether or not the breach has been committed.
>
> [34]. But Rule E9 limits that secondary liability to an attempt or agreement to breach. The difference in wording is clear and must be assumed to be deliberate. Had The FA intended to extend secondary liability to attempts or agreements to breach any of The FA regulations as well as The FA Rules then it could and would have done so, in the same way it did in respect to Rule E1. Where a document contains a legal term of art, the Court will give it its technical meaning in law, unless there is something in the context to displace the presumption that it was intended to carry its technical meaning.*26* Accordingly, *"regulations"* must be taken to mean something different than *"Rules",* and which is not encompassed within "*Rules".*

90. Both The FA and the Respondents drew our attention to some familiar authorities on the question of construction, including the Leggatt LJ (as he then was) in *Minera Las Bambas SA v Glencore Queensland Ltd* [2019] EWCA Civ 972, *Arnold v Britton* [2015] UKSC 36[41] and, in the sporting context the decision of CAS in CAS 2008/A/1622, *FC Schalke v FIFA*.

91. On behalf of LP, Mr Anderson adopts the submissions of Mr De Marco KC and in his own submission (which again we quote rather than paraphrase since it is a succinct summary of his arguments): -

> [28] Rule E9 renders misconduct any "agreement…to act in breach". The mechanism by which it does so is a legal fiction by which a person who has agreed to act in breach is treated as having in fact acted in breach in the agreed way.
>
> [29] Pausing there, and contrary to the FA's drafting of Charge 7, Rule E9 does not penalise "being party to an agreement" pursuant to which somebody (anybody) plans to breach a Rule. In other words, it does not create a species of common law conspiracy within the Rules whereby every party to an agreement to act in breach of the Rules is liable for every breach committed by any party pursuant to that conspiracy: if the framers of the Rules had wished to do so (i.e., the FA), they could have.
>
> [30] What Rule E9 is plainly aimed at is the situation in which Participants agree that they themselves will commit wrongdoing but then do not go on to do so: they are treated "as if" a breach had occurred. Where a breach does indeed occur there is no scope for Rule E9 to apply. There does not need to be: the breach is itself penalised. Thus the FA's use of the word "inchoate" at §29 of its global response.
>
> [31] The breaches in question (Reg E4) are breaches by Mr. Standing and/or FTPM: thus "An Intermediary, any individual or legal person with an interest in an Intermediary's Organisation or an Intermediary's Organisation shall not". That encompasses no agreement for Mr. Power "to act… in breach". If Mr. Power is treated "as if" the breach by Mr. Standing and/or FPTM occurred, the Rules provide no consequences for Mr. Power
>
> [32] But in any event, the Charge falls away as against Mr. Standing and FTPM because they have been charged for the breach itself not a mere "inchoate" breach.
>
> [33] As above, at the time of any relevant "agreement…to act in breach" (even if it could in some way bite on Mr. Power – which it cannot), the prohibition is

[41] The other authorities to which we were referred can be found in the parties written submissions and in the Authorities/Submissions bundle. We do not consider it necessary to review that jurisprudence any further in this decision.

> on Participants agreeing to act in breach. At the date of the agreement, Mr. Power was not yet a Club Official and thus not a Participant. There is no mechanism by which an agreement ex post facto becomes unlawful simply because the relevant party's position changes. Nor could there be without offending the principle of legality.

92. We were also taken to the decision of a (differently constituted) Regulatory Commission in *The FA v Reading FC and Others* , the written reasons for which were published in December 2023.

93. Mr Martin submitted that (as he summarised in paragraphs 30 and 31 of The FA's Response submissions) the Regulatory Commission agreed with The FA's submissions that Rule E9:

> "*allowed the FA to bring a charge against any Participant, if they become party to any agreement to breach any provision of the WWI Regulations*".

94. He quoted the key passage at paragraph 82 of the Regulatory Commission's decision:

> "*The WWI Regulations are binding on all Participants and govern working "with" intermediaries. The acquisition of a registration right or economic right contrary to Regulation E5 requires two parties to act together: the Intermediary and another party such as a club or a player that grants the right. If there is an agreement to do so between an Intermediary and another Participant such as a club, then we consider that the club is also in breach of Rule E9 taken together with Regulation E5. The construction contended for by the Reading Participants gives rise to a serious gap in the regime governing the relations between intermediaries and other Participants, even though misconduct in this regard is potentially a lucrative and serious matter. Thus, a club could collude with an Intermediary to break the rules and yet the club itself would not breach any specific rule. We do not think that can be what is intended. On the contrary, the purpose, and context of the rule strongly support the FA's case. The Reading Participants argued that on their interpretation there would be no gap in the disciplinary regime, as Rule E3(1) could apply – as illustrated by the alternative charge brought by the FA in this case. The logic of that argument is that there need be no specific disciplinary rules for any conduct beyond Rule E3(1). There are however good policy reasons for a more detailed set of requirements – not least so that Participants understand the standards that are required of them*[29]*."*

95. Further, at paragraph 89, the Regulatory Commission agreed with the submission made on behalf of The FA that "*the purpose of FA Rule E9 was 'to prohibit Participants from conspiring to agree'.*

96. In our view, the decision in the Reading case does not address the same argument as arises here.

97. It is certainly true that the Commission in the *Reading* case considered that an agreement to breach the Regulations could – and in that case did – constitute a breach of FA Rule E9. We do not need to offer our own view on that proposition because the Commission there did not consider the argument that has been raised in the current matter, namely, whether an agreement to breach Regulations can give rise to a breach of Rule E9 given that that rule E9 refers attempts or agreements to breach "*any provision contained in these Rules*".

98. Unsurprisingly, given that the point was not argued, there is no reference to Rule E1.2 in the *Reading* decision. Nor is there a reference to the wording of Rule E.25 which Mr De Marco KC pointed to which specifically provides for Participants to comply with the provisions of the anti-doping regulations and any social drugs regulations which provide that, in those circumstances, a breach of the regulations is also a breach of the rules.

99. That seems to us to be a powerful and decisive point. The word 'Rules' is, as we have said, a defined term. If the FA wished Rule E9 to apply to contraventions of the regulations, as well as the Rules, then it should say so[42]. The fact that it does not in this instance but does in another instance (Rule E.25) is, in our view, decisive when one comes to look at the natural meaning of words and without any regard for the *contra proferentem* principle[43]. In short, it means that charge 9 does not have the wider meaning contended for by The FA and is not ambiguous. The natural meaning is that it applies to 'Rules' and not to 'regulations' as well.

100. The approach we take here is evidently different from that taken in the *Reading* case (as is clear from paragraph 82 of that decision). Whether that case (or this) should be considered as distinguishable or as wrongly decided is for others to argue hereafter. We repeat that we are adopting a different approach recognising that the matter was argued there on a different basis and the reasoning here was not there addressed.

[42] And it could very easily do so by amending the wording of the provision accordingly
[43] As to which the parties made competing submissions.

101. Given the conclusion summarise above, it is unnecessary for us to engage in consideration of what Mr De Marco KC characterises as Issues 6, 7 and 8 which are (respectively)

- Does FA Rule E9 permit penalisation of a Participant who is a party to an agreement to act in breach of the Rules (and Regulations)?

- Does FA Rule E9 limit the penalisation of agreements to breach the Rules to circumstances in which no substantive breach has in fact taken place i.e. does a substantive breach somehow remove liability for being a party to the agreement?

- Does the point at which the agreement was first entered into preclude penalisation of those parties to the agreement who were not Participants at that point?

102. However, should it be relevant for us to offer any response to the questions framed as issues in this way, we would answer them in line with the submission of Mr de Marco KC.

**Conclusions on Breach**

103. In those circumstances, and in summary

- MS has admitted Charge One.

- FTPM has admitted Charge Two.

- GB is held in breach of Charges 3 and 4.

- In relation to LP, we dismiss Charge 5.

- STFC has admitted Charge 6.

- We dismiss charge 7 against all parties (but see paragraphs 104-5 below).

104. In relation to the position of STFC which has, in effect, accepted a breach of a charge we think is ill—founded, it may be academic but, subject to any submission to the contrary by The FA, we considered[44] the appropriate course of action would be to direct that this last charge should be dismissed on STFC's indication (which we suggested might be given in correspondence) that the Club wished to withdraw its admission in the light of our findings on the contested issues.

105. Since we received the responses of STFC and The FA to the draft of this decision, STFC have sought permission to withdraw that admission and The FA, very sensibly, has conceded that, in the light of our analysis of Charge 7, such an application cannot be opposed. Nevertheless, The FA reserves the right to challenge our analysis and conclusion in respect of that charge in respect of all Respondents. Subject, therefore, to acknowledging that The FA can argue on appeal that STFC and all Respondents should have been held in breach of this charge, we grant the application to withdraw the admission and direct that it should be dismissed as against STFC.

**Sanction**

106. The appropriate sanctions must reflect what we find to have been the most likely nature of the arrangement between LP, MS, GB and STFC.

107. The FA submits that, in relation to LP and MS, "suspensions ought to be measured in years not months"[45]. LP has, of course, be cleared of any breach and MS only found in breach of one charge (Charge One) which he has admitted.

108. On Charge One, MS has admitted that this breach constitutes 'serious misconduct'[46] which is, in our view, an appropriate description. However, as is submitted on his behalf, he has admitted his misconduct and was not in fact an Intermediary himself until 2019 and even then did no actual intermediary activity. He was not therefore in breach of Rule E4 or any other provision until 2019 and he will have had no reason to think he was engaged in any wrongdoing until then (and will have been correct in that belief).

[44] In the original draft of this decision which was circulated for comment.
[45] Paragraph 66 of its written Response
[46] Paragraph 50 of the submission of Mr de Marco KC

We also accept that his whole involvement has cost him money so there is no question of him having profited from his wrongdoing.

109. In all the circumstances, we consider some period of suspension from all football activity would be appropriate. There is no particular yardstick (such as the penalty imposed in a comparable case) but we think a 6-month suspension from all footballing activity would be appropriate. Without identifying a specific date from which that suspension would have commenced, we accept and rule that it should be deemed too have been served.

110. We shall treat the 21-month period during which, following an undertaking given at an earlier stage of this disciplinary process, as counting towards (and thus eliminating) that period of suspension.

111. Given the factors relied on by Mr de Marco KC in mitigation and all the other circumstances of the case which we have discussed, we do not consider any additional financial penalty appropriate but do issue a Reprimand.

112. FTPM has admitted a breach of Charge Two. In our view, The FA fairly characterises its misconduct as high. Given that FTPM is under new ownership[47] (albeit there remain some common links with the previous ownership in that JS remains a director whereas MS does not), we agree with The FA that a sporting sanction would not be appropriate. We think the appropriate penalty should be financial.

113. In mitigation, aside from the fact of the new ownership arrangements, we accept that FTPM admitted this charge at the earliest opportunity. We also accept the wrongdoing occurred because MS used the company as a vehicle for his funding of STFC and not because the company itself sought to exercise any influence over the affairs of the Club.

114. The fine we impose is one of £40,000 to be payable within 35 days of the parties' receipt of the final version of this decision as issued. Failure to pay that amount at the

[47] It is reasonable to assume that the new owners of the company completed its purchase in full awareness of the possible financial or other penalties which might follow in this case.

appropriate time will result in an automatic increase in the amount due as per the terms of the Decision letter. We also direct that a warning should be issued to the company.

115. We have found GB to be in breach of Charges 3 and 4. We accept that his motivation was generosity towards a friend. We accept he did not wish to become involved in the affairs of STFC or FTPM but there is no escaping the fact that he was an experienced player – technically, a Participant – who knew that FTPM was an Intermediary and Intermediary's Organisation and must have known that his friend, MS, was also a registered intermediary in 2019. He should have known that the considerable financial support he was providing at least put him at risk of contravening The FA Rules/regulations.

116. Nevertheless, we accept that he has not profited and has more probably lost money as a result of his involvement and, more to the point, that he has not acted deceitfully or dishonourably. We shall therefore impose no sporting sanction nor a financial penalty but issue a warning on charge 3 with no separate or additional penalty under charge 4.

117. Under charge 6, The FA has submitted that a financial penalty is appropriate in the form of an immediate financial penalty by way of a fine in the range £25,000-£50,000.

118. STFC have provided helpful written submission drafted by Jane Mulcahy KC, instructed by Pinsent Masons[48]. She concludes by observing, correctly, that STFC is entitled to credit for its admissions, and does not challenge the range of fines suggested as appropriate. She commends to us the figure at the lowest end of the range proposed, not least because STFC suffered considerably as a result of the previous ownership arrangements and because, as is submitted, there is no good reason to burden the present owners, supporters and staff unduly.

119. We consider that the appropriate financial penalty under charge 6 is a fine of £25,000 which is at the lower end of the range of fines commended to us by The FA[49] and accepted as appropriate by STFC.

[48] Pages 146-156 of the Hearing Bundle
[49] See paragraph 75 of The FA's updated (4 June 2024) submissions on sanction.

120. We direct that half that amount shall be paid within 35 days of the Club's next administration fees and invoice. We consider that it would be unfair (in the sense of being disproportionate to the wrongdoing and in all the circumstances) to require STFC to pay the whole amount of that fine immediately. Rather, we think that it would be appropriate to allow the Club (under its new ownership) to demonstrate its respect for the rules and the efficiency of its new regime by suspending the balance (half) of that overall sum for a period of two years. This will also act as a practical incentive for STFC to comply with the Rules and regulations in this particular and important area of financial responsibility and good practice.

121. In doing so, we are summarising what we consider to be 'clear and compelling' reasons for that decision to suspend part of the sanction as The FA asked us to do when providing their comment on the earlier draft of this decision. That is in accordance with the Regulation in question (regulation 44) which provides as follow

> *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.*

122. Accordingly, we direct that the remaining 50% (that is, the balance of £12,500) will be suspended for two years but would become payable in the event of the Club being responsible for any further breach of the Football Agent Regulations (which superseded the Working with Intermediaries Regulations on 1 January 2024). For the avoidance of doubt, that means that if the Club is found to have contravened those regulations within two years of the issued decision (that is, a breach committed during the period between 3 July 2024 and 2 July 2026) is likely to have the effect that the remaining 50% will become payable.

123. We would have imposed no separate penalty under charge 7 even had STFC's admission not been withdrawn.

**Costs**

124. We will deal with any submissions on costs if and when they are made[50].

125. However, our provisional view is that, given the points on which the parties have succeeded or failed in respect of the issues that fell to be considered in this personal hearing, the order we would favour (subject to further argument) is one in which the parties all bear their own costs and there is no order in respect of the costs of the Regulatory Commission.

**Appeal**

126. The decisions are subject to the relevant Appeal Regulations.

**William Norris KC (Chair)**

**Dominic Adamson KC**

**Ken Brown**

**3rd July 2024**

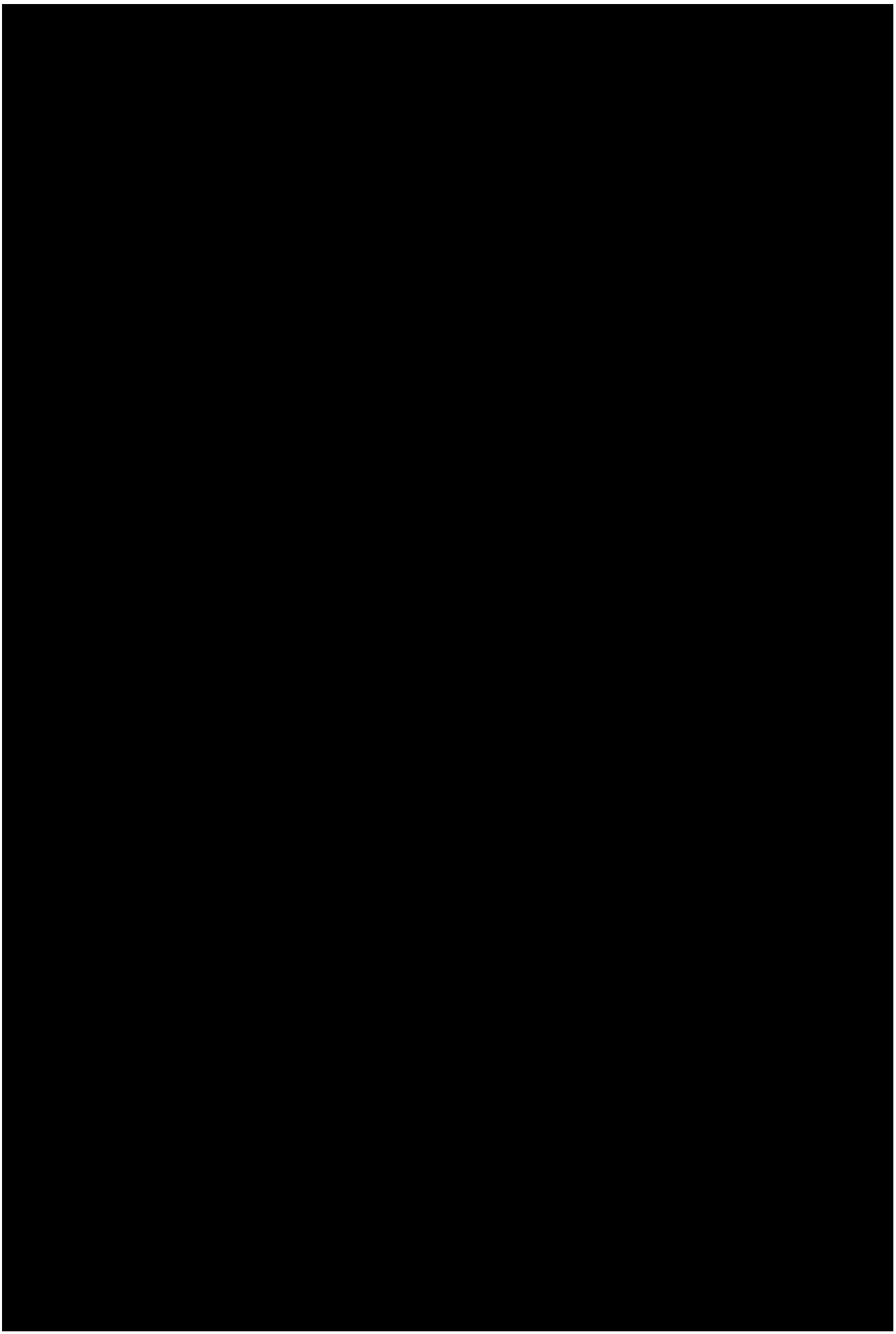
[50] They need only be made in writing, and we shall determine them on paper if necessary.

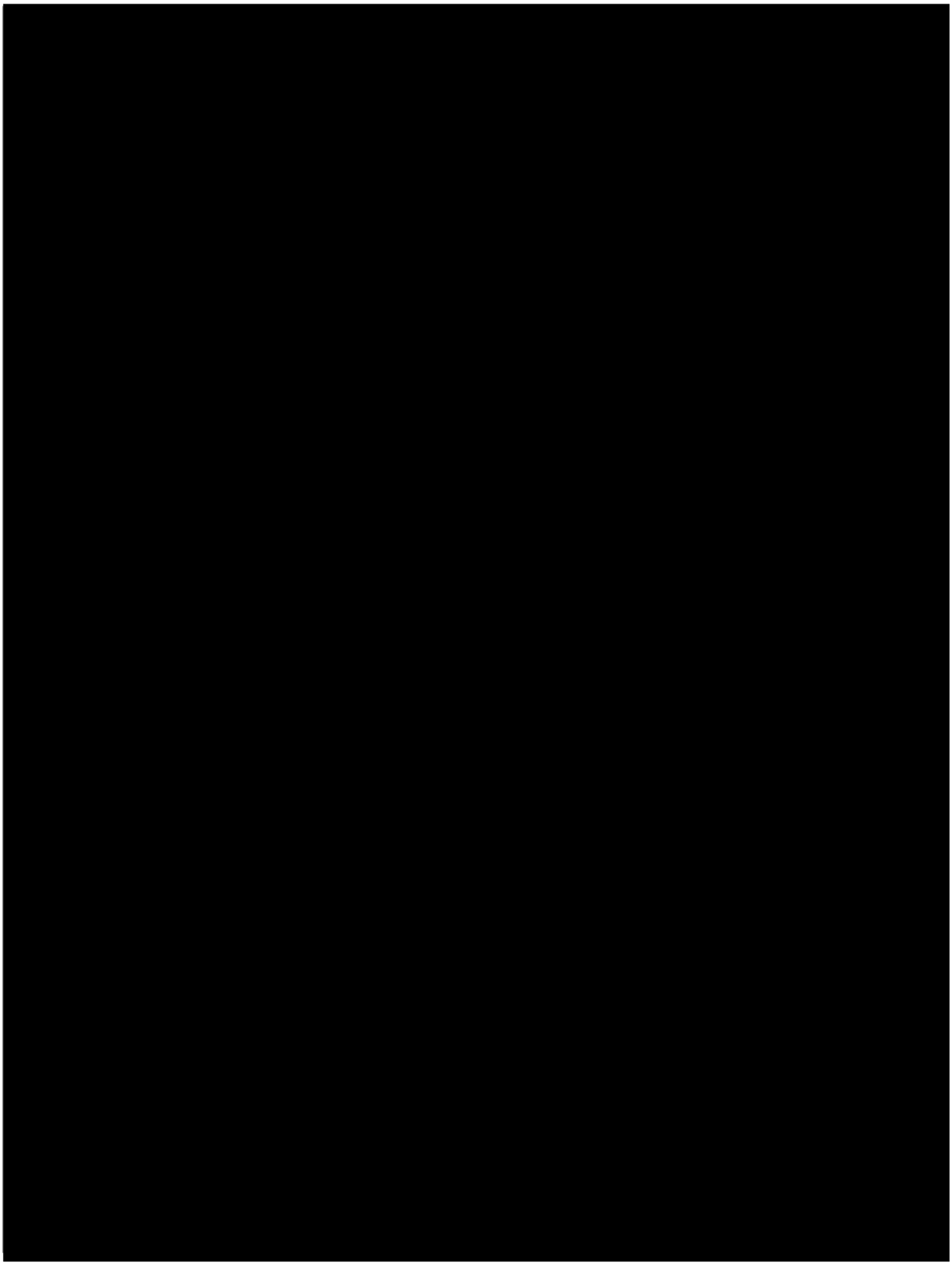
## ANNEX I – LIST OF KEY PEOPLE / ORGANISATIONS

| | |
|---|---|
| **Axis Football Investments Ltd ('Axis')** | Company owned by Mr. Morfuni. From January 2018 a 15% shareholder in Swindon Town. From July 2021, 100% shareholder. Axis is party to the (consolidated) High Court proceedings against LP. |
| **Clem Morfuni ('CM')** | Owner of Axis and since July 2021, ultimate owner of Swindon Town. |
| **Daniel Drury ('DD')** | A director of FTPM since 14/11/08. Was a registered Intermediary operating out of FTPM. |
| **First Touch Pro Management ('FTPM')** | Company incorporated in 2008. Registered as an Intermediary in April 2015. MS is a former director and shareholder. JS and DD remain directors. Both JS and DD were registered Intermediaries operating out of FTPM. |
| **Gareth Barry ('GB')** | Former footballer. Friend of MS. Former client of FTPM. Director and majority shareholder of Lindene. |
| **IPS Law Solicitors ('IPS')** | Solicitors instructed by SR20 as part of LP's purchase of STFC. Paid monies by FTPM (£150,000) and Lindene (£450,000) around the time that SR20 established |
| **John Standing ('JS')** | Brother of MS. Director of FTPM since 1/08/12. Was a registered Intermediary operating out of FTPM. Appointed as a director of Lindene in April 2021. |
| **Lee Power ('LP')** | Between November 2013 and July 2021, Chairman and owner (via shares in top company, Swinton Reds 20) of STFC. |
| **Lindene (GB) Promotions ('Lindene')** | Company of which GB is a director, as well as JS. The company has the same registered address as FTPM and SRC Consulting. |
| **Michael Standing ('MS')** | Between 1 August 2012 and 12 April 2021, a director and 23% shareholder of FTPM. From 7 January 2019, for one year, a registered Intermediary. Close friend of GB. Brother of JS. |
| **Power Bloodstock Ltd ('PBS')** | Company owned by LP |
| **Seebeck 87 Ltd ('Seebeck')** | Holding company (under Swinton Reds 20 Ltd) through which LP owned STFC |
| **Stephen Crouch ('SC')** | Accountant for MS, FTPM and Lindene. Appointed as a director of SR20 in April 2013; removed as a director in August 2019. SC's company SRC Taxation Consultancy Ltd (now known as SRC Partnership Ltd) shares a business address with FTPM and Lindene. SRC Consulting acts as company secretary to FTPM and Lindene. |
| **Swindon Town Football Club ('STFC')** | Club founded in 1879. It currently plays in EFL's League Two. |
| **Swinton Reds 20 Ltd ('SR20')** | Top holding company through which LP owned STFC. |
| | |

**CONFIDENTIAL ANNEX II** [redacted]

[redacted]





**CONFIDENTIAL ANNEX III –** [redacted]