

IN THE MATTER OF A REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

FRIDAY 6 DECEMBER 2024

BETWEEN:

THE FOOTBALL ASSOCIATION

And

PORTSMOUTH F.C.

WRITTEN REASONS

Background

1. These are the written reasons for the decisions made by a Regulatory Commission which sat on Friday 6 December 2024 to determine the appropriate sanction arising from the admitted Charge, referred to below, for a breach of Rule E21 in respect of events at a match between Portsmouth Football Club ("**Portsmouth**") and Barnsley Football Club ("**Barnsley**") in League One on 16 April 2024 ("**the Match**"). As described below, the result of the Match saw Portsmouth promoted to the Championship as League One Champions.
2. The Regulatory Commission comprised Mr Christopher Stoner KC (Chair) (Independent Legal Panel Member), Ms Alison Royston (Independent Football Panel Member) and Mr Peter Fletcher (Independent Football Panel Member). Mr Michael O'Connor acted as secretary to the Commission. We record our thanks to him. The Commission had originally been due to sit on Thursday 28 November 2024, but that hearing was adjourned as at that time the videos forming part of the bundle were not in a medium which had enabled the Commission members to view them all.

3. By a Charge Letter ("**the Charge**") dated 30 May 2024 Portsmouth were charged with a breach of Rule E21 in respect of the Match. The Charge states:

"It is alleged that Portsmouth FC failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match and do not behave in a way which is improper, violent, threatening or provocative; and/or throw missiles and/or encroach on to the pitch or commit any form of pitch incursion, contrary to FA Rules E21.1, E21.2 and E21.3."

4. Having checked The FA Handbook for season 2024/25, the Regulatory Commission noted that the wording of Rule E21 has slightly changed for the 2024-25 season. Rules E.21.1 – E21.3 now provide:

"A Club must ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) attending any Match do not:

E21.1. behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative.

E21.2 throw missiles or other potentially harmful or dangerous objects at or on to the pitch.

E21.3. encroach on to the pitch or commit any form of pitch incursion."

Previously:

(a) In the introduction, after the words in parenthesis, the following words were included, which are reflected in the Charge, namely "*conduct themselves in an orderly fashion whilst attending any Match and do not*"; and

(b) The words in Rule E21.1 cited above were prefaced with "*use words or otherwise...*"

5. The Commission considered these changes but determined that the amendments were not relevant to the matters it had to consider. The removal of the cited words is not relevant to the issues the Commission has to determine, which relate to the unchanged words in E21.1, E21.2 and E21.3.
6. Prior to the hearing all members of the Commission considered all the papers contained within the bundle, comprising some 277 pages. In addition, all members of the Commission carefully considered the various video clips which had been provided.
7. All the evidence was carefully considered. That not all the evidence is referred to in these Written Submissions does not mean that such evidence as is not expressly referred to was not considered. It was, and all evidence and submissions has been taken into account in the Commission's consideration of the Charge.

Response to the Charge

8. By a Response to the Charge dated 28 June 2024, Portsmouth indicated that it admitted the Charge and requested that the matter be dealt with by way of a Paper Hearing. Portsmouth also asked that the correspondence attached to the Response be put before the Regulatory Commission. We shall detail that more fully below, but it principally consisted of a letter from the Club dated 28 June 2024 and the various exhibits to that letter, as well as the letter dated 24 April 2024 providing observations to The FA from the Club and the various exhibits to and links within that letter.

The Evidence

9. In support of the Charge, The FA relied upon the following evidence (as summarised in the Charge):
 - 9.1. Reports from Match Referee, Mr. P. Howard, dated 17 April 2024.
 - 9.2. Correspondence between The FA's On-Field Regulation Officer, and the Match Referee, Mr. P. Howard dated 17 April 2024.
 - 9.3. A Letter from Mr. J. Flatman, CEO of Barnsley FC, to the FA's On-Field Regulation Officer dated 26 April 2024.

- 9.4. A Letter from the Club to the FA's On-Field Regulation Officer dated 24 April 2024 (which had various links embedded within it as well as annexing the extensive documentation referred to in the next sub-paragraph).
 - 9.5. Portsmouth FC Planning & Preparation Documents (which appear to be the extensive exhibits to the letter referred to in the previous sub-paragraph).
 - 9.6. Crowd Observer Review by Graham White dated 22 May 2024; and
 - 9.7. Video clips of the incident.
10. The evidence relied upon by Portsmouth was contained in a letter dated 28 June 2024 together with:
- 10.1. An email from Barnsley dated 27 April 2024.
 - 10.2. Portsmouth's Pitch Encroachment Protocol (including for the Match).
 - 10.3. EFL's Guidance on Tackling Pitch Incursions.
 - 10.4. An email from Ann Ramage, SGSA Regional Inspector, dated 4 June 2024.
 - 10.5. An email from Steve Dowson, EFL Security and Safety Operations Consultant dated 11 June 2024.
 - 10.6. An emailed letter from the South Central Ambulance Service dated 11 June 2024.
 - 10.7. An email from Adam Robson, Dedicated Football Officer, Hampshire Constabulary Football Unit dated 4 June 2024.
 - 10.8. Match Day risk assessment document for the Match.
 - 10.9. Briefing document for the Match.
 - 10.10. Steward signature forms
 - 10.11. E-mail correspondence with Supporters Groups.
 - 10.12. Andrew Cullen's Match programme notes.
 - 10.13. Supporter Liaison Email to supporter groups.
 - 10.14. Draft Tannoy announcements.
 - 10.15. A draft 'acceptable behaviour' contract.
 - 10.16. The minutes of a Support Conduct Meeting on 14 March 2023 with the Hampshire Constabulary and Supporters; and
 - 10.17. A commentary on the FA Safety and Security Advisor Case Review.
11. In addition to the foregoing, Portsmouth also asked that we had regard to the letter dated 24 April 2024 from the Club, as referred to above. We did so, including the exhibits to that letter and the links embedded within it.

12. The Commission was also supplied with written submissions on Sanction from The FA dated 16 September 2024, together with a response to those submissions from Portsmouth dated 4 October 2024 to which was appended an email from Sergeant Andrew Wakley from the Hampshire and Isle of Wight Constabulary, dated 23 September 2024 as well as photos of signage at Fratton Park. The submissions from Portsmouth in response included an extract from 'The Green Guide', to which we will refer further below.
13. We thank both The FA and Portsmouth for the documentation presented.

Background Facts

14. The Match was significant. It was won by Portsmouth which saw them promoted to the Championship as League One Champions. The FA explain, in their submissions on sanction at paragraph 5, that a draw in the Match would itself have been sufficient for Portsmouth to secure promotion.
15. To provide some deeper context the Club's letter accompanying the Reply to the Charge dated 28 June 2024 stated:

"We were very much aware of the importance of what promotion meant for the Club's fans. Portsmouth is a passionate footballing city and following the hardship which the Club has been through in recent times, there was a sense of high emotion in the build-up to this fixture across the city. The Club had fallen from the Premier League to League 2 from 2010 to 2013, before winning promotion back to League 1 in 2017 where it had remained. In 2013 the Club exited its second administration in just three years, having been saved by its own fans who purchased the Club from the administrators."

16. We will refer to the preparations undertaken by Portsmouth for the Match below. It suffices to note, at this stage, the following incidents which occurred:

15.1. The Match Referee filed the following extraordinary incident report relating to events in or about the 59th minute of the Match:

“Following the scoring of Barnsley's 2nd goal in the 59th minute, the goalscorer went and celebrated in the corner that housed the Barnsley fans. During this celebration, at least four lighters were thrown from a section of the stadium that housed the Portsmouth fans onto the field of play, one striking the senior steward, (stood in front of the celebrating players) in the face.”

15.2. The Match Referee also filed the following extraordinary incident report relating to events in or about the 69th minute of the Match:

“In the 69th minute, my assistant referee Declan O'Shea reported to me over the communication kit that he had been struck by an object thrown from behind him, a section of the ground that housed the Portsmouth fans. I immediately went over to him, checked on his welfare, retrieved the item which was a 4-6 inch plastic vape, and passed this to the 4th official to relay to the safety team who said they would check CCTV to see if they could identify the offender.”

15.3. A further extraordinary incident report was filed by the Match Referee relating to events in or about the 80th minute of the Match. It stated:

“In the 80th minute, at the award and taking of a Barnsley corner, an unidentified object was thrown onto the field of play in the direction of the kicker. So as not to delay the game and risk the potential of more objects being thrown in this area, I got the game restarted and failed to identify what this object was. This was from the same section of the crowd as the incident in the 59th minute.”

15.4. A fourth extraordinary incident report was filed by the Match Referee relating to events in or about the 89th Minute of the Match. It stated:

“In the 89th minute of the game, following the scoring of Portsmouth's 3rd goal, a blue flare was thrown onto the field of play from the Fratton end, in the corner where the celebrating players were located. In addition to this, a large numbers of spectators from multiple areas of the ground entered the field of play in celebration. I initially signalled for players, especially of Barnsley FC to move towards the tunnel for their safety, but as I was doing so, it became apparent that all spectators were in the process of leaving the field of play and this was therefore not required and the game could continue.”

17. The Commission also notes that in the letter from South Central Ambulance Service, dated 11 June 2024, it was said:

“During the second half of the game there was a small invasion of the pitch by a handful of fans. SCAS were involved in the treatment of a steward who suffered an injury from being pushed over by fan/s entering the pitch area, not resulting in major treatment or hospital admission from site.”

The Commission proceeds on the basis this was as a consequence of one of the aforementioned matters referred to by the Match Referee in his extraordinary incident report forms, as distinct from it being yet another incident to record.

18. It is also clear that upon the final whistle being blown, there was a very significant mass pitch incursion. The Commission notes from Portsmouth’s letter dated 4 October 2024, that the total attendance for the Match was said to be 19,062 (although Mr White’s report on behalf of The FA suggests the attendance was 19,960 and the pre-match briefing document states that 19,825 tickets had been sold). Of the 19,000 odd in attendance, on any view it appears that the travelling support for Barnsley was small. The Club’s letter dated 28th June 2024 suggests the number of Barnsley fans in attendance in the away section was 245 (whilst the pre-Match briefing refers to away ticket sales of 284).
19. The figures are relevant as the Hampshire and Isle of Wight Constabulary, in the email of Adam Robson dated 4 June 2024, suggest that at the final whistle *“around 70% of the home fans entered the playing area.”* Whilst the Commission cannot be and need not be exact as to the number of spectators who entered the playing area, the suggestion it was in the region of 13,000 is not altogether surprising given the video clips we have viewed. We need say no more other than that a very significant pitch incursion took place which the Commission considers would have been very intimidating for the Match Officials and players, especially those from Barnsley.
20. Unfortunately, during the mass pitch incursion after the final whistle not all the Barnsley players were able to reach the tunnel without incident. In a letter from Mr Flatman, Barnsley’s CEO, dated 26 April 2024, to the FA in response to a request for observations, Mr Flatman refers to ‘players’ being assaulted. The Club in it’s letter of Reply dated 28 June 2024 comment:

“The Club wishes to clarify that it is only aware of one alleged assault on a BFC player after the Match which was Jamie McCart. The Club sincerely regrets that this incident occurred and condemns the mindless actions of the individual responsible in the strongest possible terms. The Club was relieved to hear from Ms Hough that the player was not seriously injured. Jamie McCart provided a statement to H&IOWC on 23rd April 2024 and the Club is fully cooperating with this investigation. The Club has thoroughly reviewed its CCTV footage since the Match, and it cannot identify any other assaults on BFC players save for perhaps some unintentional contact made by fans as they rushed past BFC players in their rush to celebrate on the pitch. However, the Club would greatly welcome the opportunity to liaise further with BFC on this point to ensure that this is the case that it was only one assault on a BFC player which is currently under investigation by both West Yorkshire Police and H&IOWC.”

21. The Commission, in viewing the clips of the mass pitch incursion provided, notes that it is clear that a Barnsley player, whom we assume to be Mr McCart, appears to take a blow to the head, causing him to double over before continuing toward the tunnel. The Commission is not in a position to comment on whether this was an assault or not, but it is absolutely clear the entire situation would have been avoided if there had not been a mass pitch incursion.
22. It is equally plain that the Barnsley player, whether accidentally or deliberately, received a significant physical blow. This, in the Commission’s view, is important. A rationale of Rule E21 is that the pitch area is the workspace for players, Match Officials and also coaching and related staff. That was clearly violated in the present instance with a very significant pitch incursion. Whilst, with the benefit of hindsight, the Commission observes the incursion was of a celebratory nature that does not mean that for those caught up at the time of the incursion it would have been other than a threatening and frightening invasion of the workspace area.
23. The Commission also notes that during the pitch incursion there was the use of some pyrotechnics in the form of blue smoke devices and the Match Referee’s extraordinary incident report relating to the 89th minute also refers to a blue flare being thrown.

Sanction

24. Portsmouth admitted the Charge at the earliest possible opportunity, namely in its Reply Form dated 28 June 2024.
25. In such circumstances the Commission's task is to consider the evidence presented to us and determine the appropriate sanction. The FA, in its written submissions on sanction, invited us to adopt the approach taken in *The FA v Birmingham City* (16 September 2019) and *The FA v Bristol Rovers* (27 July 2022). The Commission is not bound by these decisions but is aware they have been applied on a number of occasions. Furthermore, the Commission considers that to adopt the approach to determining sanction as advocated in those cases is both sensible and logical. The Commission cannot improve on that approach.
26. Accordingly, it is for the Commission to consider the following factors in determining sanction:
- 26.1. The seriousness of the breach (focussing on the gravity of Portsmouth's breach of the FA rules, not the consequence of the breach, namely a serious mass incursion, as well as the throwing of projectiles and the smaller pitch incursion which occurred as referred to in the Match Referee's extraordinary incident report recited above).
- 26.2. The culpability of the Club, which we shall consider by adopting the approach of the Appeal Board in *Reading v The FA* (7 October 2015) which advocates a sliding scale of responsibility.
- 26.3. The harm caused by the incident, adopting the approach to 'harm' identified in *The FA v Birmingham City* (16 September 2019) as being wider than the immediate consequence of the incident; and
- 26.4. The mitigation available to Portsmouth.

Evidence – pre-Match Planning and the Match itself

27. We now turn to consider the evidence with a focus on the planning by Portsmouth for the Match. This is inextricably linked with the various elements of the approach to sanction identified in the last paragraph, especially regarding the seriousness of the breach and the culpability elements.

28. The Club states in its letter dated 28 June 2024 accompanying the Reply to the Charge:

“For the Match, the Club identified ... that the risk of a pitch incursion from supporters wanting to celebrate despite the Club’s pleas not to do so ... was extremely high and along with the engagement of the relevant authorities, extensive planning was put in place to ensure that a policy for preventing and tackling any potential pitch encroachment was implemented.”

29. Unfortunately, for the reasons stated in the paragraphs which follow, aside from accepting that the risk of a pitch incursion was extremely high, the Commission finds itself unable to agree with this statement.

30. Before turning to the detail of the pre-match planning, the Commission makes two general observations, namely:

30.1. Simply stating that there has been extensive planning does not mean that there has been, or indeed that there has been an adequate level of planning, especially in the context of whether it is sufficient to prevent and/or deal with a mass pitch incursion; and

30.2. The Commission can only proceed on the basis of the evidence that has been supplied to it, which ultimately is the choice of The FA in supporting the Charge and, in this instance, Portsmouth as part of its response to admitting the Charge and asking the Commission to consider the appropriate sanction.

31. When asked to provide observations to The FA, Portsmouth's initial response was by a letter dated 24 April 2024. This referred to the Match specific Risk Assessment, the Match Day briefing and the Match specific policy for pitch incursion, before commenting:

"In the event of a win, it was becoming increasingly obvious that the supporters would be coming on to the pitch so all the planning for this match was to protect the match officials, the players, coaching and technical staff and opposition supporters. The match officials briefing was delivered by myself and took place on the pitch."

The Commission notes this statement has a different emphasis to that cited at paragraph 28 above in the letter accompanying the Reply to Charge.

32. Overall, however, in turning to the documentation the Commission expected to see well planned procedures for protecting the Match Officials, the players, coaching and technical staff and opposition supporters. In addition, the Commission expected to see planning seeking to prevent a pitch incursion notwithstanding the belief that a mass pitch incursion was likely, as well as planning for what the reaction to any mass pitch incursion would be.
33. Sadly, for the reasons identified in the following paragraphs, in the Commission's view, based on the evidence presented it appears the planning, whilst good in some respects, was very weak in others.
34. The Match specific pitch incursion document, entitled 'pitch encroachment protocol' did refer to the Match, but appeared to the Commission to be a somewhat generic document. The document included the following statement:

"In the event of any pitch encroachment the primary objective of the safety team should be to prevent an assault on a match official or player and to detain and remove the person or persons concerned. Consideration should also be given to protecting broadcasters, ball retrievers and others from harm. It is good practice, that Clubs have a security team which is trained and designated, to enter the field of play when a pitch incursion takes place, to protect the match officials and both teams' players from threats and serious harm and this will be tested prior to turnstiles opening."

Whilst a laudable statement, the Commission considered that the document was lacking in detail on how these aims would be achieved, save that reference was made to creating a safe corridor back to the dressing room area.

35. It is fair to say that the document did provide, in scenario 1, for a non-hostile encroachment following promotion allowing for the safe exit from the field of play for officials and players. However, even in this respect, aside from a couple of diagrams there was little of substance or guidance as to the practical implementation of the protocol.

36. The Commission also notes the absence of any effective planning seeking to prevent a pitch incursion in the protocol document, putting aside a generic reference to a 'ring of steel'.

37. The Commission notes that the document also records that if a mass pitch incursion occurs:

*"In the event that the pitch is overwhelmed, **All staff with body worn cameras** will be deployed on to the pitch to capture evidence of those on the field of play for further action to be taken."*

Having seen this, the Commission anticipated that it would see footage from such cameras and/or an explanation of the steps taken to utilise the footage and identify those responsible. Sadly, the words in the protocol failed to materialise into any identifiable action, as the resolution of the footage was weakly said to be insufficient.

38. Turning to the risk assessment document. It is fair to say that in sections 15.1 and 15.2 the risk of a pitch encroachment was noted as 'High Risk'. In the column marked 'Control Measures' a number of points were noted, namely:

"The club supports the EFL enjoy the match campaign.

Signage is clear around the stadium.

Announcements are made.

Enjoy the match features in the match day programme.

Steward[s] are deployed pitch side and are briefed to listen out for any conversations that may indicate pitch encroachment is planned.

FSOA intel would be shared as well as police intel if an opposing team has a history of pitch encroachment.

Dialogue has continued ahead of this fixture with EFL, SGSA, PST, Match Officials and Club Staff.

A Policy has been used to all of the above

Clear messaging has been agreed for all eventualities

A pitch runner will be deployed to assist with getting the lineman on the far side into a sterile area.”

39. It was difficult for the Commission to discern how any of the above was specific to the Match, as distinct from being generic.

40. In the column headed ‘Further Precautions’ the Risk Assessment stated:

“If someone enters the pitch they will be detained and handed to the police. Good clear CCTV available. Reporting line encouraged.

Stewards are deployed into a ring of steel 10 mins prior to match end and a sterile area to protect tunnel and technical area.”

41. Again, the Commission considers these comments to be somewhat generic and lacking in specificity, although the first appears to be directed more at a sole supporter or perhaps a few supporters entering the field of play, as opposed to considering a mass pitch incursion.

42. The risk assessment also refers to pyrotechnics and identifies that as a high-risk matter. However, there is nothing in the document to assist the Commission with understanding how Portsmouth intended to deal with that high-risk issue, aside from some generic wording which offers nothing in terms of practical steps toward prevention. The Commission notes with surprise, for example, that the reference to ‘strict searching’ was limited to away supporters.

43. Against this, under a ‘Match Specific Oxford’ section, which is obviously incorrect, but perhaps illustrates that the care and thought which went into this document was not as it should have been, there is a clear reference to the fact that ‘robust searching’ would be in place and ‘any person found in possession of a pyro will be handed to police.”

Given the use of smoke flares at the end of the Match during the mass pitch incursion and as reported by the Match Referee in the 89th minute, it would appear this element of the Risk Assessment (also identified as 'High Risk') did not translate into effective action at the turnstiles: furthermore, we have not been provided with any evidence of *any* confiscations of pyrotechnics (extending that term to include smoke devices) at the Match.

44. The Commission were also provided with the Risk Assessment for the match against Wigan the following Saturday. It appears the only differences (in respect of the matters cited above) relate to the 'Match Specific' section, which on this occasion correctly identifies the match to be that against Wigan. Even then the 'Further Precautions' wording was the same as for the Match, with the only real change being in the 'Control Measures' section. Inferentially, the Commission considered this evidenced a generic document with minimal amendment on a game-by-game basis, even if (as with the Match) a serious mass pitch invasion was contemplated.

45. Overall, in respect of the Risk Assessment documentation, whilst it had correctly identified certain matters as 'High Risk' the attention to detail in how that would be dealt with in the context of the Match was, in the Commission's view, weak.

46. We now turn to the pre-Match briefing document. Again, we had a copy of this document for the Match and also for the Wigan match the following Saturday. They are very similarly worded documents.

47. It is difficult, if not impossible, for the Commission to see how anyone being briefed in line with this document would be aware of the real risk of a mass pitch incursion at the Match. Nor is there any detail on how they were to seek to prevent such an eventuality or, indeed, deal with any incursion if one took place. Equally, there is nothing to identify how they would deal with the other matters complained about (namely projectiles being thrown and smoke devices/flares being used). The only direction of real relevance is that under a sub-heading 'Ten Minutes to match end', which provides:

"Ring of steel to be commenced on direction from stadium control.

Police presence to assist stewards in front of away supporters at the East stand at match end.

Where possible supporters are to be prevented from entering field of play, but supporters will not be chased or physically tackled.

Priority to be given to safety of match officials and players both home and away. Response staff to be positioned in the tunnel area to create a safe corridor back to dressing room area. A03

*In the event that the pitch is overwhelmed, **All staff with body worn cameras** will be deployed on to the pitch to capture evidence of those on the field of play for further action to be taken.*

Keep control of exist gates for those without tickets trying to enter.”

48. This wording was repeated in the briefing document for the Wigan match. Accordingly, it is unclear to the Commission whether this is standard wording, or, alternatively, wording used for both the Match and the Wigan match given the circumstances surrounding both games and the fact the pitch incursion policy also mentioned both matches.

49. The Commission accepts there were pre-Match briefings and that, as is evident from the video clips provided, there was also a detailed practice run of the implementation of what is described by Portsmouth as the ‘ring of steel’ before spectators were admitted into the stadium. However, as previously observed, the Commission can only proceed on the evidence presented to it and the Commission considers the briefing documentation was lacking in clear direction both as to the threat of a mass pitch incursion and also how that would be dealt with: there was little additional detail either in the Club’s letter dated 24 April 2024, although that confirms the Match-day briefing was “*cascaded through to all safety personnel*”.

50. In so far as the Club’s letter accompanying the Reply to Charge dated 28 June 2024 asserts:

“We were therefore adamant to do all we could, to minimise the risk of any pitch invasion during or after the Match and the threat to the safety of Match officials, players and staff of both clubs.”

based on the evidence presented to the Commission, we feel that despite Portsmouth’s assertion of “*extensive planning for the Match*”, there was a distinct lack of detail in planning, especially in the context of how a mass pitch incursion, which was rightly identified as high risk, would be sought to be prevented and how it would be dealt with if it occurred.

51. One exception to this, however, was Portsmouth's engagement with its fans before the Match. In the Commission's view Portsmouth's work in this respect was very good. The Commission notes the steps, set out in the initial observations letter dated 24 April 2024, including the messaging sent to all supporter groups as well as the programme notes of Mr Cullen, the CEO, which stated:

Our fans matter most to us and our plea to everyone, both this evening and at the weekend, is whatever the result, to avoid entering the pitch. We have a game here on Saturday and want to protect the fragile playing surface. Just as importantly, though, we want to ensure the safety of match officials, players of both teams and opposition supporters, and protect our own supporters from potential personal sanctions.

Over many years, it has been a football tradition for fans to come on to the field of play at the end of the season. However, what has largely been innocent and celebratory has been tarnished over the past two campaigns at a number of other clubs, with individuals attacking opposition players, opposition supporters and assaulting match officials. This has resulted in arrests and prison sentences, as well as Football Banning Orders for others coming onto the pitch, which is now a criminal offence. A Football Banning Order not only means exclusion from attending matches, but could mean an individual having to surrender their passports periodically and be banned from city centres on matchdays, whenever their team are playing.

The increase in incidents has resulted in The FA and the police advising that they are extremely likely to apply even heavier sanctions against individuals and clubs this season, where any such pitch invasion occurs. None of us can predict what might happen next when any supporter enters the pitch. Celebrations should be a time of unbridled joy for everyone – not something that leads to individuals regretting their actions for many years to come. The club and players are united in asking you to remain in the stands, so they can remain on the pitch and enjoy any special moments with you all.

52. The Commission also notes that for the match against Wigan the following Saturday messaging was additionally used from the manager and a player. There was no pitch incursion after the Wigan match and whilst circumstances were very different, the Commission is disappointed that similar direct messaging was not used in advance of the Match. No doubt in future Portsmouth will use such direct messaging, which in the Commission's view can be a very powerful influence on supporters.

53. Before moving on from supporter engagement, the Commission has to note it was aghast to read in the Club's letter accompanying the Reply to Charge:

"The Club was disappointed that despite highlighting the potential dangers of a pitch invasion by support groups to players and match officials, one supporter organisation replied stating that "whilst they were aware of the safety risk to opposition players and the possibility that the club would face sanctions from the footballing authorities, the pitch invasions of 2003 and 2017 were among Pompey fans' happiest memories with many already excitedly talking about doing it again. They therefore were very reluctant to comply with the Club's request not to encroach onto the pitch despite the Club's best efforts to communicate clearly that there should not be a pitch invasion after the final whistle. I wrote a further appeal ... asking them to reconsider this, given circumstances had changed in recent years with an increased threat to players and match officials as evidenced from celebratory pitch incursions in the last two seasons. However, they maintained their position..."

54. It appears the initial response received from the supporters group was one which included a statement from the writer that he would risk looking like a hypocrite if he encouraged supporters not to go onto the pitch, "... as I will likely end up on the pitch myself" a statement seemingly written in ignorance of the fact it is a criminal offence and with disregard to the effect on the Club.

55. We note that to Portsmouth's credit the Club responded to the email and sought to provide reason as to why a pitch incursion must not occur, including identifying that matters have changed since 2017 and stating: "*There is no exception to the law even if people think it is celebratory.*" This was then followed by an email from the CEO personally, setting out in considerable detail why a pitch incursion should not happen. From the Club's perspective, the Commission is satisfied it could have done no more on this issue.

56. In terms of pre-match planning, we also have to consider stewarding numbers. There is some discrepancy on the papers as to how many stewards were on duty, namely 258 or 268. In their comments on Mr White's case review Portsmouth observe, at paragraph 4.9:

“There were 268 stewards deployed by the Club for the Match (not 258 as stated by Mr White) of which 114 were licenced SIA, 1 Police Sergeant in the tunnel, a DFO in the control room with a UKFPU officer and football officers on the ground.”

57. However, there is no doubt that Portsmouth’s own documentation, in the guise of the Matchday briefing document, clearly identifies that 258 stewards were on duty. On page 3 of that document, it is stated that Portsmouth FC stewards confirmed numbered 68 and external stewarding support requested numbered 190, providing a total of 258. This latter figure is also referred to in the email from Steve Dowson, EFL Security and Safety Operations Consultant, in his email dated 11 June 2024, although he also suggests that the Club then updated that figure to 268.

58. Whatever the actual figure, Mr Dowson also confirms that the number of stewards had been increased from 230. That was the figure he identified would be engaged for a ‘typical low risk fixture.’

59. In the Commission’s view, whilst the game overall and in particular from the perspective of a low away supporter attendance, was a ‘low risk’ fixture, Portsmouth appear to have had little or no regard to the fact the risk of a pitch incursion was correctly identified in the risk assessment as being ‘high’.

60. In the Commission’s view to increase the stewarding numbers in all the circumstances by just 28 or 38 was inadequate. In their response letter dated 4 October 2024 to the FA’s submissions on sanction, Portsmouth referred to the ‘Green Guide’ and quoted part of section 4.12 of that document. Pursuant to a direction of the Chair, the Commission was subsequently provided with the whole of section 4 of the ‘Green Guide’.

61. As cited by Portsmouth, section 4.13 refers to ‘Mobile stewarding posts’ in the following terms:

“typically a ratio of one steward per 250 of the anticipated attendance.

This ratio should be increased where the event specific risk assessment (see Section 3.11) has identified the need for an increased level of safety management; for example, when large numbers of children are expected to attend, or where there is a likelihood that large numbers of spectators will not comply with safety instructions.”

62. The section continues in the following terms, which were not cited originally by Portsmouth (the Commission not drawing any inference on this, but noting what appears below is over the page in the Green Guide):

“In such circumstances the Safety Officer should consider a higher ratio of staffing overall, of one steward per 100 spectators, or even higher in specific locations. (Where there is a risk of unauthorised encroachment onto the pitch of area of activity, however, the higher ratio need apply only to the appropriate areas).” (underlining added for emphasis).

63. We repeat, this is in the section in the Green Guide on ‘mobile stewards’. We have not been provided with a full breakdown of steward deployment at the Match and accordingly do not know how many stewards were in fixed positions, such as those on gates and the like. However, it is plain that not all stewards on duty were ‘mobile’ and we note that the Green Guide refers to consideration of a higher ratio than even 1 to 100 spectators, if appropriate. We would suggest this was such an occasion, especially as there appears to have been an anticipation of a pitch incursion from all sides of the ground.

64. Whatever the actual figures, and noting that the Commission is unaware of whether all the stewards who took part in the practice of forming the ‘ring of steel’ before the Match were mobile at the end of the Match, from our study of the footage provided it is the Commission’s view that the number of stewards deployed was inadequate, as reflected from it being, at best, a ‘mere’ 38 more than a low risk match with no pitch incursion expected.

65. Indeed, having viewed the video clips of the end of the Match the Commission considers the reference to a ‘ring of steel’ was a misnomer, as in the Commission’s view there were insufficient stewards to provide anything like a suitable deterrent to spectators around the entire stadium entering the field of play.

66. Turning back to the pitch incursion policy, we remind ourselves that it provided:

“Priority to be given to safety of match officials and players both home and away. Response teams to be positioned in the tunnel area to create a safe corridor back to dressing room area.”

67. In reviewing the planning for the protection of match officials and players, the Commission notes that in Portsmouth's letter dated 28 June 2024 accompanying the Reply to Charge, it states:

“The Club did review as part of its planning and preparation for the Match, the possibility of deploying a ‘man-mark’ system for home and away players. After extensive review by the Club’s Safety team and H&IOWC, it was deemed that due to the makeup of the Stadium and how close the pitch is to the stands, the chances of fulfilling this method of close protection would be virtually impossible. The conclusion reached was that more players would be placed at greater risk if they were relying on a steward, who was unable to reach them. Therefore, the decision was made to ensure the tunnel was secured and that players were instructed to get to the sterile area by the tunnel as soon as the final whistle was blown.”

68. In fact, the Commission finds, the only steward deployed to specifically look after any one individual was a steward deployed to look after the Assistant Referee on the far side of the stadium from the tunnel. The Match Referee, in an email dated 17 April to The FA confirmed that they were informed this ‘runner’ would be provided in the pre-match safety briefing. The Match Referee also confirms that all Match Officials were able to exit the field of play, although the Commission notes the runner for the Assistant Referee on the far side of the pitch actually became swamped by the spectators on the pitch. This, of course, is in addition to the issues with the Barnsley players we have described.

69. The Commission cannot agree with the conscious decision taken by Portsmouth not to provide, or attempt to provide, one to one protection on the field of play. The reasoning suggested by Portsmouth, in the Commission's view, is equivalent to a statement to the effect that Portsmouth will *never* be able to offer individual protection to Match Officials and players, which when combined with inadequate stewarding is a real concern.

70. Indeed, despite it being a stated aim to give priority to the players and Match Officials, as it turned out it is difficult to see that anything other was done that providing a runner for the Assistant Referee on the far side of the pitch and forming a cordon around the tunnel. To hope that players and Match Officials can reach that cordon without incident, as we conclude is the natural consequence of the approach, is, in the Commission's view, wholly and worryingly inadequate.

71. The Commission notes that Barnsley, in providing observations in their letter dated 26 April 2024 from their CEO, Mr Flatman, observed:

“Upon the conclusion of the game, the stewarding operation appeared to be in formation as detailed in the pitch encroachment plan for a non-hostile pitch invasion, but regrettably, there did not seem to be any stewards instructed to ensure the safe exiting of players/staff from the field of play. It was down to our non-playing staff to identify our players who were in the midst of crowds and prior to everyone being able to exit the pitch safely, three of our players were physically assaulted.”

72. Given the fact a mass pitch incursion was anticipated, the Commission is also surprised that Portsmouth did not undertake a tabletop exercise together with all relevant parties to plan both to seek to prevent any such incursion, but also how to respond to it.

73. Finally, in respect of pre-Match planning whilst the pitch invasion policy referred to the creation of a ‘*safe corridor back to dressing room area*’ and the briefing document referred to “*The Tunnel must be protected at all times*” the Commission observes that the tunnel protection put in place was only after some momentary delay. The Commission accepts, however, that a number of stewards formed a clear protective line which formed a safe area within it, around the tunnel.

74. Turning to the execution of the planning by reference to some of the events during the Match itself, the Commission also notes that whilst the documentation refers to public address announcements and messaging on the big screen aimed at deterring supporters from entering the field of play, including at full time with a message being shown on the big screen and some announcements about players not returning to the pitch unless made safe, there is actually no evidence presented to the Commission to support that the audio or visual messaging happened, especially at the end of the Match. Indeed, the Commission notes that the only announcement we have been able to discern from the clips we have been provided with was one celebrating that Portsmouth were Champions. The Commission agrees with The FA’s submission that this was ill-advised, as it could only serve to further excite supporters.

75. The Commission also notes that one of the few specific statements in the documentation which dealt with the event of a mass pitch incursion was that all staff with body worn cameras be deployed on to the pitch to capture evidence of those on the field of play for further action to be taken. However, in the letter of Portsmouth in response to the submissions of The FA on sanctions, the Club says:

“In paragraph 30 the FA criticises the Club for not instructing stewards with body cameras to enter the pitch once the pitch invasion had taken place. The Club wishes to clarify that it did deploy stewards with body cameras to enter the pitch once the pitch invasion occurred, however, because the footage was not of a sufficiently high quality, it did not submit this to The FA with the Observations or with the Charge Reply.”

76. The Commission considers this to be a very weak stance on the part of Portsmouth. Given the role of the body cams and their importance, to have cams which do not provide footage of sufficient quality, and, by inference, that had not been checked for their quality before the Match is hard to comprehend.

77. As we have already stated, not only was there a mass pitch incursion at the end of the Match, but there does not appear to be any real dispute that the incidents of projectiles being thrown and the mini pitch incursion after Portsmouth scored their winning goal occurred. The Commission notes that in the letter in response to the Charge, Portsmouth respond to just one incident, indicating they were aware of one missile being thrown in the 69th minute, which resulted in an increased stewarding presence, but a review of the CCTV was unable to identify the perpetrator. We have not seen any footage of the incident or the response to it in the evidence supplied to us and we have not been supplied with CCTV footage of the period when the other projectiles are noted as having been thrown by the Match Referee’s extraordinary incident reports.

78. As a general observation, the Commissions feel compelled to comment that whilst it accepts that the mood of those who had entered the field of play from the stands at the end of the Match was undoubtedly celebratory, it was only a matter of happenstance that no injuries were reported, although in saying this the Commission remains very mindful of the incidents involving the Barnsley players. In any event, that it remained celebratory was lucky and was not attributable, in the Commission’s view, to good planning on the part of Portsmouth.

Seriousness of Breach

79. As we have already stated the seriousness of the breach is to be viewed in the context of the gravity of Portsmouth's breach of rule E21, not simply by reference to the consequence which in this instance was the throwing of projectiles as well as one minor and one major pitch incursion.
80. The Rules are in place for obvious and good reasons: namely to protect the workplace of the Match Officials, players and staff of both clubs involved in any given match. The obligation is placed on, in this instance, Portsmouth to ensure that its supporters behave in accordance with the Rules and to plan accordingly. Perfection is not required, as reflected in the defence available in Rule E21.5, although Portsmouth rightly did not suggest it was in a position to avail itself of that defence in the present instance.
81. Have placed a forensic focus on Portsmouth's planning for the Match, we need not repeat what we have stated above. Sadly, our observations are largely critical of Portsmouth's planning. We fully recognise that some planning was undertaken, but we reject the suggestion made by the Club that that the planning was 'extensive'.
82. Indeed, aside from the engagement with the supporters, for all the reasons given in the foregoing paragraphs the Commission concludes that the documentation presented by Portsmouth illustrates planning which was weak, formulaic and lacking in anything like the detail required for the specifics of the Match.
83. The Commission considers that it was presented with a lot of documentation, but very little substance and that when it considers the evidence presented by Portsmouth it is driven to the conclusion the planning was poor, especially in the context of planning to avoid a mass pitch incursion, but also in the context of how such an incursion would be dealt with.
84. In all the circumstances the Commission categorises the seriousness of the breach of Rules E21 as very serious.

Culpability

85. In *The FA v Birmingham* (16 September 2019) the Regulatory Commission in that case identified a scale of culpability which we are grateful to adopt. That scale is (1) the most serious (for example a deliberate decision not to provide the necessary resources for financial reasons); (2) a reckless disregard in respect of the club's duties; (3) gross negligence; (4) negligence; and (5) a situation where a club has marginally failed to avail itself of the "due diligence" defence set out in Rule E 21.5.
86. Given what we consider to be the lack of stewards on duty, the conscious decision taken by Portsmouth that the players and Match Officials (save for one of the Assistant Referees) would not be provided with one to one protection and their consequent vulnerability, the lack of evidence of searches having been undertaken on spectators on arrival (with pyrotechnics being used on the pitch after the Match ended) and the lack of planning for a mass pitch incursion, or indeed how a mass pitch incursion would be dealt with if it occurred, after careful consideration the Commission considers that the appropriate degree of culpability is at level 3 on the above scale, namely that Portsmouth were grossly negligent.

Harm

87. 'Harm' in this sense was also identified by the Regulatory Commission in *The FA v Birmingham* (16 September 2019) as not just being limited to the immediate adverse consequences of the pitch invasions and the throwing of projectiles, but also encompasses a wider meaning including matters such as:

- (a) The creation of a dangerous or hostile situation, even if, in fact, that situation did not escalate.
- (b) The creation of a risk of copycat incidents, in respect of which the Commission notes the EFL's Club Guidance on Tackling Pitch Invasions, where it provides:

"Following the increase in assaults on players and other individuals, it should not be assumed that pitch incursions at the conclusion of the season are in a celebratory nature and to be expected."

(c) Any wider damage to the reputation of football.

88. The harm in the present case was, in the Commission's view, significant. The Charge deals with multiple incidents, which culminated in a very significant mass pitch incursion with, if the police estimate is correct, 70% of the home support entering the field of play.
89. The Commission was particularly concerned to note in the video footage the presence of many unaccompanied minors and the situation was clearly dangerous even if it was not hostile. Furthermore, a steward was struck by a projectile, a number of projectiles were thrown, smoke devices (which we have described as pyrotechnics) were brought into the stadium and used on the pitch and a player from Barnsley has been the subject of, whether accidental or deliberate, significant physical contact, seemingly with his head. These matters can only harm the reputation of the game.
90. Unfortunately, the Commission finds that what the EFL Guidance says should not happen, did happen in this instance with Portsmouth simply proceeding as if a mass pitch incursion was inevitable and doing very little to prevent it or, in reality, planning for what was to happen to deal with any incursion that may occur. Hoping that it will be celebratory in nature and disperse accordingly, as the Commission infers was Portsmouth's stance, is wholly inadequate. That can only encourage copycat incidents.

Mitigation

91. Portsmouth has advanced mitigation in its letter accompanying the Reply to the Charge dated 28th June. Taking each point advanced in turn:
- (a) *The Club's extensive planning for the Match:* for all the reasons stated above in our consideration of the planning for the Match we reject this as mitigation. As we have already concluded, we consider the planning by Portsmouth was poor.
- (b) *The Club's communications strategy for the Match:* we have already praised Portsmouth for its engagement with supporters in advance of the Match, including maintaining engagement when the anticipated response was not received and recognise that credit is properly due for this.

(c) *Measures taken by the Club on the day of the Match/during and after the Match:*

The Club refers to the fact that a 'runner' was assigned to the Assistant Referee furthest from the tunnel area. However, we have already criticised the decision not to provide on field protection at the end of the Match to all Match Officials and Players, in so far as possible. We reject that as mitigation.

A point is also made about the control room being aware of one missile being thrown in the 69th minute. Given that the review of CCTV could not identify the perpetrator no mitigation arises, although it does in the Commission's view for increasing the stewarding in that area.

A point is also made about 'aggressive attention' to the Barnsley bench. This is a point on which the Match Referee made no comment and in respect of which the Commission does not consider it has sufficient evidence and, as such, it has not taken it into account in the sanction applied.

(d) *The actions taken by Portsmouth since the Match:* The Commission rejects the suggestion of any mitigation under this heading. The Commission has already recorded its view that the suggestion that body cam footage could not be used because it was not of sufficient resolution is weak.

That, in reality, Portsmouth have done very little since the Match, aside from co-operating with the Police which the Commission considers is a basic requirement in any event, is evidenced in the Commission's view by the fact the mitigation advanced includes statements referable to previous banning orders, which is no evidence of what happened in response to the matters which are the subject of the Charge.

In the Commission's view there has been very little done by Portsmouth since the Match. That not one individual has been identified, irrespective of any action being taken or not, is in the Commission's view very disappointing.

(e) *Admission of the Charge:* there is no doubt that Portsmouth admitted the Charge at the earliest opportunity. In the Commission's view it had very little alternative, given the evidence, but it still deserves credit for its timeous admission. Additionally, the Commission notes the apologies advanced on behalf of Portsmouth, which are accepted as being unconditional and genuine.

- (f) *Disciplinary Record*: it is accepted that Portsmouth has not previously been charged with a breach of Rule E21. However, in the Commission's view not having previously been charged is not a matter of mitigation in respect of the events which have led to the actual Charge.

Guidance/Previous Cases

92. There is no guidance as to the appropriate sanction for a breach of Rule E21.
93. Equally, the Commission was clearly mindful of the fact that it had to consider the facts of this Charge arising from the Match on their own merits. Notwithstanding this, it was aware of and reminded itself of previous Regulatory Commission decisions involving similar breaches, including the cases of *FA v Bristol Rovers* (28 July 2022); *The FA v Sheffield Wednesday* (16 October 2023) and *FA v Plymouth Argyle* (4 November 2024). This exercise was undertaken simply as a check and balance to ensure that the Commission's view on sanction was not disproportionate to other Regulatory Commissions.
94. The Commission was also mindful of the football pyramid and the fact that at the time of the Match Portsmouth was a League One Club.

Conclusion

95. Having regard to all the matters referred to in the preceding paragraphs and having regard to the multiple breaches in this instance, not simply the very significant mass pitch incursion at the end of the Match, and also having regard to what we consider to be very serious breaches, with a gross negligence level of culpability on the part of Portsmouth with significant harm, the Commission considers that it is appropriate to impose a financial sanction, as opposed to a sporting one, namely a substantial fine in the sum of £55,000, reduced to £50,000 to take account of the limited mitigation referred to above.
96. The Commission also warns Portsmouth as to its future conduct and considers it appropriate that Portsmouth should pay the costs of the Regulatory Commission.

97. In addition, not least to seek to reinforce the seriousness of what happened at the Match in the minds of the supporters of the Club, we direct that Portsmouth publish the outcome of this Commission hearing on the Club's website and provide a summary of it in the next matchday programme (if one is produced), whether that be digital, physical or both.

98. In summary therefore, Portsmouth is sanctioned as follows:

- (1) Portsmouth will pay a fine of £50,000.
- (2) Portsmouth will pay the costs of the Regulatory Commission.
- (3) Portsmouth is warned as to its future conduct; and
- (4) Portsmouth must publish the outcome of this Commission hearing on the Club's website and provide a summary of it in the next matchday programme (if one if produced), whether that be digital, physical or both.

99. There is a right of appeal against the decision of the Commission as provided by the Disciplinary Regulations.

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Christopher Stoner KC

As Chair and on behalf of the Regulatory Commission.

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13 December 2024.