BEFORE A REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

THE FOOTBALL ASSOCIATION
-v-
READING FC (1)
GLEN TWENEBOAH (2)
NIGEL HOWE (3)
SUE HEWETT (4)
MICHAEL GILKES (5)

WRITTEN REASONS AND DECISION: BREACH

Attendees at Glen Tweneboah's personal hearing of 15 November 2023

Regulatory Commission & Secretary
Tim Ward KC (Chair) – Independent Specialist Panel Member
Alison Royston – Independent Football Panel Member
Stuart Ripley – Independent Football Panel Member

Paddy McCormack – Judicial Services Manager – Secretary
Marc Medas – Judicial Services Officer – Observer

Glen Tweneboah
Glen Tweneboah – Participant
Ifeanyi Odogwu – Counsel for Glen Tweneboah

The FA
Will Martin – Counsel for The FA
Yousif Elagab – Senior Regulatory Advocate for The FA

Reading FC, Nigel Howe, Sue Hewett, Michael Gilkes
Alice Skupski - Associate, Centrefield LLP, Observer for the Reading Participants

INTRODUCTION

1. These Written Reasons contain the Commission's determination of the charges issued on 17 July 2023 against Reading FC, Nigel Howe, Sue Hewett, Michael Gilkes ("**the Reading Participants**") and Glen Tweneboah (collectively "**the Participants**"). The charges were consolidated pursuant to Regulation 13 of the General Provisions. The Reading Participants elected to have the charges dealt with on the papers. Mr Tweneboah requested a personal hearing which took place on 15 November 2023. The Commission granted the Reading Participants' request to have an observer present at the personal hearing. We reserved our decision. A copy of these Written Reasons was provided to the parties in draft on 1 December 2023.

2. We were greatly assisted by both counsel at Mr Tweneboah's personal hearing.

3. The Reading Participants partially admitted the charges. The Commission has upheld the remaining alternative charges against the Reading Participants and upheld the charge against Mr Tweneboah. The Commission will invite further submissions as to sanction and issue a further determination in due course.

4. The Reading Participants were charged as follows:

    " between 1 March 2019 and 16 July 2019, Reading FC, and Nigel Howe, Sue Hewett and Michael Gilkes, acting on behalf of Reading FC, and Glen Tweneboah, an Intermediary, agreed that Glen Tweneboah have an interest in relation to a registration right or an economic right, namely to receive payments contingent on the future transfer of a Player, namely 10% of any gross guaranteed transfer fee generated at the time of future sale to another club."

    Contrary to FA Rule E9 and Regulation E5 of the Regulations on Working with Intermediaries, The FA Handbook 2018/19 and 2019/20."

    Alternatively:

    "Between 1 March 2019 and 16 July 2019, Reading FC acted in manner which was improper and brought the game into disrepute, namely purporting to agree to with an Intermediary, namely Glen Tweneboah, that he have an interest in relation to a registration right or an economic right, namely to receive payments contingent on the future transfer of a Player, namely 10% of any gross guaranteed transfer fee generated at the time of future sale to another club.

Contrary to FA Rule E3 (1), The FA Handbook 2018/19 and 2019/20."

5. The Reading Participants denied the first charge and admitted the alternative second charge of conduct contrary to FA Rule E3(1), but only in so far as it alleged that they acted in a manner that was improper. The FA subsequently modified this charge to abandon the allegation that the conduct brought the game into disrepute, maintaining the allegation that the conduct was improper. Thus, the charge that the Reading Participants acted in a manner that was improper is admitted.

6. Mr Tweneboah faced only the first of these charges of conduct contrary to Rule E9 and Regulation E5, which he denied.

7. The Commission was provided with extensive contemporaneous documentation, a witness statement of Chris Hall, FA Integrity Officer, written observations made to the FA by Mr Tweneboah and Reading FC, transcripts of interviews with Mr Howe, Ms Hewett and Mr Gilkes, witness statements from Mr Howe, Ms Hewett, Mr Gilkes and Mr Tweneboah, character statements on behalf of Ms Hewett from Bryan Stabler and Nicholas Craig, and several sets of written submissions on the behalf of the FA, the Reading Participants and Mr Tweneboah. At Mr Tweneboah's personal hearing, the Commission heard oral evidence from Mr Tweneboah as well as detailed submissions.

8. It is not possible to set it all out in detail in these Written Reasons but the Commission took it all into account.

THE RELEVANT RULES AND REGULATIONS

9. At the material time, the relevant rules and regulations were as follows: FA Rule E3(1) provided:

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

10. FA Rule E9 provided:

> "An attempt by a Participant or <u>any agreement with any other person (whether or not a Participant) to act in breach of any provision contained in these Rules</u> shall be treated for the purposes of these Rules as if a breach of the relevant provisions had been committed. (emphasis added)

11. The FA did not allege any "attempt" to breach the rules. Thus to make good its case of breach of Rule E9 it was necessary for the FA to establish the existence of a relevant agreement within the scope of Rule E9 between one or more of the Participants.

12. Regulation E5 of the Working With Intermediaries Regulations ("WWI") provided :

> "<u>An Intermediary must not have, either directly or indirectly, any interest of any nature whatsoever in relation to a registration right or an economic right.</u> This includes, but is not limited to, owning any interest in any transfer compensation or future transfer value of a Player [or payments contingent on the future transfer of a Player]. This does not prevent an Intermediary acting solely for a Club in relation to a Transaction to transfer a Player's registration being remunerated by reference to the total amount of transfer compensation generated by solely that Transaction." (emphasis added)

13. The words in square brackets were added for the 2019/20 season with effect from 23 May 2019. The FA submitted, and we accept, that they were clarificatory and did not change the meaning of Regulation E5.

<u>THE ISSUES IN SUMMARY</u>

14. The charges arose out of negotiations which took place in 2019 between Mr Tweneboah and the Reading Participants in respect of the registration of [redacted] In [redacted] 2019, Reading FC ("**the Club**") offered [redacted] a Professional Contract. At the time he was a scholarship player at Reading FC. The FA's central allegation is that in [redacted] 2019 the Club, through its Chief Executive Officer Nigel Howe, the Head of Football Operations Michael Gilkes, and Club Secretary Sue Hewett, agreed to pay Mr Tweneboah 10% of any future transfer fee received by the Club for the onward sale of [redacted] (the future transfer fee payment' or "**FTFP**").

15. The FA contends that such payments are prohibited by Regulation E5 of the WWI

Regulations, and none of the Participants disputes this as a matter of principle.

16. The FA further contends that while no future transfer fee payment ultimately materialised there was an agreement for such a payment to be made. Accordingly, there was an agreement between the Respondents to breach Regulation E5, contrary to Rule 9 of the FA Rules.

17. The burden of proving the charges falls on the FA, on the balance of probabilities. Two broad issues arise before the Commission.

    a. First, the Reading Participants alleged that the first charge could not properly be brought against them. They contended that Rule E9 did not permit the FA to bring disciplinary proceedings for misconduct against any participant involved in an agreement to breach the WWI Regulation E5, but only an intermediary.

    b. Secondly, all of the Participants denied that an agreement had been reached as required by Rule E9.

18. The Reading Participants did not seek to argue that any distinction arose between them in terms of culpability in respect of any alleged agreement. This is understandable: whilst Ms Hewett conducted most of the negotiations with Mr Tweneboah, she did so on behalf of the Club and under the direction of Mr Gilkes and Mr Howe.

THE BACKGROUND FACTS

19. The facts giving rise to the charges took place more than four years ago. The following chronology is based upon the factual narrative advanced by the FA, primarily on the basis of the contemporaneous documents. Save where indicated, it has not been disputed by any Participant.

20. In March 2019 the Club offered [redacted] (then under a scholarship contract) a Professional Contract [redacted] On [redacted] 2019 the Club's Secretary Ms Hewett emailed Mr Tweneboah, copying in Mr Gilkes, and attaching the terms for the offer of a Professional Contract for [redacted] Mr Tweneboah had provided Mr Gilkes with his

email address - at Mr Gilkes' request - earlier the same day. Ms Hewett explained in her email that the email followed "recent discussions between you and Michael Gilkes" and asked Mr Tweneboah to review the offer and "please kindly contact Michael Gilkes with your feedback". The terms of the offer had been approved by Mr Howe the day before.

21. [redacted] On [redacted] 2019 Ms Hewett emailed Mr Howe, copying in Mr Gilkes, stating that "Michael [Gilkes] has been in discussions today with [redacted] agent and obviously we are keen to get this deal signed off with the player ASAP". The email attached a proposed Professional Contract offer, which Mr Howe had approved.

22. EFL approval to make the offer was obtained on [redacted] 2019. Minutes after the approval had been given, an offer was sent to Mr Tweneboah in an email from Ms Hewett copying in Mr Gilkes, stating "further to your recent discussions with Michael Gilkes, my Head of Football Operations", and attaching an offer of a Professional Contract for the Player ("**the 22 May 2019 email**"). The second paragraph of the email stated:

> "In addition to all of the terms detailed in the attached offer, I have also been asked to confirm to you on behalf of Reading Football Club, that we are in agreement to pay a further Intermediary fee to you which would be equivalent to 10% of any guaranteed transfer fee generated at the time of [redacted] future sale to another club from Reading FC – <u>as applicable under the terms of the Player's Exit Clause</u> (see attached contract terms)." (emphasis added)

23. The "**Exit Clause**" referred to in this email formed part of the contract offered to, and eventually signed by [redacted] It applied in a series of transfer windows between 2020 and 2022", in each case in materially the same form:

> "(XI) With effect from the commencement of the [redacted] Summer Transfer Window only and prior to 22:00 hours (GMT) on the 7th (seventh) day prior to the closure of the [redacted] Summer Transfer Window, should the Club receive an offer from another club (the "Buying Club") for the Player of no less than [redacted] plus a 10% "sell-on" in respect of any future transfer profit generated in excess of [redacted] applicable to any future transfer or transfers of the Player from the Buying Club (the "Transfer Fee"), then the Club shall agree to permanently transfer the Player and release his registration to the Buying Club, subject to the Player being able to agree personal terms with such Buying Club, and also subject to the Club (acting reasonably) and the Buying Club reaching a mutual agreement in respect of the payment schedule of the Transfer Fee. The Club acknowledges and agrees

> that the Player and/or his Licensed Intermediary may disclose the contents of this clause to other clubs."

24. On ██████ 2019 Mr Tweneboah responded ("**the ██████ 2019 email**"), setting out his amendments to what he described at the Hearing as "the high level commercial terms" which included the following revision to the second paragraph:

> "In addition to all of the terms detailed in the attached offer. The Club shall pay the Intermediary a 10% fee on any sale, transfer of the player from the Club to a new club, based on the gross value of the transfer, under any circumstances, for any reason whatsoever".

25. On ██████ 2019 at 14.44 Ms Hewett emailed Mr Tweneboah ("**the 14.44 email**") (said to be further to Mr Tweneboah's recent discussions with Mr Gilkes) copying in Mr Gilkes, attaching a formal offer letter confirming the details of the Club's offer of a Professional Contract for the Player from █████ 2019, and an Acceptance Letter for the Player and his parents to sign. The email stated:

> "In addition to all of the terms detailed in the attached offer, I hereby confirm again to you that Reading FC is in agreement to pay a further Intermediary fee to you which would be equivalent to 10% of any guaranteed transfer fee generated at the time of ████████████ future sale to another club from Reading FC – as applicable under the terms of the Player's Exit Clause(see attached contract terms)."

26. On 29 May 2019 at 10.02 Mr Tweneboah emailed Ms Hewett stating that he had "spoken to Michael [Gilkes]" (who was, again, copied in) and there were "two amendments that need to be made" ("**the 10.02 email**"). He included a revised paragraph which replaced the wording "as applicable under the terms of the Player's Exit Clause" with "based on the gross value of the transfer, under any circumstances, for any reason whatsoever" (i.e. the wording he had proposed on ██████ 2019). Ms Hewett replied at 10.19 the same day ("**the 10.19 email**") to suggest alternative wording, namely:

> "In addition to all of the terms detailed in the attached offer, I hereby confirm again to you that Reading FC is in agreement to pay a further Intermediary fee to you which would be equivalent to 10% of any gross guaranteed transfer profit generated at the time of ████████████ future sale to another club from Reading FC and actually received by Reading FC as a result of such transfer to a new club, under any circumstances for any reason whatsoever."

27. Mr Tweneboah responded at 12.18 the same day indicating that the wording was "agreeable, with profit and actually received removed" ("**the 12.18 email**"). His email then set out a revised clause with certain text crossed through and some further words added:

> "In addition to all of the terms detailed in the attached offer, I hereby confirm again to you that Reading FC is in agreement to pay a further Intermediary fee to you which would be equivalent to 10% of any gross guaranteed transfer ~~fee~~ generated at the time of ██████ future sale to another club from Reading FC ~~and actually received by Reading FC~~ as a result of such a transfer to a new club, under any circumstances, for any reason whatsoever."

28. Ms Hewett emailed Mr Tweneboah again at 14.20 on ██████ 2019 saying:

> "Further to your reply email and then subsequent conversation with ██████ please see revised wording below in respect of the potential future transfer of the player to a new club.
>
> I trust that all is now in order and that the player and both his parents can now be instructed to sign the attached Acceptance Letter and return to me ASAP please."

29. The revised wording set out below reflected the wording in Mr Tweneboah's previous email, except replacing the word "profit" with "fee"):

> "In addition to all of the terms detailed in the attached offer, I hereby confirm again to you that Reading FC is in agreement to pay a further Intermediary fee to you which would be equivalent to 10% of any gross guaranteed transfer fee generated at the time of ██████ future sale to another club from Reading FC, under any circumstances, for any reason whatsoever."

30. At 15.06 on ██████ 2019 ("**the 15.06 email**") Ms Hewett then emailed Mr Tweneboah in the same terms as she had on ██████ 2019 in relation to the arrangements for the Player's formal offer, but with the title "*Subject to Contract*" and with a revised version of the second paragraph which reinserted reference to the Player's Exit Clause:

> "In addition to all of the terms detailed in the attached offer, I hereby confirm again to you that Reading FC is in agreement to pay a further Intermediary fee to you which would be equivalent to 10% of any gross guaranteed transfer fee generated at the time of ██████ future sale to another club from Reading FC, under any circumstances, for any reason whatsoever – <u>and as applicable under the terms of the Player's Exit Clause (see attached contract terms)</u>." (emphasis added)

31. At 15.34, Mr Tweneboah emailed Ms Hewett (“**the 15.34 email**”), copying in Mr Gilkes, asking Ms Hewett to resend the email without the heading “Subject to contract” as “it’s not applicable to email ... and I’m in the progress of getting the form signed”.

32. At 16.56 Ms Hewett emailed Mr Tweneboah (“the **16.56** email”), copying in Mr Gilkes, in the same terms as her email of 15.06 save that the title “Subject to Contract” had been removed .

33. On ██████ 2019 Mr Tweneboah and the Club entered into a Standard Representation Contract, appointing Mr Tweneboah “to provide services on a non-exclusive basis to the Club in connection with the negotiations of the New Professional Registration (the ‘Services”) of the Player ████████ with the Club”. Under the terms of that agreement, Mr Tweneboah ████████████████████████████████ It made no reference to the FTFP. Clause 5 provided:

> “Any other arrangements between the parties in any way connected to the provision of the services set out in clause 1 that are supplemental to the Contract shall be in accordance with the requirements of The FA Regulations on Working with Intermediaries and the FIFA Regulations on Working with Intermediaries, and must be attached to the Contract and lodged with The FA together with the Contract”.

34. No such arrangements were attached. Clause 11 set out an “entire agreement” clause:

> “This Representation Contract sets out the entire agreement between the parties hereto, in relation to those matters set out herein, and supersedes all prior discussions statements representations and undertakings between them and their advisors”.

35. As the Reading Participants point out, under Regulation B2 of the WWI Regulations, the Representation Contract must set out the entire agreement between the parties. It did not contain the FTFP. The FA did not make any submissions as to whether this entire agreement clause was effective. Its case is that an agreement arose in ████ 2019, irrespective of whether it survived the entering into of this Representation Contract in July 2019.

36. Mr Tweneboah contacted the FA about the matters giving rise to these charges on █████

~~2021.~~ There is some dispute as to exactly what was said on this occasion, although the Commission does not consider it necessary to decide that question. Mr Tweneboah forwarded the 14.44 email to the FA.

37. On ███ ███ ███ was transferred to ███ for the sum of ███. On the same day, Mr Tweneboah entered into a tri-partite Standard Representation Contract with ███ and ███ in respect of the transfer to ███ Under the terms of that agreement, ███ On ███ ███ Mr Tweneboah emailed Ms Hewett stating:

> "Please kindly find attached an invoice which corresponds with the payment specified in the email below."

38. Below this message, Mr Tweneboah forwarded Ms Hewett's 15.06 email, set out above. Mr Tweneboah also attached an invoice dated ███ ███ in the sum of ███ to the Club for "Club Services and the Further Services by the Intermediary to the Club." That sum was 10% of the transfer fee ███ had agreed to pay.

39. There then immediately followed telephone conversations between Ms Hewett and Mr Tweneboah, which are further referred to below. The invoice was not paid.

EVIDENCE OF THE PARTICIPANTS

40. Reading FC wrote to the FA on ███ ███ to explain:

> "The Club was willing to agree to the Intermediary's proposed Exit Clause, however it was reluctant to agree to the Future Transfer Payment as Ms Hewett's understanding was that this was not permitted under the Regulations. Nevertheless, so as not to jeopardise the negotiations, the Club initially let the Intermediary believe that it would consider his proposal regarding the Future Transfer Payment." (emphasis added)

41. The Club explained that it did not intend its emails expressing agreement to have any legal effect, and that no such agreement was ever formalised. It expressed regret it may have "mistakenly misled" Mr Tweneboah. As we shall explain, this is not how the position was described in interview with the FA.

42. Mr Howe (who had been CEO of the Club in 2019) explained in his witness statement that everything Ms Hewett and Mr Gilkes "did on behalf of the Club was approved by me". In his interview he stated:

> "I was never clear whether an intermediary would understand the regulations as well as they should. And I was never clear, never 100% clear myself, of whether I knew the regulations, because quite a lot of them are changing all the time, and anybody who said they did, has got, you know, an ego bigger than they can possibly manage. You know, you never could absorb that much information. So, everything I usually did was to say to people, like, 'Make it subject to contract. Don't disagree with them. Make it subject to contract, and make sure, at some stage, we have got to refer to The FA.' and we did it many times, that it was part of negotiation, and quite a lot of agents, because you were going back to where I started, you were trying to get the player's deal agreed, rather than worry about the agents. That was what was the important factor. So, if you tried to indicate to the agent, 'Make it subject to contract.' ultimately, you'd make sure that you'd think the agent, himself, would check, and quite a lot of them did. Whether it was possible or not possible, but you carried on pushing the negotiations along, and that tended to work." (emphasis added)

43. Mr Howe was asked in interview whether any concerns or issues were raised at the first time the club heard about the proposed FTFP clause. He explained:

> "Well, I think, my-, excuse, I know this is recorded, but my first reaction would be, 'You can fuck right off.' but, you know, I think it's all part of negotiation. You know, as far as I'm concerned, string the guy along. It doesn't sound-, I mean, to me, it's a negotiation. I don't feel like I'm doing anything wrong stringing the bloke along. I'm not making any promises. It's all subject to contract. You know, when we get to the crunch, we're going to give him the bad news, and kick him in the wherevers."

44. He also made clear "this agent never asked to proceed on the basis of that agreement". In his witness statement he said:

> "When I was made aware of the intermediary's request for a 10% sell-on fee (the Transfer Payment'), I discussed this with Mr. Gilkes and Ms. Hewett. Ms. Hewett was not sure this would be permitted under the FA Rules, and I told her to keep it 'on the table' for the time being and check with The FA in due course whether it would be permitted. By that time, the Player's contract would hopefully have been agreed and then the agent would be in a much worse bargaining position, so, if it was confirmed by The FA that the Future Transfer Payment was not allowed, we could convey this to the agent without jeopardising the whole deal.
>
> I devised this strategy and approved the actions to implement it. We weren't committing to anything at that stage and we could take advice later if Mr Tweneboah

> maintained his demand. I would not have signed off on anything I knew to be a breach of the rules…. As I recall, Mr Tweneboah did not ultimately pursue is request for this payment". (emphasis added)

45. Mr Howe acknowledged he "acted improperly by entertaining Mr Tweneboah's request for the Future Transfer Payment rather than checking at the time whether such payment was permitted under the rules, and I apologise for my actions".

46. Mr Gilkes, then Football Operations Manager, confirmed in his witness statement that he had "sought and obtained Mr Howe's approval at every stage of the negotiation". The proposal for the FTFP had come from Mr Tweneboah, and that he did not know if it would be permitted as "that was not my role". Mr Gilkes explained that he relayed the request to Ms Hewett, who stated she wasn't sure if it could be agreed to under the rules, and that Mr Howe stated that once the Player's terms were agreed, it would be easier to negotiate the agent's terms.

> "He instructed me and Ms Hewett to entertain Mr Tweneboah's request for the Future Transfer Payment, saying the Club would agree to it in principle, on the basis that we could revisit this and deal with the details later when it came to preparing the representation agreement in respect of this transaction (once the Player's terms were agreed) if the agent were to insist on the Future Transfer Payment." (emphasis added)

47. Like Mr Howe, Mr Gilkes acknowledged "our conduct in this matter was improper and that we should have checked whether the Future Transfer Payment would be permitted as soon as it was raised. I apologise for my actions in this regard."

48. Ms Hewett is the Club Secretary, and has been for 23 years. She told the FA on ██████ 2022 that the strategy formulated by Mr Gilkes and Mr Howe was "we would, in our dealings with the intermediary make it appear that we could be willing to entertain" the proposal for the FTFP "whilst continuing the negotiations regarding the player, which was obviously a separate thing."

49. As Club Secretary, it was an express part of Ms Hewett's duties to be responsible for "completion of player registrations, domestic and international transfer contractual matters, and ensuring compliance with governing body rules and regulations." She was asked whether there was an understanding as to whether this would be permitted by the FA Rules. She explained in interview:

> "I'm saying we weren't sure, I wasn't sure if it would be permitted, and I said at the time that we would need to refer, we would need to, you know, properly look at it in more detail, and just find out in what way we could contract with the intermediary that would allow us to agree. And I was still saying, 'We might be able to do it, we might not.' But what I was asked to do and prepare around █████ May was to send an email to the intermediary on behalf of Reading Football Club that said, 'We would be willing to agree to this if we can do it, and if we can contract, and if we contract legally. And if we're able to do it under the rules, in principle, we're willing to entertain this proposal.' (emphasis added).

50. In fact, as noted, the emails sent to Mr Tweneboah between █████ 2019 went further than this, and were not qualified in the manner Ms Hewett indicated.

51. In her witness statement, Ms Hewett said that she "doubted that such a payment would be permitted under FA Rules and I shared my doubts with Mr Howe and Mr Gilkes". She also explained she sent the email of █████ 2019 that contained a reference to an FTFP on the instructions of Mr Howe and that she "sought approval from Mr Howe at every stage". She said:

> "I understood this to be an 'agreement to agree'/an agreement in principle, which was not binding and would be subject to agreeing further terms and formalising the agreement in a representation contract, if, and only if, the terms of the Future Transfer Payment were allowed under the FA Regulations." (emphasis added)

52. She also explained that the Club "didn't get to the stage" where they sought advice "because the intermediary stopped bringing it, you know, stopped raising it, basically". Instead, they "moved forward to the contract stage"…"as there had been no further mention of the Future Transfer Payment, I assumed that this issue had gone away". Had it not, she would have checked whether it was permissible.

53. As for Mr Tweneboah's invoice, she stated that whilst she did not remember her exact words:

> "I may well have asked Mr Tweneboah why he had told The FA that he had any entitlement to a sell on fee because I didn't think that was permitted. I did not belief the Club had breached any regulations, because no such fee had been agreed with Mr Tweneboah or was going to be paid by the Club, but I was concerned that Mr Tweneboah had made it seem to the FA as if there had been a breach." (emphasis added)

54. The language used here, emphasised above, is firmer than the "doubts" she claims to have

expressed, noted above.

55. Ms Hewett also expressed regret, albeit on a wider basis than Mr Howe and Mr Gilkes. She stated "I accept and deeply regret that the negotiations with Mr Tweneboah should have been handled differently and that my conduct could be described as 'improper'" and "sincerely apologise'[d]". She also expressed regret that "I was not strong enough at that time to challenge my superior and my line manager and to push back against the negotiating tactics of Mr Howe."

56. Mr Tweneboah gave two written accounts to the FA in ████████ following his notification to the FA. He also made a witness statement for these proceedings and gave oral evidence. We took into account all of this material.

57. In oral evidence, Mr Tweneboah explained that he works as senior professional in the trading of liquid natural gas. As part of that role, he is involved in negotiation with some of the biggest oil companies in the world. This involves the negotiation and use of written contracts. His work as an Intermediary began many years ago whilst he was at University. He now acts as Intermediary for five players. Accordingly he has long experience as an Intermediary, even if part-time. We would expect him to be well familiar with the WWI Regulations, which are just a few pages long.

58. Mr Tweneboah's witness statement said that the proposal that the Club pay a percentage of any proposed transfer fee for the Player came from him (although he explained to the Commission that the ████ 2019 email was the first time he had seen this put in writing). He stated:

> "I had no knowledge that this proposal was not permitted under FA Intermediary Regulations as I was still an Intermediary for the Player (and not acting solely for the Club). Had I known I absolutely would not have made such a proposal or sought to negotiate a fee in any way connected to a future transfer fee. It would have been easy for me to negotiate a fixed fee with the Club." (emphasis added)

59. Mr Tweneboah's evidence was that although there was a course of negotiation with the Club, he never did reach an agreement on the FTFP. As of ███ 2019 "the term was still being negotiated."

60. Under cross-examination, Mr Tweneboah appeared at one point to accept that at the time of the ███ 2019 email it was at least agreed that he would receive 10% of the transfer fee, even if the other matters remained to be negotiated. He also asserted however that "nothing was agreed".

61. Mr Tweneboah placed particular emphasis on the fact that the ███ 2019 email had referred to a transfer "as applicable under the terms of the Player's Exit Clause." He stressed the importance of this matter to him, as its inclusion would affect the circumstances in which he would be entitled to be paid. He had objected to that language and replaced it in the version included in the ███ 2019 email. The Club had reinstated it in the ███ 2019 email, but he had again removed it in the 10.02 email of ███ 2019. The Club did not materially change his preferred wording in the 10.19 email. At that point Mr Tweneboah had said the wording was "agreeable." When asked about this in cross-examination, he said he was "agreeable, but there was more to agree".

62. Mr Tweneboah told us that at some point around this time he had a conversation with Mr Gilkes in which he had said they should deal with the dual representation contract later, and that he proceeded in good faith.

63. The reference to the Exit Clause nevertheless reappeared in the version included in the Club's 15.06 email. In response to the email Mr Tweneboah sent the 15.34 email asking for "subject to contract" to be removed, raising no further objections to the language and stating "I am in the process of getting the form signed" – which we understand to be a reference to the acceptance letter sent to ███ parents. In his witness statement Mr Tweneboah explained:

> "At 15.34, I emailed SH, copying in MG, asking SH to resend the email without the heading "*Subject to Contract*" which had suddenly been inserted. I did not read or agree the rest of the email, and certainly did not say or indicate my agreement but wanted the "*Subject to Contract*" proviso removed as this was an obvious addition that I had noticed and that I had not agreed to, and wanted this to be addressed right away. It is absolutely not the case that this email was me agreeing to the Future Transfer Payment."

64. Mr Tweneboah appeared uncertain when he gave oral evidence about whether he had noticed the re-appearance of the reference to the Exit Clause. He said he did not notice this, but on further reflection thought he had noticed it, but considered it to be of no relevance (we infer because he thought the negotiations were going to continue at a later stage).

65. As to his request to remove the words "subject to contract" (which had appeared in the 15.06 email), he explained that he considered that the form of words was "still being negotiated" and this was a matter that they would conclude and agree separately after the signing of the Player contract. In oral evidence, he explained he asked Ms Hewett to remove the words "subject to contract" because "we were far from agreement". He considered there were other terms that needed to be added and at that stage there was no need to mark the proposals "subject to contract". These were just "counterproposals."

66. Mr Tweneboah explained he was content to leave matters there, and to deal with this matter separately after the signing of the Player Contract. As a result "it was just dropped".

67. Mr Tweneboah in fact went on to carry out a considerable amount of work, starting during ██████ to bring about a transfer for ██████ Following his successful negotiation of a firm bid of ███ for the Player as well as a sell on fee, Mr Tweneboah contacted the club but, he explained to the FA:

> "I began to have some concerns about the Club not agreeing to the Future Transfer Payment as I had not received a formal draft Representation Contract by this time. I called the intermediatory hotline of the FA on the morning of ███ ███ to check whether I could claim the fee without this having been formerly agreed. This was my first transaction representing a Club, and so I wanted to firstly double check if receiving the equivalent of 10% of the transfer fee was permissible within the FA regulation. I then followed up his phone call with the FA with an email.
>
> Given the lack of response from the Club about the Future Transfer Payment formal proposal, and my growing concern that I still did not have an agreement between myself and the Club (and that I may have been deceived during the negotiations), on ███ I decided to invoice the Club for ████. I addressed this to SH.
>
> Within 30 minutes of sending the invoice I received a voice message from SH asking me to call her back as a matter of urgency. She sounded panicked on the phone and asked why I had informed the FA about the email because surely, I knew

it was outside the FA regulations. I replied that I did not know, which was why I had sent it to the FA and if it had been agreed and sent in contractual form I would never have signed anything without checking with the FA first anyway, as I did not want to be involved with anything untoward that would affect my registration or reputation as an Intermediary. She said I had put Reading FC and herself personally in a difficult position, and she was now informing the board of directors of the situation. and she was now informing the board of directors of the situation.

68. Asked why he had issued the invoice, Mr Tweneboah explained that he had put a lot of work in, even if "nothing was agreed", and he believed he was due funds. He had "panicked" which had led him to issue the invoice. He said the FA had not said that payment was not permitted.

69. It was put to Mr Tweneboah that he wanted the FTFP to be agreed before the player contract was signed off. He rejected that suggestion.

70. Mr Tweneboah gave his account of these matters to the FA in his letters of [redacted] [redacted] The first, received on [redacted] stated:

> " Thank you for clarifying that the contract Reading FC proposed below via email was in fact outside FA regulations and that you will provide a response in due course.
>
> Regarding the transfer of [redacted] from Reading FC to [redacted] earlier this month, I would like to reiterate that I solely acted on behalf as Reading FC in negotiating and securing the [redacted] transfer fee from [redacted] (pursuant to a release clause in [redacted] professional contract with Reading FC).
>
> At the time of negotiating the [redacted] release clause under [redacted] professional contract with Reading FC in May 2019, <u>I was led to believe by [redacted] [redacted] that I would be paid a commission equivalent to 10% of any transfer fee generated in any future sale of [redacted] to another club</u> (i.e. [redacted], which they are now refusing to pay. I have outlined the sequence of events below as well evidence that support my claim." (emphasis added)

71. In oral evidence, Mr Tweneboah accepted that the reference to [redacted] in the underlined passage above should have been a reference to Reading FC.

72. His letter to the FA went on to explain:

> "On the morning of [redacted] I negotiate[d] a firm bid of [redacted] for [redacted] as well as the 10% sell on fee and a reasonable schedule of payments with [redacted] [redacted]. I immediately informed Seb Ewen [of the Club] and he sent an acknowledgment text reply along with his Reading FC's email address… I followed up with a call giving

him all the exact details, which he was very pleased with.

I called the intermediatory hotline of the FA on the morning of [redacted] the to inform the FA of the above and query if the contract where Reading FC promised to pay me a 10% of [redacted] transfer's fee was within the FA regulations and if I was entitled to the sum, as Reading had not yet provided a representation contract between us (I knew I may be provided along with IM1 as pre deal paperwork)." (emphasis added)

73. In his letter to the FA received on [redacted] Mr Tweneboah stated:

"I called the intermediatory hotline of the FA on the morning of [redacted] and spoke to Tom, because this was my first transaction representing a club, I wanted to firstly double check if receiving equivalent of 10% of the transfer fee Reading FC had agreed was ok and within the FA regulation as well as negotiating on the players and receiving fee also from that. It was a very a short quick conversation where Tom told he didn't think it was within regulation and I then said I would send some information regarding the matter, I also wanted to secondly check if would be possible to be paid fee from the email sent from Reading FC to myself if they decided not to send through the representation contract." (emphasis added).

INTERPRETATION OF THE RULES AND REGULATIONS

74. Mr Odogwu on behalf of Mr Tweneboah submitted that the Commission should "apply ordinary principles relating to the construction of written contracts" when construing the WWI Regulations (*FA v Intermediary X*) and the FA Rules, and any ambiguity should be construed *contra proferentem* against the FA. In *FA v Intermediary X*, the following summary was given, also relied upon by the FA:

> *39.* From those texts, authorities and decisions we derived and applied the following principles:
>
> a) When interpreting any written document (including Regulations such as the [WWI] Regulations in this case), a tribunal is concerned to identify the objective intention of the parties to that document. It does so by focusing on the meaning of the relevant words in their documentary, factual and commercial context. Their meaning has to be assessed in the light of
>
> i) the natural and ordinary meaning of the words used in the clause or (in this case) Regulation,
> ii) any other relevant provisions of the regulatory framework, and
> iii) the overall purpose of the particular Regulation and the wider Regulations of which it forms part

b) The subjective evidence of any party's intentions or understanding of the wording is to be disregarded

c) Save in a very unusual case, the meaning of a document is most obviously to be gleaned from the language of the provision under scrutiny

d) Where the language used is unambiguous, the tribunal must apply it. If however the language is ambiguous, such ambiguity is to be resolved against the person or entity putting forward that language, particularly in cases where it is put forward (as by a rulemaker in a sporting context) on a 'take it or leave it' basis. That principle applies when ambiguous provisions of a disciplinary code are construed just as it applies to the construction of ambiguous provisions of a commercial contract

e) However, wording is not ambiguous simply because two parties contend for different constructions or meanings. It is only if wording is genuinely ambiguous that regard should be had to the contra proferentem principle as an aid to construction."

75. As to point (d), above, *Chitty On Contracts* observes at (16-113) "to the extent that the rule continues to exist, it should only be applied to remove (and not to create) a doubt or ambiguity and as a last resort where the issue cannot otherwise be resolved by the application of the ordinary principles of construction".

76. The FA also relied on the approach of the Supreme Court to contractual construction in *Rainy Sky SA v Kookmin Bank* [2001] UKSC 50 at 21, a case relied on by the FA. Lord Clarke held "[i]f there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and reject the other". The Supreme Court has also held that the meaning of words in a contract must be seen in their "documentary, factual and commercial context" including "commercial common sense": *Arnold v Britton* [2015] UKSC 36 at [15]; *Wood v Capita Insurance Services* [2017] UKSC 24 at [8]-15].

77. We adopt the foregoing approach, subject only to the observations we make below regarding the role for subjective intention.

<u>Whether the Reading Participants can be charged with a breach of FA Rule E9 and Regulation E5</u>

78. The Reading Participants contended it was not open to the FA to charge them with a breach FA Rule E9 and Regulation E5 because Regulation E5 applies exclusively to intermediaries. Rule E9 could not have the effect of deeming a breach of Regulation E5 WWI by a non-intermediary. They pointed out that Regulation E5 forms part of a section entitled "Restriction on conflict of interest" which imposes obligations E4 to E7 on intermediaries, and only E6 on clubs and club officials, concerning the receipt of consideration for a benefit. They argued that Rule E9 could have, but does not, provide that any agreement by a Participant to facilitate a breach by another should be treated as if that Participant had themselves committed the relevant breach.

79. The FA relied on the "ordinary and natural meaning" of Rule E9, which it argued allowed the FA to bring a charge against any Participant, if they become party to <u>any</u> agreement to breach <u>any</u> provision of the WWI Regulations" (original emphasis). The FA argued that the "fact that the Reading Respondents could not themselves hold a prohibited interest in the Player under WWI Regulation E5 is immaterial to liability, as it is the *agreement* with GT that he have a prohibited FTFP (i.e. a prohibited interest) that amounts to the Misconduct, rather than the FTFP itself". Otherwise, the FA argues, club officials who secretly facilitate and encourage a prohibited FTFP, in the knowledge that such arrangements are prohibited, would escape sanction.

80. The Reading Participants argued, however:

> "The ordinary and natural meaning of Rule E9 is straightforward: if there is an agreement of the kind identified in Rule E9, the relevant breach should be treated "as if [it] … had been committed". In other words, in cases where an actual breach has not occurred it is deemed to have occurred if there was an attempted breach or an agreement to breach. In this case, therefore, the effect of Rule E9 is simply that the Regulatory Commission should deem a breach of WWI Regulation 5 to have been committed.
>
> However, if only an intermediary can commit a breach, absent a provision to the contrary, only an intermediary can be charged with a breach."

81. The Reading Participants argue that in circumstances where a non-intermediary cannot, as a matter of principle, act in breach of Regulation E5 WWI Regulations (see above), FA Rule E9 cannot be relied upon by The FA to *deem* the commission of such conduct by a non-intermediary. They also relied on the interpretative principle against doubtful penalisation, and point to the existence of an alternative basis for charge in the form of Rule

E3(1).

82. We prefer the submissions of the FA. 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.

The meaning of "agreement"

83. The FA and the Participants made submissions as to the approach the Commission should take to determining whether there was an agreement.

84. Mr Tweneboah relied on the following definition of "agreement" from Jowitt's Dictionary of English Law 5th Ed: "(1) A consensus of two or more minds in anything done or to be done. (2) Agreement, in its widest sense, is where two or more persons concur in expressing a common intention with the view of altering their rights and duties…" He further emphasised the following passages from Cartright on "Misrepresentation, Mistake and Non-Disclosure (6th Ed, 2022): "cross-offers do not make a contract" and that "mere silence by either party during the formation of a contract is problematic… unless the silence can in context communicate the meaning sufficiently clearly to the other party it cannot be

treated as part of the communication by which their agreement was formed".

85. As Mr Odogwu put it:

> "under FA Rule E9 in the context of WWI Regulations 5, requires the FA to prove (whether in a binding contract or not) a '*consensus ad idem*" a **meeting of minds**" . This means that an offer was made by one of the Respondents of a FTFP agreement and that this was accepted by the other to whom the offer was addressed."

86. These propositions were not disputed by the FA and we found them helpful.

Whether the agreement needs to be legally valid

87. It was common ground as between the FA and Mr Tweneboah that the agreement need not be valid or a legally binding contract, in light of *FA v Andrew Evans.* The Reading Participants, however, argued in their written submissions that a legally binding agreement was required. In their Response submissions, they argued that to apply *Andrew Evans* in this case, where there was no Representation Contract, would be to "very substantially extend the approach in Evans, by applying it to interpret an entirely different rule and by drawing in matters that were not included in the final form of the agreement". These submissions were not adopted by Mr Tweneboah.

88. We accept that the facts of *Andrew Evans* are different, but the essential basis of the Appeal Board's approach was that the phrase "valid agreement" was used elsewhere in the Regulations, but not in the rule in question. That point applies with equal force in the present case. We consider the core issue is whether, as counsel for Mr Tweneboah put it, there was a sufficient "meeting of minds", not mere cross-offers. We do not decide whether any such agreement amounted to a legally binding contract.

89. Mr Tweneboah raised a different point as to the construction of Rule E9, when read together with Regulation E5. It was submitted that the agreement "has to be capable of conferring some ownership rights… an agreement to transfer an economic right." Mere negotiations or cross offers are not sufficient. The FA's response was that the Commission was not concerned with whether there was an enforceable transfer of an economic right. The FA agreed with Mr Tweneboah's submission that the purpose of FA Rule E9 was "to prohibit

Participants from conspiring to agree". We also agree. Rule E9 works to deem that to be a breach of E5 itself. The agreement does not have to be legally effective.

The objective approach

90. In the *Andrew Evans* case, the Appeal Board (Chaired by Lord Dyson) observed that it was common ground that the question whether there was an agreement within the meaning of that definition "must be determined objectively". The same approach was taken in *FA v Intermediary X*. This objective approach reflects the observations made in *Chitty on Contracts*: (4-01), cited by the FA:

> "In deciding whether the parties have reached agreement, the courts normally apply the objective test …. Under this test, once the parties have to all outward appearances agreed in the same terms on the same subject-matter, then neither can, generally, rely on some unexpressed qualification or reservation to show that they had not in fact agreed to the terms to which they had appeared to agree. Such subjective reservations of one party therefore do not prevent the formation of a contract. Equally, a party who completes and signs a contractual document "cannot avoid its consequences by saying that they did not read it or did not understand it". (emphasis added)

91. Thus "an apparent intention to be bound may suffice, ie: the alleged offeror (A) may be bound if their words or conduct are such as to induce a reasonable offeree to believe that he intends to be bound, even though in fact he has no such intention" (4-003) Mr Odogwu drew our attention to paragraph 5-014 of *Chitty* which addresses the relevance of subjective intention:

> "No contract can be formed if there is no correspondence between the offer and the acceptance, or if the agreement is not sufficiently certain. The starting point must be whether the parties have reached an agreement that there is a contract between them on the same terms, so that subjectively they are agreed on the same thing. If so, there will be a contract on the agreed terms, certainly if they had made their intentions clear to each other and quite possibly if they had not but in fact their intentions coincided. If, however, one party claims that he did not intend to contract at all, or did not intend to contract on the terms which the other party claims were agreed, then the question is whether there is a contract (or, as it is often put, whether or not the "contract is void"). The intention of the parties is, as a general rule, to be construed objectively: the language used by one party, whatever his real intention may be, is to be construed in the sense in which it was reasonably understood by the other. Thus:
>
> > '… if one party (O) so acts that his conduct, objectively considered, constitutes an offer, and the other party (A), believing that the conduct of O represents his actual intention, accepts O's offer, then a contract will come into existence, and

on those facts it will make no difference if O did not in fact intend to make an offer, or if he misunderstood A's acceptance, so that O's state of mind is, in such circumstances, irrelevant.' (emphasis added)

92. As to the question of intention to create legal relations, Chitty explains at 4.210:

> "In deciding issues of contractual intention, the courts normally apply an objective test: for example, where the sale of a house is *not* "subject to contract", both parties are likely to be bound even though one of them subjectively believed that he would not be bound until the usual exchange of contracts had taken place…" (emphasis added)

93. It is worth re-emphasising that the foregoing passages of *Chitty* are concerned with legally binding contracts. As already noted, we consider that is not a requirement for an agreement for the purposes of Rule E9.

WHETHER AN AGREEMENT ON THE FACTS

94. The FA's case was that by ████ 2019 there was a legally binding agreement, but that to make good the charge, it did not need to go that far. It contended there was an agreement in principle by ████ 2019, and that this was sufficient to make good its case.

95. The agreement alleged in the particulars of misconduct contained in the charge letter was: "an interest in relation to a registration right or an economic right, namely to receive payments contingent on the future transfer of a Player, ████ namely 10% of any gross guaranteed transfer fee generated at the time of ████ future sale to another club". We find that:

    a. As a matter of principle, an exchange of emails of the kind we have been asked to consider is capable of amounting to an agreement, even if outside the scope of a formal, detailed written contract such as a Standard Representation Contract.

    b. If the negotiations consisted of nothing more than a series of offers and counter-offers, that would be insufficient to constitute an agreement. There needed to be a meeting of minds as to the alleged agreement.

96. In our view, the evidence demonstrates that the alleged agreement was reached on ██████ 2019. There was also a high level agreement in principle on ██████ 2019.

97. In approaching this issue we have placed more weight on the contemporaneous documents than on the explanations that have now been provided four years later. On ██████ 2019, the Club indicated its acceptance of Mr Tweneboah's core proposal. Following further negotiation, agreement was reached in greater detail through the exchange of the 15.34 and 16.56 emails. Whilst some matters remained outstanding, we find that this is a sufficient factual basis to satisfy Rule E9.

98. In so far as the subjective intentions of the Participants are relevant (notwithstanding the observations in *FA v X* and *FA v Andrew Evans*), we reject Mr Tweneboah's evidence that he did not intend to reach any such agreement. We find that he believed that such an agreement had been reached. Very significant sums of money were at stake for Mr Tweneboah, and we find he would not have been content to simply drop this matter without any agreement, in the hope of revisiting it later if he was able to negotiate a transfer for ██ ████ as he sought to suggest.

99. As to Mr Tweneboah's evidence that he would have sought to check with the FA before entering into such agreement, both parties sought to explain that their negotiations were subject to such checking Neither appears to have said so explicitly however.

100. As to the claims of the Reading Participants that they did not intend to enter into the agreement with Mr Tweneboah that the FA contends for, we do not need to decide if they are true although we are sceptical about them. We find that the Club would have well understood the significance of removing the words "subject to contract" when sending the 15.06 email. No Reading Participant offered an explanation as to why this had happened. Mr Howe explained that making the terms "subject to contract" was part of a negotiation strategy, aimed at "stringing along" the agent, demonstrating an understanding of the meaning of those words. Ms Hewett stated she could not recall sending that email. She had permanently deleted the email (a two stage process) although did not remember doing so. It was discovered in the course of the FA's investigation in the "deleted items" folder of Mr Gilkes' mailbox. (who was copied in to the email) It was explained by the Club that it was necessary for Ms Hewett to periodically permanently delete emails to comply with

the mailbox size limit, although it was not said that this why she had made the deletion on this occasion.

101. Irrespective of the subjective intentions of the Reading Participants, we find that their conduct, objectively considered, demonstrated an intention to be bound, and that Mr Tweneboah believed this to be the case. In particular we note the following.

102. The Club's first written response to Mr Tweneboah's proposal for an FTFP stated that "we are in agreement to pay a further 10% to you which would be equivalent to 10% of any guaranteed transfer fee". The language we "are in agreement" appeared in six emails over the course of a week. The core proposition, that Mr Tweneboah would receive 10% of a future transfer fee never varied, even if there was further negotiation over the precise circumstances in which it would or would not fall due. By [redacted] 2019, Mr Tweneboah stated he was "agreeable, with profit and actually received removed" : 12.18 email.

103. In her witness statement, Ms Hewett accepted there was an 'agreement to agree'/an agreement in principle". Mr Gilkes stated he was instructed to "agree to it in principle".

104. The existence of an agreement as alleged by the FA is further borne out by Mr Tweneboah's conduct at the point where the FTFP fell due. He not only issued an invoice for the agreed amount, but in addition, the explanations he gave to the FA in [redacted] [redacted] clearly demonstrated his belief (at that time at least) that there was an agreement that he would be paid 10% of any transfer fee: see paras 73-76 above.

105. We also consider it significant that when the wording "subject to contract" was introduced by Ms Hewett in the 15.06 email, Mr Tweneboah's response was to ask her to remove that language. As a matter of contract law, "agreements 'subject to contract' are not legally binding", and "such agreements are usually regarded as incomplete until the terms of a formal contract have been settled and approved by the parties" Chitty, 4.159, 4.,1.6.1. When asked about the meaning of this under cross-examination, Mr Tweneboah appeared to have a good understanding of the point. This is unsurprising given that his professional life involves sophisticated contractual negotiation.

106. Thus, as a matter of contract law, removal of the words "subject to contract" took away

a measure of protection against the emails becoming contractually binding. We think Mr Tweneboah would have understood this, as would the Club.

107. We reject Mr Tweneboah's evidence that he did not read the 15.06 email in full. He responded to the email 28 minutes later. The email chain from [redacted] 2019 between Mr Tweneboah and the Club revealed very careful attention on his part to the drafting, which was unsurprising given his professional background and what was at stake for him.

108. Mr Tweneboah explained, and indeed emphasised, that he considered there were other terms that needed to be agreed, although he was not specific about what they were. Most of the remaining terms should have been set out in the FA's Standard Representation Contract, which is mandatory under Regs A2, B2 and Appendix 1 of the WWI Regulations.

109. As noted, the various explanations offered by the Club and the Reading Participants state that either they knew that an FTFP was not permitted, had doubts, or were not sure. Mr Tweneboah claims to have had "no knowledge" of this, even though as he explained, he had legal advice and had many years of experience as a representative.

110. We find these assertions of doubt or ignorance difficult to accept, but do not make any finding in this regard. We note though that such concerns as to whether the FTFP was permissible could have provided the motivation for the agreement to "sit separately" from the other contractual negotiations. We also note that the 22 May 2019 email refers to this as a "further Intermediary Fee". The Standard Intermediary Agreement entered into in July 2019 also contained a fee, albeit of £25,000.

111. We accordingly find that the FA has demonstrated the charge of misconduct contrary to FA Rule E9 and Regulation E5 against all Participants.

112. We will invite submissions on sanction and costs.

Tim Ward KC

Stuart Ripley

Alison Royston

13 December 2023