

BEFORE THE REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

IN THE MATTER OF

THE FOOTBALL ASSOCIATION

and

WEST BROMWICH ALBION FC

WRITTEN REASONS
OF THE REGULATORY COMMISSION

Regulatory Commission: Graeme McPherson KC (Chairperson)
Andrew Adie
Peter Fletcher

Secretary to the

Regulatory Commission: Paddy McCormack
(Judicial Services Manager)

Date: 4 July 2024

Venue: Paper hearing

(A) Introduction

i) The match and the incidents

- 1) On 28 January 2024 West Bromwich Albion Football Club (*'the Club'*) played Wolverhampton Wanderers FC (*'WW'*) in the fourth round of the FA Cup (*'the Match'*). The Match took place at the Club's home ground.

- 2) Incidents occurred during the Match. For present purposes the relevant incidents (*'the Incidents'*) comprise
 - a) In the 37th minute – a number of pyrotechnics (smoke devices) were activated by WW supporters. At least three devices were thrown towards the pitch, although none reached the playing surface. One of the devices was thrown into the Club's supporters in the East Stand, from where it was picked up and thrown back to the WW supporters. The pyrotechnics were safely disposed of by the Club's stewards and no injuries occurred

 - b) In the 61st minute – a small number of items (including plastic bottles) were thrown towards a WW player who was taking a corner in front of supporters of the Club. The Match was delayed for a short period. No injuries were suffered

 - c) By the 72nd minute – plastic bottles were being thrown between Club and WW supporters in the East and Smethwick End Stands. No injuries were suffered

 - d) In the 79th minute:
 - i) A fight broke out in the West Stand in a block close to the Birmingham Road Stand. The catalyst for the fight was the presence of a WW supporter (who celebrated a WW goal) amongst Club supporters seated in a part of the stadium reserved for Club supporters. The WW supporter was attacked by supporters of the Club. Supporters in the vicinity moved away from the disturbance and climbed over the perimeter onto the pitch side track
 - ii) Club supporters in the East Stand and Millenium Corner surged toward the gangway and also spilt onto the pitch side track
 - iii) Club supporters in the Birmingham Road Stand surged towards the disturbance and the pitch side track
 - iv) The Match Referee suspended play and the players left the pitch. Play was suspended for 38 minutes

- v) While play was suspended two Club supporters entered the field of play
 - vi) Police and stewards were deployed to deal with the disturbances
 - vii) A number of individuals suffered injury
- e) In the 90th minute – a cup containing liquid was thrown towards a WW player who was taking a corner in front of supporters of the Club. No injury was suffered.

ii) Following the match

3) Following the Match

- a) The Referee prepared and submitted reports detailing the Incidents, and
- b) The Club (after being requested to do so by the FA) provided detailed observations on the Incidents and on the Match more generally (*'the Observations'*). The Observations addressed a number of discrete questions asked by the FA – in particular the Club set out
 - i) The preparations that it had undertaken for the Match and the measures that had been put in place to prevent misconduct by spectators
 - ii) The measures that the Club had taken once it became aware of the Incidents and the effect of those measures
 - iii) The action taken by the Club to identify and take action against the perpetrators of the Incidents
 - iv) Measures that the Club intended to take to reduce the risk of similar incidents from reoccurring
- c) With the Observations the Club submitted a document titled *'Preparations and Measures Document'*:
 - i) That document set out in chronological order the steps that had been taken to prepare for the Match, the communications that had occurred before the Match within the Club and between the Club and various third parties and the steps that had been taken during the Match to address the Incidents as they occurred
 - ii) That document in turn was cross-referenced to various other documents, copies of which were provided with the Observations.

iii) The Charges

- 4) By letter dated 12 March 2024 the FA charged the Club with Misconduct for breaches of FA Rule E21.1 and FA Rule E21.2 (*'the Charges'*) in connection with the Match. The FA alleged that the Club
- a) Had failed to ensure that its spectators and its supporters (and anyone purporting to be its supporters or followers) conducted themselves in an orderly fashion while attending the Match and did not behave in a way which was improper, offensive, violent, threatening, abusive, indecent, insulting or provocative [FA Rule E21.1]
 - b) Had failed to ensure that its spectators and its supporters (and anyone purporting to be its supporters or followers) refrained from throwing missiles or other potentially harmful or dangerous objects at or on the pitch [FA Rule E21.2].
- 5) With the Charges the FA enclosed
- a) The evidence on which it relied in support of the Charges. That evidence included
 - i) The reports of the Match Referee
 - ii) The Club's Preparation and Measures Document and Risk Assessment for the Match
 - iii) Minutes of meetings of the Club's Safety Advisory Group (*'SAG'*) in the run up to the Match
 - iv) Minutes of the Club's various Planning Meetings in the run up to the Match
 - v) Police deployment plans and information for the Match shared by West Midlands Police (*'WMP'*) with the Club in the run up to the Match
 - vi) The Stewards Briefing for the Match
 - vii) The Pitch Encroachment Plan for the MatchThe evidence also included video footage and still photographs from the Match (including pre-Match)
 - b) A report from Steve Graham (*'the Graham Report'*) in support of the Charges. Mr Graham is a Safety and Security Advisor for the FA. The Graham report considered the Club's conduct before, during and after the Match. We return to the Graham Report in greater detail below
 - c) Unused material (which was also listed in the Charge letter).

iv) The Club's response to the Charges

- 6) By its 'Disciplinary Proceedings: Reply Form' dated 5 April 2024 the Club admitted the Charges. It did not request a personal hearing before a Regulatory Commission and confirmed that it was content for the Charges to be dealt with at a paper hearing.
- 7) With the Reply Form the Club submitted
- a) Detailed written submissions dated 5 April 2024 in reply to the Charges (***'the Club's Submissions'***)
 - b) A witness statement from Howard Lewis-Jones, the Club's Head of Security and Matchday Operations. Mr Lewis-Jones' statement addressed
 - i) the Club's general approach to safety and matchday operations
 - ii) the Club's preparations for the Match
 - iii) the Club's response to the Incidents during the Match
 - iv) the Club's response after the Match
 - c) Emails from
 - i) Bob Eastwood. Mr Eastwood is the EFL's Head of Security and Safety Operations. In that email Mr Eastwood expressed an opinion on '*the overall match day operation at [the Club]*' and the competence of Mr Lewis-Jones. Mr Eastwood was complimentary about both. He was not however at the Match; his expressed opinions were generic and did not relate to the particular facts of this case
 - ii) Alan Shaw. Mr Shaw is a director of an Explosives and Forensic Solutions organisation. The purpose of his email was to address a suggestion in the Graham Report that the Club could/should have had in place Amnesty Bins into which supporters could have disposed of pyrotechnic devices before entering the stadium. In that email Mr Shaw explained why he is opposed to the use of Amnesty Bins for that purpose; in essence, they have the potential to be extremely hazardous in certain circumstances
 - d) A bundle of documents including
 - i) the Green Guide
 - ii) the Club's Health and Safety Policy, Stewarding Plan, Safety Policy for Spectators, Fan Behaviour Plan, Ticket Conditions, Ground Regulations, Match Day Structure and Big Screen Messaging
 - iii) documents relating specifically to the Match.

8) In the light of the Club's admission of the Charges, on 29 April 2024 the FA served a Note on Sanction (*'the FA's Note on Sanction'*). The Club responded with a Note on Sanction of its own dated 8 May 2024 (*'the Club's Note on Sanction'*).

v) The hearing before the Regulatory Commission

9) The Charges were considered by us as the appointed Regulatory Commission (*'the RC'*) at a hearing (conducted by Teams) on 4 July 2024. Because the Club had elected a paper hearing no representative from either the FA or the Club attended the hearing.

10) In advance of the hearing the Members of the RC were able to read the entirety of the voluminous written materials relied on by the parties. They also viewed the many videos that the parties invited it to watch.

vi) The Decision

11) Having considered the Charges, the Club's response, the evidence submitted by each party in relation to the Charges and the Submissions/Notes on Sanction provided by each party

- a) We accepted the Club's guilty plea to the Charges; each of the Charges was in the RC's view made out on the evidence before it, and
- b) We determined
 - i) that a fine of £30,000 should be imposed on the Club. That fine was a composite fine in respect of both Charges
 - ii) that the Club should be warned as to its future conduct
 - iii) that there should be no order as to costs

(together, *'the Decision'*). These are our Written Reasons for the Decision.

(B) FA Rules E20 & E21

12) FA Rule E21 provides as follows:

'A Club must ensure that its spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending any Match and do not

1 use words or otherwise behave in a way which is improper, violent, threatening, abusive, indecent, insulting or provocative;

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

13) FA Rule E21.5 provides:

‘It shall be a defence in to a Charge in relation to [FA Rules E21.1 or E21.2] (only) if a Club can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control or for reasons of crowd safety and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged. However when considering whether this defence is made out a Regulatory Commission will have regard to all relevant factors including

- *the extent to which the Club has discharged its duty*
- *the severity of the issues involved*
- *the extent to which similar issues have occurred previously in which case whether the Club took sufficient action in preventing such further incidences’.*

In these Written Reasons we refer to that as the ‘**FA Rule E21.5 defence**’.

14) FA Rules E20.1 & 20.2 do not create ‘strict liability’ offences; an FA Rule E21.5 defence is open to any club charged with a breach of FA Rule E21.1 or 21.2 if, but only if, it is able to demonstrate¹

- a) That the Incident complained of was the result of circumstances over which it had no control, and
- b) That the club’s responsible officers and agents had used all due diligence to ensure that its FA Rule E21.1 and 21.2 responsibilities had been discharged

15) It is accepted by the Club that in this case it is unable to discharge the burden of making out an FA Rule E21.5 defence to either of the Charges, hence its acceptance of the Charges. However, given that (as we set out below) the correct approach to considering sanction in a case such as this requires us to consider

- a) The seriousness of the breaches of FA Rules E21.1 and FA Rule E21.2 committed by the Club,
- b) The culpability of the Club underlying those breaches, and
- c) The harm caused by the Incidents that give rise to the breaches

it is necessary for us to consider in a little detail what the Club did for the purpose of attempting to comply with FA Rule E21.1 and FA Rule E21.2, the extent to which the Club’s efforts fell short of meeting the standard required by FA Rule E21 and the degree

¹ See for example the Regulatory Commission decision in *The Football Association v Birmingham City FC* (27 August 2019) for a consideration of the 2 limbs of an FA Rule E21.5 defence

of culpability on the part of the Club for the failure to meet the standard required by FA Rule E21. We therefore consider such matters below.

(C) The facts in greater detail

i) Pre-Match

16) The Club learned that it would be playing WW in the fourth round of the FA Cup when WW won a third round replay place on 16 January 2024 i.e.12 days before the date fixed for the Match.

17) The Club appreciated immediately that the Match would be a high risk fixture, comprising as it did (amongst other things)

- a) A local derby between historic rivals that had resulted in crowd trouble previously,
- b) The first match between the Club and WW with supporters present for 12 years, and
- c) A knockout match.

The Club therefore appreciated that significant additional planning and precautions (i.e. over and above that required and carried out for a ‘normal’ match) would be needed. That process involved a number of Planning Meeting, SAG Meetings and meetings with WMP. A significant number of possible and potential risks created by the Match were identified and documented during the course of those meetings.

18) Additional policing and stewarding resources were put in place for the Match. The levels of policing and stewarding (including FOP stewarding) exceeded even the levels that the Club had previously deployed for other high risk fixtures. However, one matter that appeared to us to be lacking was an adequate documented plan for the deployment of the stewards within the stadium before, during and after the Match. Given (1) how the Club planned to keep Club and WW supporters apart (see below), and (2) the Club’s appreciation that supporter disruption during the Match was a real possibility, that is one area where the Club’s preparations fell short.

19) A particular risk identified prior to the Match was the possibility of spontaneous disorder between rival supporters and/or by the WW supporters (which had occurred previously) during the Match. Ordinarily at the Club’s ground

- a) The West Stand, the East Stand and the Birmingham Road Stand provide seating for home/Club fans, and
- b) The Smethwick End provides seating
 - i) in Block A, for away fans, and
 - ii) in Block B for home/Club fans.

A corner of the ground known as Millenium Corner (where the Smethwick End and the East Stand meet) is where home and away fans are usually closest.

20) However, because the Match was an FA Cup tie the Club was required by FA Rules to allocate a larger percentage of tickets to away fans than would have been the case for a non-FA Cup fixture. That meant that the seating arrangements summarised in the previous paragraph needed to be changed; Block A in the Smethwick End did not provide sufficient seating to meet the WW ticket allocation.

21) Accordingly, early in the planning process the Club decided that for the Match

- a) It would use the Smethwick End exclusively for away fans (and so ease pressure on stewarding and police by having away fans all in one stand)
- b) The majority of police resources would be deployed at the Smethwick End to patrol the WW supporters
- c) It would not have Club Stewards in front of the Smethwick End (so as to avoid the risk of confrontation between WW supporters and Club stewards) but instead would have WW stewards deployed in that location
- d) It would relocate Club season ticket holders from Block B of the Smethwick End around the stadium for the Match.

22) In order to provide distance between WW fans (in the Smethwick End) and home/Club fans (in the parts of the East and West Stands closest to the Smethwick End) and to limit the prospect of items being thrown across the Stands

- a) Banners were to be used in each corner of the Smethwick End, and
- b) Certain sections of the Stands where home and away fans would have been closest were to be left empty and netted.

Additional netting was to be placed over sections of the front two rows of the Smethwick End to prevent/deter WW fans from attempting to access the pitch.

23) However, one matter that we found surprising was the decision to use the Millenium Corner for seating for the Match. That area of the stadium had been the site of anti-social behaviour in the past due to the proximity of home and away supporters. Given the history between the Club and WW, re-opening the Millenium Corner for the Match was a risk.

24) The police assessed the risk of the use of pyrotechnics as 'high'. The Club was aware of the risk of pyrotechnics

a) Being used by Club supporters against the coach carrying the WW players when they arrived at the ground. That risk was addressed by the WW players arriving earlier than normal

b) Being brought into the stadium. Although the Club's pre-Match planning documentation referred only to 'random searching' (See below), that risk was to be addressed

i) by '*everyone [being] searched head to toe as they came into the venue*' and by bags being searched (a system operated by the Club for every match in any event). The need for such searches was stressed in the pre-Match stewards briefing. To minimise the risk of such searches antagonising WW fans, WW agreed to provide some of its own stewards (initially 20, subsequently increased to 50)

(1) to search WW fans entering the Smethwick End, and

(2) to assist with away supporters in front of the Smethwick End during the Match

ii) by posters located around the stadium warning against the use of pyrotechnics.

The Club (for what in our view are justifiable reasons) does not (and did not for the Match) use Amnesty Bins as a means of preventing pyrotechnics being brought into the stadium.

25) The police also assessed the risk of spontaneous disorder as 'high'. The Club appears to have (initially at least) agreed with assessment. However, in its Risk Assessment, although the Club recorded (under '*Additional Information*') that

a) '*The potential for organised 'risk supporter' disorder*' at the Match was '*High based on the behaviour of supporters at previous meetings between the two clubs and the intelligence surrounding the fixture*'

b) '*The potential for spontaneous disorder is High based on the numbers expected to attend and previous history*', and

c) '*The potential for the use of pyrotechnics is High*'

d) *'I expect high levels of ASB (anti-social behaviour) along with both spontaneous and pre-arranged disorder at various stages throughout this operation'*

the sections of the Risk Assessment addressing *'Significant Hazards'* rather contradicted those overarching concerns.

26) Three parts of that section of the Risk Assessment are of particular relevance:

a) 'Crowd Disorder' was identified as a risk:

i) Initially the risk was graded 5 out of 10² and given a rating of 50 out of 100³

ii) The Risk Assessment identified the controls that the Club was to put in place at the Match to address the risk

iii) In the light of those controls the risk and rating were reduced to 2 and 20

In our view the Club's belief that the controls that were to be put in place reduced the risk of Crowd Disorder to such a low level was unjustified. Although we must of course not use hindsight to judge the Club, the fact that the disorder during the Match was so frequent and of various types in our view demonstrates that the Club's optimism at the effectiveness of its controls in reducing the risk of Crowd Disorder was unjustified. Nothing that occurred during the Match was unforeseeable; everything that occurred during the Match could (and should) have been anticipated or at least considered in advance

b) 'Disorder at the Segregation Lines' was identified as a risk:

i) Initially the risk was graded 3 out of 10 and given a rating of 21 out of 100

ii) The Risk Assessment identified the controls that the Club was put in place at the Match to address the risk

iii) In the light of those controls the risk and rating were reduced to 2 and 14

Again in our view the Club's belief that the controls that were to be put in place were adequate was unjustified. The videos show that those controls were inadequate (particularly in the corners of the stadium between the East and West Stands and the Smethwick End), and in our view that could and should have been appreciated before the Match

² The scale in the Risk Assessment ran from 1 ('remote') to 10 ('certain')

³ The scale in the Risk Assessment ran from a band of 1-29 ('low') to 70-100 ('high')

- c) ‘Smoke Devices/Flares/Pyrotechnics’ was identified as a risk:
 - i) Initially the risk was graded 3 out of 10 and given a rating of 21 out of 100
 - ii) The Risk Assessment identified the controls that the Club was put in place at the Match to address the risk:
 - (1) Those controls included ‘*random searching*’ and ‘*enhanced searching*’
 - (2) The Club explained that ‘random searching’ was in fact a reference to searches that would be conducted inside the stadium
 - (3) The Club’s intention (albeit that this was not recorded in the Risk Assessment) was that every supporter entering the stadium for the Match would be searched
 - iii) Despite those controls the risk and rating remained at 3 and 21
- Again in our view the Club’s belief that the controls that were to be put in place were sufficient was unjustified

27) The risk of away fans finding themselves in the home end (*‘AIH Fans’*) was not specifically considered in the Club’s Risk Assessment. However

- a) The Club had a general policy in place for every match to the effect that, if an AIH Fan was identified, he or she would be removed from the stadium, and
- b) The Club’s evidence was that it did consider such an event – which will often be the trigger for wider disorder – specifically for the Match in the wider context of ‘crowd disorder’ in its Risk Assessment. It was not however clear to us exactly what (if any) additional measures the Club put in place to plan for what would be done if an AIH did in fact find his or her way into a home stand. Particularly given the changes that the Club made to seating arrangements for the Match, that was in our view a matter that ought to have been considered and planned for
- c) One thing that the Club did however do was release tickets in home stands in such a manner as, it anticipated, would limit the opportunity for WW supporters to acquire such tickets
- d) On receiving intelligence on the day of the Match that a small number of WW fans might have managed to obtain tickets in home stands, additional police were deployed in the Birmingham Road and East Stands; those were where (according to the Club’s evidence) the Club considered that any disorder from AIHs would be most likely. However, quite why the Club considered that AIHs were unlikely to cause disorder in the West Stand was unclear on the evidence before us.

ii) During the Match

28) As we have said above, the Club's intention was that all supporters would be searched as they entered the stadium. However, the evidence before us demonstrates that that was not what in fact happened:

- a) Videos of WW supporters entering the Smethwick End show supporters entering the stadium without being searched
- b) Videos of Club supporters entering the stadium show that no female stewards were present. As a result, female spectators were admitted to the stadium without being searched
- c) Searches were being carried out extremely close to the turnstiles. Not only did this result in significant numbers of spectators being 'backed up' immediately before the turnstiles, it also enabled some supporters to enter the stadium without being searched at all

29) The only incident during the first half of the Match was the activation of pyrotechnics by WW supporters in the 37th minute following WW's first goal. The pyrotechnics were dealt with safely by the Club's trained stewards using equipment purchased by the Club for that purpose.

30) There was however disruption between home and away fans during the first half in Millenium Corner, between the Smethwick End and the East Stand. To address that, additional police were deployed to Millenium Corner at half time. As we have said above, the possibility of disorder in that part of the stadium is a matter that in our view should have been anticipated before the Match.

31) In the 61st minute Club supporters threw a small number of items, including plastic bottles, at a WW player who went to take a corner in front of the East Stand. No missiles struck the player, although there was a short delay to the Match. By the 72nd minute a number of plastic bottles were being thrown between the East Stand (by Club supporters) and Smethwick End (by WW supporters).

- 32) An AIH (a WW supporter seated with the Club's supporters in the West Stand, in a block close to the Birmingham Road Stand) celebrated when WW scored a second goal. Club supporters almost immediately rounded on and attacked the AIH. That had two knock-on effects in the West Stand
- a) Stewards and police moved in to break up the attack and to protect and detain the AIH. The AIH was removed from the stadium
 - b) A number of Club supporters (who were attempting to move away from the Incident) came over the perimeter hoardings and onto the pitch side track, where they were contained by police and stewards.
- 33) That Incident triggered a number of further Incidents:
- a) Diagonally across the stadium from the Incident (in Millenium Corner, in between the East Stand and the Smethwick End) Club supporters surged forward down a gangway and onto the pitch side track.
 - b) Club supporters in the Birmingham Road Stand also surged forwards. Some of those supports moved towards the Incident inside the perimeter boards. Others crossed the perimeter boards and came on the pitch side track and the edge of the field of play
 - c) A number of Club supporters ran across the field of play from the direction of the East Stand/Birmingham Road Stand
 - d) There was disorder amongst the WW supporters in the Smethwick End.
- 34) Each further Incident prompted a response from stewards and police, who contained the supporters on the pitch side track and prevented a mass incursion on to the pitch. However, it did not prove possible to restore order promptly and the Match Referee accordingly decided to formally suspend the Match and take teams off the pitch. While the Match was suspended two Club supporters entered the field of play. One walked across the pitch with a Club scarf held aloft. The second began dribbling a football that was pitch side. Both were detained.
- 35) The Match resumed 38 minutes after the AIH's celebration had first triggered the disorder. The restart was delayed in part because paramedics – whose presence was needed pitch side before the Match could restart – were dealing with crowd incidents, including at least

one that was unrelated to the Incidents. The Incidents did however cause a significant delay to the Match.

36) In the 90th minute a Club supporter threw a liquid-filled cardboard cup at a WW player who went to take a further corner in front of the East Stand. It did not strike the player and there was no delay to the Match.

iii) Following the Match

37) The Club conducted various de-briefings after the Match to review the Incidents – in particular

- a) To determine what had caused the Incidents, and
- b) What steps could and should be taken in the future to prevent any recurrence. Steps so identified by the Club included
 - i) the addition of a section on AIH Fans in the Club's risk assessment
 - ii) the placing of a supplementary banner across Millenium Corner to further limit interactions between home and away supporters
 - iii) the possible use of additional signage to deter the use of pyrotechnics and anti-social behaviour.

38) In addition, the Club took steps to identify individuals involved in the Incidents. WMP continue to investigate the Incidents and the Club has suspended a number of individuals.

(D) Assessing the Club's conduct

39) The FA (in the Graham Report) identified certain respects in which, in its opinion, the Club had 'fallen short'

- a) Before the Match, and
- b) During the Match.

40) As regards the Club's preparations for the Match

Pyrotechnics

- a) The Graham Report criticised the Club for failing to put in place adequate measures to prevent pyrotechnics being brought into the stadium. In Mr Graham's view, far more could and should have been done by the Club

- b) We agree that, as the Club submitted, it is difficult to prevent pyrotechnics from being smuggled into a stadium by determined supporters. However, in our view the criticisms in the Graham Report are justified. The Club
- i) Should have had in a place a clearly documented plan for preventing pyrotechnics from being brought into the stadium. It did not. In particular, given that its primary line of defence was to be searches of all spectators prior to entry into the stadium
 - (1) that decision ought to have been documented, and
 - (2) there ought to have been a clear plan in place for how that was to happen (and happen effectively) addressing matters such as (a) where searches should take place (b) how supporters would be prevented from evading searches (c) how male and female and child supporters were to be searched
 - ii) Should have put in place effective measures to communicate that plan to the stewards who would in fact be carrying out the searches

AIHs

- c) The Graham Report criticised the Club for failing to have in place a plan to address
- i) how AIHs would be dealt with in the event of an AIH being identified, and
 - ii) how any knock-on effect that AIHs might cause – such as disorder amongst Club supporters in their immediate vicinity - would be dealt with
- In Mr Graham's view the Club should have specifically included plans for such an eventuality in its pre-Match planning
- d) We agree. The Club has accepted that such issues ought to have been specifically addressed in the Risk Assessment, and has confirmed that it now does so

Crowd Disorder more generally

- e) The FA also criticised the Club's pre-Match planning to address the risk of crowd disorder, particularly at the lines between WW and Club supporters
- f) In our view such criticisms were justified. This was a high risk fixture, with a high risk of organised and/or spontaneous crowd disorder taking place. While purporting to recognise the severity of that risk and put in place controls to address it, the Club in our view

- i) over-estimated the likely effectiveness of the controls that it was to put in place for the Match in reducing those risks, and so
- ii) under-estimated the risk of organised and/or spontaneous crowd disorder that in reality always existed.

41) As regards the Club's conduct during the Match itself:

Pyrotechnics

- a) Given that the Club's chosen 'defence' to supporters attempting to smuggle pyrotechnics into the stadium was to search all spectators, it was paramount that that was done. But it was not (and certainly not done effectively). While (as has been said by other Regulatory Commissions) a failing on the part of an individual to do as instructed will generally not be deemed to be a failing on the part of the club, in this case
 - i) the failings were widespread, and
 - ii) in our view the failings were the result of inadequate planning and briefing by the Club

AIH

- b) Once the AIH had been identified he was dealt with as quickly and effectively as could reasonably have been achieved. However, that outcome was primarily the result of prompt and courageous action by a small number of stewards and police acting very much on their own initiative. Those individuals deserve considerable credit for dealing with the Incident as they. Had they not done so, the outcome of the Incident could have been far worse than it was

Crowd Disorder more generally

- c) In our view two broad criticisms are to be made of the Club's conduct in this regard
- d) The first concerns the Club's response to the Incidents that occurred prior to the 79th minute. In our view the Club could and should have been more proactive in addressing those Incidents. From the evidence and the videos it is clear that tensions within the

stadium grew as the Match progressed. The Club did little if anything to prevent or respond to that continued escalation

- e) The second concerns the Club's response to the Incident in the 72nd minute. It is clear the Incident escalated relatively quickly, with disorder occurring at about the same time in a number of different parts of the stadium. Despite the possibility that disorder in one part of the ground might trigger disorder in another – particularly given (1) that Club season ticket holders had been moved around the stadium for the Match to accommodate WW supporters in the Smethwick End and (2) the Club was aware that WW fans might have been able to access home stands – the Club did not have adequate resources deployed (or quickly deployable) to address that
- f) As a result, supporters were able to spill out of the Stands onto the trackside pitch at a number of locations. And once they were there
 - i) the Club failed to prevent individuals from accessing the pitch. Self-evidently that means that the Club failed to 'corral' those individuals adequately at pitch-side
 - ii) the Club failed to move those individuals back into the Stands. Indeed, we noted that when play restarted supporters were still on the trackside pitch and had not been returned to the Stands (or, if appropriate, removed from the stadium).

42) Before we leave this section, we do acknowledge that (for obvious reasons given the nature of the issues that we are tasked with addressing) our focus above has been on where the Club 'fell short'. We do however recognise that the Club did do a very considerable amount of work – both before the Match and during the Match – to try to address the risks created by this high-risk fixture. We return to that matter below.

(E) Findings on the substance of the Charges

43) As we have said above

- a) The FA charged the Club with 2 breaches of the FA Rules:
 - i) Each of those breaches was admitted by the Club
 - ii) In neither case did the Club contend that it could rely on the FA Rule E21.5 Defence. In other words, the Club accepted that it could not demonstrate that it had used all

due diligence to ensure that its responsibilities under FA Rules E21.1 and E21.2 were discharged;

- b) Having considered the evidence before us, we accepted the Club's admissions of breach, meaning that we agreed
- i) That each Charge was proven to the requisite standard on the evidence before us, and
 - ii) That the Club's evidence did not make out an FA Rule E21.5 defence in response to either Charge,

44) The question for us then became – what sanction should be imposed on the Club to reflect those admitted breaches of FA Rule E21.1 and FA Rule E21.2 ?

(F) Approach to assessing sanction

i) A preliminary point

45) The conduct underpinning the two Charges occurred during the same Match and shared similar features. Both parties (in their Notes on Sanction) implicitly invited us to consider the Charges as a whole for the purpose of sanctioning the Club and so to impose a single sanction in respect of both Charges. We agree that that approach is appropriate in this case and confirm that that is the approach that we took when sanctioning the Club.

ii) The approach to be taken to assessing sanction in a case such as this

46) As has been done in other cases, for the purpose of determining the appropriate sanction to be applied in this case we adopted the 3 limb test described by the Regulatory Commission in *The Football Association v Birmingham City FC* (16 September 2019). We therefore asked ourselves

- a) How serious were the Club's breaches of FA Rule E21 in this case ?
- b) How culpable was the Club for those breaches ?
- c) What harm resulted from the Club's breaches ?

(1) Seriousness of the breach

47) We acknowledge that the Club

- a) Recognised the extraordinary nature of the Match, and
- b) Recognised the need to plan accordingly.

We also acknowledge that the Club did a very considerable number of things ‘right’ when planning for the Match and when implementing those plans before and on Match day. The Club plainly took its responsibilities seriously and made genuine and concerted attempts to comply with its obligations under FA Rule 21. We gave the Club credit for such matters.

48) However, as we have set out above, the Club fell short in certain respects. We have set out above the key deficiencies in the Club’s planning, preparations and conduct as we have found them to be. We are of the view that those deficiencies were significant and serious.

In particular

- a) The Club’s planning for and preparation to deal with
 - i) attempts to smuggle pyrotechnics into the stadium,
 - ii) incidents of spontaneous and/or organised crowd disorder, and
 - iii) the presence of AIHswas inadequate in certain respects, and
- b) The Club’s performance on the day was short even of what had been planned.

(2) Culpability

49) We adopt the ‘sliding scale’ of culpability suggested in Reading FC v The Football Association (7 October 2015), namely

- a) Category 1 - the most serious (for example, a deliberate decision by a club not to provide the necessary resources for financial reasons)
- b) Category 2 - a reckless disregard in respect of the club’s duties
- c) Category 3 - gross negligence
- d) Category 4 - simple negligence
- e) Category 5 - a situation where a club has marginally failed to avail itself of the FA Rule E21.5 defence.

50) The FA accepts that the Club did not deliberately or recklessly disregard its responsibilities; the FA’s position was that this matter falls at the lower end of the culpability scale.

51) We agree, although we did not conclude that the Club’s culpability fell at the very lowest end of the scale. In our view this was a Category 4 case. The Club did not fall ‘just short’ of what would have been required to succeed on an FA Rule E21.5 defence; it fell short by some way. And in our view ‘simple negligence’ is entirely apt to describe the Club’s

principal failings in this case. The Club ought to have appreciated that, in light of the foreseeable risks that existed for this Match, its preparation and planning was inadequate in certain respects, but failed to do so. The Club also negligently persuaded itself that, due to the controls and mitigation measures that it intended to put in place, certain high risks would be significantly lowered. That in our view likely contributed to the inadequacy of the measures in fact put in place by the Club for the Match.

(3) Harm

52) While the physical harm that resulted from the Incidents was mercifully minor, ‘harm’ in this context goes beyond actual physical injury or damage to property. As was noted by the Regulatory Commission in *The Football Association v Bristol Rovers FC* (28 July 2022) (albeit in a different context) conduct

- a) That carries with it associated risks and dangers, whether to a spectator, steward, player, official or staff member, or
 - b) That creates a risk of a situation escalating into public disorder
- will often be viewed as harmful even where little or no actual harm is caused.

53) And of course, this was a televised, relatively high-profile match, viewed by a considerable number of people. The damage caused to the reputation of football in England cannot be disregarded.

54) And so in our view

- a) While no actual harm resulted from the use of pyrotechnics, the use of pyrotechnics always has the potential to result in harm, either to individuals hit by the same or to those tasked with dealing with pyrotechnics once they have been activated
- b) Similarly, while no actual harm apparently resulted from the throwing of bottles and cardboard cups
 - i) the throwing of any missile has the potential to cause harm, and
 - ii) such conduct can (and did in this case) antagonise others (whether those at whom the missiles are thrown or those who witness such behaviour), leading to wider disorder

- c) The presence of an AIH had the potential to cause disorder and violence (as it did). It also had the potential to act as a trigger (as it did) to more widespread disorder, particularly in a high risk fixture such as the Match. That disorder did lead to a number of individuals sustaining injury in this case. The fact that no greater actual harm was caused was in part due to good fortune, although as we have said above, we recognise that the actions of the stewards and police
 - i) in reacting to the violence instigated against the AIH likely prevented greater harm being caused in that regard, and
 - ii) in reacting to the crowd surges that followed the second goal scored by WW
 - (1) likely prevented a mass pitch incursion, and
 - (2) played a very large part in avoiding further harm and injury
- d) Harm was certainly done to the reputation of football as a whole by the Incidents, both by the scenes of disorder during the (televised) Match and by the Match being delayed while the disorder was calmed.

(G) Mitigation

55) The Club identified a number of mitigating factors of which it invited us to take account when considering sanction. Those included

- a) The significant planning and preparation that it did in fact carry out for the Match, both internally and through liaison with third parties. We have considered that above and confirm that it is a matter that we kept in mind, both when assessing the seriousness of the Club's failings and when considering the credit to be given to the Club (as we accept it should be) for the steps that the Club did in fact take in such regard
- b) The steps that the Club took during the Match to respond to and deal with the Incidents
- c) The steps that the Club has taken since the match
 - i) To apologise for and condemn the Incidents
 - ii) To assist with the investigation of the Incidents
 - iii) To assist with the identification of individuals involved in the Incident
 - iv) To prevent and deter future incidents.

Such matters show, the Club submitted, that it has taken full responsibility for the Incidents and has taken meaningful steps to address the issues that arose

- d) The Club's early admission of the Charges and co-operation with the FA throughout the disciplinary process
- e) The Club's clean previous disciplinary record. The Club has not previously been charged with a breach of Rule E21 or any similar misconduct.

56) The FA accepted that those matters could and should be regarded as mitigating the Club's breaches in this case. We agree and confirm that we took each into account when considering the appropriate sanction to be imposed on the Club.

(H) Aggravating features

57) The Club submitted that there were no aggravating features in this case. Save in one respect, we agree; features that might in other circumstances be considered 'aggravating' for the purpose of sanction have already been taken into account when assessing (1) gravity of breach (2) culpability, and (3) harm, and so to also consider them to be aggravating features would be double counting.

58) The one matter that we do however consider to be an aggravating feature is the fact that

- a) There were multiple Incidents during the Match, and
- b) Those Incidents have been charged as two discrete breaches of the Rules.

This was not a case of a single incident resulting in a single charge. That in our view does amount to an aggravating feature in this case.

(I) Sanction

59) The Club's primary position was that a warning as to future conduct would be a sufficient sanction in this case. We rejected that submission. The imposition of a financial penalty was in our view necessary and proportionate to properly reflect the Club's breaches of the FA Rules.

60) As regards the magnitude of that financial penalty:

- a) In its Note on Sanction the FA invited us to have regard to the fact that its Policy and Guidance on the Regulation of Discriminatory Conduct by Spectators recommends a financial penalty of between £5,000 and £75,000 being imposed on an EFL club found in breach of FA Rule E21.4 for the first time. The Sanctions Guidance section of that Policy and Guidance document (1) gives guidance as to the type of (aggravating and mitigating) factors to be considered when assessing sanction (2) provides indicative ranges of financial penalty for clubs playing at various levels in the football pyramid, and (3) makes clear that second breaches will be viewed more seriously than first breaches
- b) While the Guidance (a) is precisely that – guidance, and (b) addresses breaches of FA Rule E20.1 involving discriminatory behaviour (which this case was not), the principles set out in the Sanctions Guidance were in our view of some assistance to us
- i) When considering the approach to be taken when determining the appropriate financial penalty to be imposed on the Club, and
- ii) In identifying the order of magnitude of financial penalties that might be imposed for breaches of other limbs of FA Rule E21 on clubs at different levels in the football pyramid
- c) Both parties identified previous decisions of Regulatory Commissions and Appeal Boards to us in which financial penalties of varying magnitude had been imposed on clubs which had admitted or been found guilty of similar conduct to that in this case (and so of similar breaches of the FA Rules):
- i) We derived assistance from those previous decisions only to the extent that they demonstrate the broad order of magnitude of fines that other Regulatory Commissions and Appeal Board have imposed on other clubs for breaches of the same FA Rules
- ii) However, since so much turns on the individual facts of each case, we did not find it helpful to try to tailor what has been done in other cases to reflect the facts of the present case.
- 61) In our view, but for the mitigation available to the Club, the appropriate financial penalty would have been a fine of up to £50,000. However, taking into account the mitigation

available to the Club we concluded that the appropriate financial penalty to impose in this case was a fine of £30,000.

62) As the Club requested that we do at paragraph 19 of its Note on Sanction, we considered whether all or any part of that fine should be suspended for the reasons set out therein. While accepting that we had a discretion to suspend all or part of the fine of £30,000, in our view there was no compelling reason for us to do so in this case and accordingly we declined to suspend any part of the fine.

63) We also considered that the Club should be warned as to its future conduct.

64) Finally we considered whether the Club should be ordered to pay costs in this case. We concluded that such an order was not necessary or appropriate. We therefore made no order as to costs.

(J) Order

65) We therefore order as follows:

- a) West Bromwich Albion Football Club is fined £30,000
- b) West Bromwich Albion Football Club is warned as to its future conduct
- c) No order as to costs.

66) This decision, which is the unanimous decision of the Regulatory Commission, is subject to the Appeal Regulations.

Graeme McPherson KC (Chairperson)

Andrew Adie

Peter Fletcher

12 July 2024