

**IN THE MATTER OF A DISCIPLINARY COMMISSION UNDER SECTION 8 OF THE
REGULATIONS OF THE ENGLISH FOOTBALL LEAGUE 2022/23**

Before:

Tim Ward KC (Chair
Tony Agana
Lydia Banerjee

BETWEEN:

**ENGLISH FOOTBALL LEAGUE
(Trading as the “English Football League” or “EFL”)**

and

- 1) READING FOOTBALL CLUB**
- 2) MR YONGGE DAI**

WRITTEN REASONS OF THE DISCIPLINARY COMMISSION

For the EFL: Michael Armitage and Natalie Nguyen, Counsel

For the Respondents: Kendra Potts, Counsel

Hearing: 1 August 2023, remotely

INTRODUCTION

1. On 16 June 2023 the English Football League (“EFL”) sent a Notification of Charges (“the Notification”) to Reading Football Club (“the Club”) and Mr Yongge Dai (“Mr Dai”).
2. The Notification contained four charges of breach of the EFL Regulations:
 - 2.1 On 31 October 2022, on 30 November 2022 and on or around 28 April 2023, in breach of Regulation 64.7, the Club failed to make payment of wages due to its Players on time and in full. These allegations were put as three separate charges.
 - 2.2 In addition, Mr. Dai was charged with breaching Regulation 21.2 by causing the Club to have breached Regulation 64.7.
3. Regulation 64.7 of the EFL Regulations states that:

“The terms of a Standard Contract between a Club and a Player shall be strictly adhered to”.
4. Regulation 21.2 provides:

“Notwithstanding the provisions of Regulation 21.1, all Officials and Players shall by virtue of their fulfilment of those roles be deemed to have given to The League:

 - 21.2.1 an undertaking to The League not to bring The League or any Club, into disrepute;*
 - 21.2.2 an undertaking not to do anything or omit to do anything which will cause a Club to be in breach of the Laws of the Game, the Football Association Rules, these Regulations or the Articles of Association; and*
 - 21.2.3 an acknowledgement that they are subject to the jurisdiction of The League and Football Association.”*
5. The charges are admitted by both the Club and Mr Dai. The Commission was accordingly only required to determine sanction.

6. The Commission was provided with skeleton arguments and supporting documents from both parties and a number of disciplinary decisions. In addition, the EFL served witness statements from Mr Nicholas Craig (Chief Operating Officer of the EFL) and Mr John Potterill-Tilney (Director of Financial Reporting at the EFL) and the Respondents provided a witness statement of Mr Graham Odell, Chief Financial Officer of the Club.
7. The Commission also heard helpful submissions from Counsel for the EFL, Mr Armitage, and Counsel for the Club and Mr Dai, Ms Potts.
8. The Commission took all this material into account.

THE FACTS

9. The Respondents provided the following explanation of the facts, which was not challenged by the EFL.
10. The Club is funded by one of its beneficial owners, Mr Dai, who transfers money to the Club periodically (usually via one of his overseas corporate entities).
11. There were late payments on three occasions: October 2022, November 2022 and April 2023. The Respondents explained:
 - 11.1 On 27 October 2022, it became clear to the Club it had not received sufficient funds to pay all salaries due on 31 October 2022. The Club considered that it had sufficient funds to pay all staff other than the 16 highest earning players and five highest non-playing staff, and that, given the cost of living crisis, this was the approach it should take. The funds were received from Mr Dai on Tuesday 1 November 2022. The 16 highest earning players' and remaining non-playing staff salaries were paid in full on the same day and were therefore paid one day late.
 - 11.2 The Club had made a funding request to Mr Dai on 4 November 2022. The Club requested that the money arrive in its account by Monday 28 November 2022 so that payments could be made on 30 November 2022. The Club state that they regularly followed up to check that the request was being actioned. We are told that shortly

before the date for payment it appeared that Mr Dai was having issues transferring the funds.

Again, bearing in mind the cost of living crisis, the Club decided to prioritise the lower earners, which were the non-playing staff. The Club therefore paid 80% of non-playing staff salaries on Wednesday 30 November 2022. The Club received two payments from Mr Dai on Friday 2 December 2022. The players were paid on the same day, which was two days late. On the same date the Club also paid the outstanding 20% of non-playing staff salaries. Thus, the payments were made two days late.

11.3 In April 2023 the Club sought and received assurances from Mr Dai that the sum of £1.2 million would be received by the Club by 28 April 2023 so that the Club could pay all salaries in full and on time. Given that the Club was not informed that there were any issues in respect of the funding, the Club expected the funds to be in its account on 28 April 2023. This did not happen, apparently due to a delay in the transfer of the funds from Hong Kong. On this occasion, the Club took the view that it needed to ensure that the players were paid on time and in full. The Club therefore decided to pay the players in full and the non-playing staff 65% of their salary. Mr Odell manually input over 400 payment instructions and followed up with the Bank of China several times to ensure that the payments were made. Before Mr Odell left on the Friday evening he knew that some salary payments had been received by staff. Mr Odell and the Club therefore believed that all the payments had gone through.

On the morning of Saturday 29 April 2023, the Club discovered that the 15 payments for the club's highest earners were being held by the Bank '*to be authorised by the bank*'. At this point the money was shown as having left the Club account but had not been released to the players. Mr Odell was unable to contact the Bank of China until the next working day which was 2 May 2023. The 15 payments were released on 2 May 2023. Thus, the players were paid one business day late. On the same day a transfer from Mr Dai enabled Mr Odell to process balancing payments for the non-playing staff salaries.

12. Mr Odell's witness statement explained:

"I understand that Mr Dai's principal business is in relation to the operation of shopping centres in China, and that his business has been severely impacted by the COVID-19 pandemic in China, where lockdowns and restrictions on movement were more severe and more prolonged than in Europe. I understand that this has affected the cash flow into Mr Dai's businesses and teamed with the restrictions imposed by the Chinese government on certain transfers of funds, resulted in more difficulty in Mr Dai providing funding to the Club in late 2022 and early 2023."

13. At the hearing, the EFL explained that it first approached the Club in relation to the October and November late payments on 6 December 2022. This followed media reports of late payments. The EFL commenced an investigation. A call took place on 7 December 2022 at which the Club provided information about the issues with the payments.

14. Mr Armitage was instructed during the hearing that Mr Potterill-Tilney was 'fairly confident' that the April issue was raised with him by Mr Odell at the time as they were in regular communication at the time. He could not be certain and did not recall the detail. The Club did not contradict this account.

15. On 23 May 2023 the EFL proposed that the matter could be dealt with by Agreed Decision.

16. The Club did not accept this proposal. In a letter of 30 June 2023, it explained:

"As a preliminary point, the Club would like to apologise to the EFL for the poor communication in relation to this case to date, most notably with regard to the Agreed Decision proposed by the EFL on 23 May 2023. The Club appreciates the EFL's attempts to find a solution to this matter by way of an Agreed Decision. Unfortunately, the Club was not in a position to accept the EFL's proposal at that time on the basis that the requirement, under paragraph 7(c) of the draft Agreed Decision, for Mr. Dai to deposit 125% of the forecast monthly wage bill in the Deposit Account (as defined therein), was not possible then. This point should have been properly communicated to the EFL but, regrettably, it was not, and the Club accepts full responsibility for the lack of engagement and communication with the EFL on this point."

Also, as you will be aware, Bryan Stabler, who was Finance Director of the Club for over 28 years, retired on 30 April 2023. Losing such a long-standing and respected Club official at what is a difficult time for the Club, has had a profound effect on the Club, and it is unfortunate that this has meant that the Club's communication lines with the EFL were affected towards the end of the season when communication relating to the Agreed Decision proposal was required. All at the Club want to work to restore an open, honest and transparent line of communication with the EFL and we will commit to doing better in that regard."

SANCTION REGULATION AND GUIDELINES

17. Regulation 93 of the EFL Regulations provides the Commission with a wide discretion as to sanction, and any such sanctions *"may be imposed immediately or may be deferred or suspended for such period and on such terms as the Disciplinary Commission shall decide"*.
18. The EFL has published guidelines ("the Guidelines") on the approach to sanction in the event of non-payment of player salaries. The witness statement of Nicholas Craig set out the process of consultation on the Guidelines. Mr Craig explained that the EFL member clubs were increasingly concerned at what was becoming an emerging trend of default on payment of salaries to players and other staff and had asked the Executive to consider reforms to Regulations in that area. As a result, the EFL had consulted on possible reforms, leading to the promulgation of new sanction guidelines *"to offer greater clarity should there be future breaches."*
19. On 17 February 2022 at an Extraordinary General Meeting a vote was held on amendments to what is now Regulation 54 on the obligations of clubs to self-report non-payments of Players' salaries. The amendments were agreed by the requisite majority of those voting including the Club. The Guidelines themselves were not the subject of a vote but had been circulated with the proposed amendment to Regulation 54.
20. The Guidelines provide that where a club does not agree to the terms of an Agreed Decision, the EFL *"will make submissions that the appropriate minimum sanction is a 3-*

point deduction for each month of non-payment and that the Club's refusal to enter into an Agreed Decision should be treated as an aggravating factor and the principal reason why any sanction should not be suspended."

21. The parties agree that the Guidelines are not binding upon the Commission, but that they should be taken into account. This is the approach which the Commission has adopted.

SANCTIONS: SUBMISSIONS

22. The EFL sought the following sanctions:

22.1 An active four-points deduction applied for the 2023/2024 season, meaning that the Club will start the 2023/2024 season on -4 points;

22.2 The Second Respondent must arrange for an amount equal to 125% of the Club's forecast monthly wage bill to be deposited in a designated Club account within 14 days of the date of the Disciplinary Commission's decision, for calling upon by the Club in the event of any future delays in processing of overseas payments;

22.3 The Club must comply with obligations around reporting on the operation of the account and an obligation to maintain it at appropriate levels until 30 June 2024, the terms of which are to be set out in an agreement between the EFL and the Club;

22.4 A suspended four-points deduction for the 2023/2024 season, to expire on 30 June 2024 if not activated, to become active if:

22.4.1 A deposit is not made by the Second Respondent in accordance with paragraph 22.2 above; or

22.4.2 There is any further failure to pay Players' salaries on time from the date of the Disciplinary Commission's decision until 30 June 2024;

22.5 The Second Respondent is to be fined £10,000 for his breach of Regulation 21.2.

22.6 The Club and the Second Respondent are to pay the EFL's costs;

22.7 The Club and the Second Respondent are to pay any applicable costs of the Disciplinary Commission; and

22.8 The Decision is to be published on EFL.com.

23. The Respondents contended that the appropriate sanction was a suspended 3-point deduction, and in their skeleton argument made partial concessions in respect of two other elements of the EFL's proposed sanctions:

23.1 "The Club and Mr Dai accept that the Disciplinary Commission may also consider it appropriate to require Mr Dai to pay a sum equivalent to 125% of the forecast monthly salaries into a designated account".

23.2 In the case of Mr Dai, a "proportionate sanction would be a fine of £7,500 with £5,000 suspended".

24. During the course of the hearing the Parties agreed that the costs position should be reserved and addressed by the Chair based on written submissions of the Parties if not agreed.

25. The Parties also agreed that the Decision should be published.

ARGUMENTS OF THE PARTIES

THE EFL's POSITION

26. The EFL contends that whilst the Guidelines were not binding, they were highly relevant. Following this approach, it argued:

26.1 There are three charges of non-payment and that means that this should be treated as a third offence under the Guidelines.

26.2 There were no self-reporting obligations (given the duration of the breaches) and therefore we should treat the situation as if it had been self-reported.

26.3 The failure to reach an Agreed Decision is an aggravating factor which justifies increasing the sanction. The strict application of the Guidelines meant that an immediate nine-point deduction would “arguably be appropriate”, by reason of the failure to reach agreement. Nevertheless, in light of the available mitigation, the EFL sought an immediate deduction of four points, with a further four-point deduction suspended. Whilst it would be preferable to impose the penalty in the same season as the breaches, that was not possible.

26.4 The wider context of the club’s financial situation should be taken into account, whether as an aggravating factor or otherwise. We return to this below.

27. As to the points advanced in mitigation in the Respondents’ skeleton argument, the EFL’s response was:

27.1 Admission and remorse are mitigating factors but given that there is no serious scope to dispute the charge they should be given limited weight particularly in light of the significant failure in failing to reach an Agreed Decision.

27.2 Sporting advantage does not need to be shown, given the strict requirement of adherence to the contract.

27.3 The Guidelines do not differentiate based on the length of delay. Regulation 64.7 requires “strict” adherence to player contracts. Accordingly, it did not necessarily follow that a short breach was less serious. This was less significant than the nature of the breaches.

27.4 The efforts of the employees of the Club and/or Mr Odell in chasing for payment should not be regarded as mitigating factors but rather an indicator that the Club does not have robust systems in place. There is no criticism made of Mr Odell personally in this regard. The EFL accepted the breaches were neither deliberate nor cynical.

27.5 The problems encountered should not be viewed as outwith the Club’s control. If the funds had been made available in a timely fashion, it would not have found itself in this position.

- 27.6 The decision to pay non-playing staff was not a relevant mitigating factor.
- 27.7 This was not an isolated breach, the Club breached Regulation 64.7 on three occasions and they were also subject to other sanctions in relation to breaches of financial obligations and failures to pay HMRC, indicative of a worrying financial position (see further below under wider context).
- 27.8 As to any difficulties asserted on the part of Mr Dai arising from the impact of Covid on his business:

27.8.1 There was no direct evidence of any such difficulties or explanation of the nature or impact of the alleged difficulties. Mr Dai had chosen not to provide any evidence.

27.8.2 In any event, given that the delays are of one or two days it is difficult to see how Covid could explain why the money was not available one day but was available just a day later.

28. As to earlier cases, the EFL submitted that to the extent that such cases pre-dated the Guidelines they should be treated with caution given that the Guidelines marked a new approach. To the extent that such cases were based on Agreed Decisions they should be treated with caution as such Decisions are the result of effective discussion and negotiation and not a guide as to the approach the Commission should approach.
29. The EFL agrees that in an ideal world any sanction should apply in the season in which the breach occurs but where this is not possible, timing alone should not impact on the sanction issued.

THE RESPONDENTS POSITION

30. On behalf of the Respondents, Ms Potts argued that the breaches were at the least serious end of the scale given that the payments were only one or two working days late. She pointed to the self-reporting obligations in Regulation 54 and highlighted that in situations where the non-payment is two business days or less there is no self-reporting obligation on a Club. This, she argued, demonstrated that relatively short delays are

treated differently within the Rules highlighting that they are not as serious as longer delays.

31. Ms Potts also argued that a central purpose of the sanction for non-payment was to prevent clubs obtaining a competitive advantage by maintaining squads which they could not properly afford. In her submission the key justification for a points deduction element of the Guidelines was to address competitive advantage. In support of these points Ms Potts referred to the papers circulated in advance of the February 2022 EGM. In this case there is no suggestion of sporting advantage from the short delays.
32. Ms Potts argued that in relation to the April 2023 payment, having authorised the payments and, given that the money had left the account, the Club had in fact complied with the terms of the contracts. Ms Potts did not seek to retract the admission of the breach of Regulation 64.7, but to rely on this point in relation to seriousness: there was no reason why the Respondents should have foreseen the delay that then occurred.
33. In relation to mitigation Ms Potts relied on the factors set out in her Skeleton Argument at paragraph 18. In particular, Ms Potts highlighted:
 - 33.1 That admissions, apologies and remorse are relevant mitigation even in cases where there is limited scope to deny the allegation. She referred the Commission to the decision in *Southend United Football Club*¹ where the submission that no real credit should be given for admissions in such circumstances was rejected.
 - 33.2 That the decision to charge Mr Dai separately from the Club meant that his conduct should be treated separately from the Club and that the Club should be viewed as having done all that they reasonably could and be given credit for the efforts made by Mr Odell and others to secure funds in time. The Club, she submitted, does not need a deterrent.
 - 33.3 Ms Potts argued that the funding model in place with the Club is not uncommon and is a feature of how the League operates, as the EFL's evidence had acknowledged.

¹ SR/022/2022

The Club should not be criticised for its reliance on overseas ownership and investment.

33.4 The Club had not openly disregarded the rules but rather had paid in full promptly.

33.5 In relation to Mr Dai, she submitted, he was not present, he does not speak English, his apology has been given in correspondence by the Club and there was some evidence before the Commission as to the impact of Covid on shopping malls in China even as late as December 2022.

33.6 Ms Potts also highlighted the “huge sums” contributed by Mr Dai over his tenure, relying on a BBC article dated 25 July 2023 drawing the Commission’s attention to the suggestion, in the article, that his contribution was believed to be among the highest contribution of any individual in the Club’s history.

34. As to the suggestion that the wider financial position and the other proceedings to which the Club were subject should be aggravating features Ms Potts argued that those matters were the subject of separate proceedings and sanction, and it would be wrong for them to be treated as aggravating factors. Ms Potts did however accept that these factors could be relevant context for the decision on sanctions.

35. As to the Guidelines, Ms Potts argued that the Commission retains a broad discretion and that the Guidelines were instructive but not binding.

36. Ms Potts pointed to the decisions referred to in the discussion paper² circulated with the Guidelines to say that the EFL’s view was that 3 points was the appropriate sanction for a first offence, suspended if the breach had been self-reported. As part of the rationale for the Guidelines, the discussion paper cited the pre-Guideline decision in *EFL v Southend United*³ which involved two incidents of non-payment of salary. Ms Potts also referred the Commission to the post-Guidelines decision in *EFL v Wigan (no. 1)*⁴ in which three incidents of non-payment were treated as a first offence in the Agreed Decision. Ms Potts

² “Rationale for Sanction Guidelines Recommendations”

³ SR/022/2020

⁴ 17 January 2023 decision approved by Neil Block KC

suggested that on the basis of the pre- and post- Guidelines decisions the correct approach is to say that the three incidents should be treated as one offence putting this at the first level of the Guidelines. She also referred to the decision in *EFL v Macclesfield Town*⁵ which pre-dated the Guidelines, in which the breaches were much more serious than the present case and yet the penalty imposed had been similar to that which the EFL contended for in this case. She also referred the Commission to *EFL v Macclesfield Town*⁶ and *EFL v Wigan*.⁷

37. In relation to the Agreed Decision Provisions of the Guidelines Ms Potts argued that it was wrong in principle to impose a penalty for failing to agree a sanction. The Commission did not have the terms of the agreement that been offered, as such negotiations were privileged. The wording of the Guidelines left open the possibility that in principle, the EFL could offer unreasonable terms and then a club be penalised if they did not agree to them since their non-agreement would be viewed as an aggravating factor.
38. The EFL did not accept that the discussions around the proposed agreement were subject to privilege, although it did not expressly challenge this. Mr Armitage made clear, however, that the EFL was prepared to waive any such privilege on this occasion. The Respondents did not, however, take up that suggestion. Ms Potts strongly opposed this approach on the basis that the discussions were, and had to be, without prejudice. Ms Potts argued that if the discussions were not without prejudice, then earlier offers would be viewed as a minimum with the EFL likely to seek higher in front of a Commission.
39. Ms Potts pointed to the fact that the EFL sought costs on the basis that the Club had failed to agree and suggested that this showed that there was a double penalty for non-agreement, and this was not appropriate.

EFL POSITION IN REPLY

40. In reply Counsel for the EFL averred that the grace period for self-reporting only relieved the club of the obligation to self-report. It did not relieve the Club of the need to comply

⁵ SR/021/2020.

⁶ SR/127/2020/

⁷ 17 May 2023, decision approved by HH Philip Sycamore CBE.

with the terms of the contract in relation to payment. Further, there was not a linear relationship between length of delay and severity of breach. Mr Armitage accepted that the length of delay had some relevance but in this case it was not strong as mitigation, having regard to the repeated nature of the breach and the failure to reach an Agreed Decision. Whilst sporting advantage was one concern that lay behind the Guidelines, it was not the only one. Another that was expressly referred to in the discussion paper was that: *“non-payment of a Player salary is a clear indicator that a Club’s financial position is unsustainable.”*

41. Emphasis was given to the seriousness with which the EFL treat non-payment and the need for the sanction to reflect the same. He said that earlier cases had shaped the Guidelines and that the Guidelines should now be the starting point.
42. There was not a bright line as between the Club and Mr Dai, as owner. The Club had made itself dependant on Mr Dai to provide funds. Nor was Mr Odell to be viewed as synonymous with the Club.
43. There was no evidence as to specific steps that had been taken to prevent the non-payment issues reoccurring in the future.
44. Even if the wider financial context was not an aggravating factor, it was not open to the Respondents to argue this was the first breach of financial regulations.
45. As to the Agreed Decision, the Club was able to waive privilege if it wished to submit it was not appropriate to treat the failure to reach an Agreed Decision as an aggravating factor.
46. Mr Armitage suggested that the Commission should apply public law principles to any departure from the Guidelines. In particular that good reasons would be needed for any departure and reasons provided.
47. The Commission allowed Ms Potts a “last word” in which she re-emphasised a number of her core points, including reliance on *Wigan* (No. 1) and *Macclesfield* (No. 1) as cases in which multiple breaches were treated as a first offence. Ms Potts also emphasised that this was not a case where there was no engagement with the Agreed Decision process,

and she reminded the Commission of the evidence as to the Club's efforts to obtain investment.

48. Other supporting submissions were made by both parties both in their written skeleton arguments and oral submissions, all of which were taken into account.

CONSIDERATION

THE GUIDELINES

49. The Commission notes the following:

49.1 The Guidelines are not binding on the Commission;

49.2 The Guidelines arose out of the clubs' concern at an emerging trend of default on payment of salaries to players and other staff;

49.3 One intention behind the Guidelines was to assist parties in knowing the likely sanctions in order to facilitate the Agreed Decisions process, saving time and cost for the EFL and clubs;

49.4 Another intention behind the Guidelines was to facilitate consistency. Consistency being particularly important where points deductions are concerned as inconsistent approaches would affect the fairness of the competition.

49.5 The clubs were consulted on the proposed self-reporting obligations and the Guidelines and asked to indicate their agreement or provide comments.

49.6 The wording of Annex B in the pack circulated in relation to the February 2022 EGM includes the following: '*Clubs have agreed that this document will act as an instructive guide to sanctioning for any Disciplinary Commission determining a matter related to an alleged breach of either Regulation [64.7] and/or [54]*' [emphasis added].

49.7 The Guidelines are new and relatively untested meaning that there is an element of uncertainty as to their application. Whilst we have taken them into account, we have

not sought to construe the Guidelines as if they were a statute or based our decision on any particular interpretation of them.

ONE OFFENCE OR THREE

50. A central point of difference between the parties was whether this case should be viewed as involving one offence or three. We consider the Guidelines are ambiguous in this respect. The Guidelines explicitly draw upon the *Southend* case in which two charges were considered at the same time for two separate occasions of non-payment, but resulted in a suspended points deduction of three points, amongst other penalties. Relying on this case (among others) the EFL concluded that the appropriate sanction for a first offence would be either a three-point deduction either suspended or not depending on compliance with self-reporting obligations.
51. On the facts of this case, we conclude that it is appropriate to treat it as one offence with three occurrences of late payment. We note:
- 51.1 This is consistent with the pre- and post- Guidelines decisions in *Southend* and *Wigan* referred to by the Club. In both cases three separate incidents of non-payment were treated as giving rise to suspended points deduction of three points, which the Guidelines states is appropriate for a self-reported first offence. As mentioned, consistency is particularly important where points deductions are concerned as it impacts the fairness of the entire competition.
- 51.2 It is consistent with the structure of the Guidelines where sanctions for second or third offences appear to pre-suppose a previous sanction, referring to “a further 3-point deduction.”
- 51.3 It avoids a potential injustice of the first decision against a club which did not face a duty to self-report and then faces significant sanctions where it had not previously been called to account for its actions.
- 51.4 Discussion of the *Southend* decision in the Rationale for Sanction Guideline Recommendations does not suggest that there was any intention to alter the approach.

51.5 We also consider that application of the Guidelines in the manner contended for by the EFL results in a disproportionately high penalty on the facts of this case.

52. Under the Guidelines the proposed sanction for a first offence which has been self-reported is a suspended three-point deduction. We take this into account in the exercise of our discretion.

53. We consider the breaches to be of a lesser degree of seriousness than is reflected in the EFL's submissions, but also reject the Respondents' submissions that they are at the "least serious" end of the spectrum. It is concerning that they occurred three times in the course of a single season.

54. We now consider the further mitigating and aggravating factors relied upon by the parties.

LENGTH OF THE DELAY

55. We consider that the short delay in the payments in this case is relevant and consider that the EFL has understated its significance. There is no dispute that even a delay of a single day is a breach of the contractual terms and accordingly a breach of Regulation 64.7. However, it seems to us that the fact that the self-reporting obligations in Regulation 54 provide a short grace period is indicative of a recognition that very short delays are a less serious matter.

56. We accept that the short delays mean that in this case there was no sporting advantage. However, while sporting advantage may be one rationale for introducing the Guidelines and also for involving a points deduction element to the sanction, it is not the only rationale. The Guidelines reflect an understandable concern of the clubs and the EFL that Regulation 64.7 is respected, and that clubs should be run on a sustainable basis, in the interests of players, staff and supporters, and the integrity of the competition itself.

57. We do not consider that the Club or Mr Dai has provided a sufficient or satisfactory explanation for the delays. The absence of any specific explanation for or on behalf of Mr Dai as to how the factors relied upon gave rise to the specific delays in issue is unfortunate.

THE CLUBS ARGUMENT RE: 23 APRIL

58. We do not accept that instructing a bank to make payments amounts to discharge the obligation to pay a player under their contract. We recognise that the funding of many clubs involves complex financial arrangements. However, the structure of those arrangements must be such as to allow it to comply with its legal and regulatory obligations including the obligation to adhere strictly to the terms of player contracts. It is incumbent on the Club in the widest sense to put in place such arrangements and Mr Dai, as one of the ultimate beneficial owners, is as much a part of the Club's efforts as Mr Odell.

MITIGATION

59. We accept that credit must be given for the Respondents' admissions and remorse. Even in a case where there is little scope to argue the underlying facts, admissions still save time and resource and demonstrate acknowledgment of wrongdoing.
60. We accept that there was no intention to obtain a sporting advantage and that the delays in question were short. We also accept that there was no particular cynicism or malintent. Presence of any such factors would certainly aggravate the offence.
61. We also accept that efforts were made by individuals within the Club, not least Mr Odell, to secure funds and make payments. For the reasons given above we have considered the actions of the Club as a whole, including Mr Dai. We have been told that further investment is being sought but detail of action being taken to prevent recurrence of the issues is notable by its absence.
62. We note Mr Dai's contributions to the Club over a number of years and consider this alongside the wider financial picture as part of the context of our decision.
63. There is a degree of overlap between the arguments run as to the seriousness of the breach and mitigation. When we considered the appropriate sanction, we have carefully balanced the overall sanction to reflect our findings on seriousness and on mitigation ensuring that credit is not given twice for the same point.

WIDER CONTEXT

64. From the evidence and submissions of the parties the following points emerged as part of the wider context:

64.1 Since an Agreed Decision in November 2021 the Club has operated in accordance with a budget submitted to the EFL following breaches of the EFL's Profitability and Sustainability Rules. The Club was also subject to a transfer embargo from summer 2021 to summer 2023. We understand that there has been one issue in relation to compliance which has been addressed in consultation with the EFL.

64.2 The Club is presently under a transfer embargo in relation to a failure to pay HMRC for PAYE and NIC. The current default is, we are told, in relation to sums originally due on 22 July 2023. The embargo was put in place on 28 July 2023.

64.3 There was an earlier default on payments to HMRC on 22 May 2023 (paid on 5 July 2023) resulting in an embargo under Regulation 17.

64.4 There was a further default on payments to HMRC on 22 June 2023 (paid on 12 July 2023) resulting in an embargo under Regulation 17.

65. The Commission bears in mind that these matters are covered by their own procedures and sanctions and there are limits to the weight to be attached to such matters. However, as accepted by Ms Potts this wider context is relevant. It serves to heighten the concern that there is a risk of further breaches of Regulation 64.7.

FAILURE TO REACH AN AGREED DECISION

66. The Commission found the provisions in relation to failing to reach an Agreed Decision difficult to apply. On the one hand there is some merit in what was said on behalf of the Club that it should not be penalised for failing to reach agreement in without prejudice negotiations. On the other hand, the Agreed Decision process is designed to avoid time and cost for all parties and to enable the Regulations to be swiftly applied. It is clear that the Guidelines were intended to provide teeth to the Agreed Decision process.

67. On the facts of this case the Respondents admit and apologise for some failings in relation to the Agreed Decision process, at least in so far as it relates to discussions around a requirement to deposit funds to guard against future issues but did not elect to waive privilege in the negotiations. We do not criticise them for failing to do so, but it meant that the Commission could only proceed on the basis of the limited information available to it. As noted above, they have accepted a measure of fault in this regard. Moreover, the Club does not resist the proposed sanction of a requirement to pay 125% of the forecast monthly wage bill into a designated account.
68. The Commission have concluded that on the facts of this case it is appropriate to regard the admitted failures in relation to the Agreed Decision process as aggravating factors which warrant reflection in the sanction. The EFL has not gone as far as to suggest we should apply the Guidelines strictly, which on their interpretation would have led to an immediate deduction of nine points. We consider that on the facts of this case, an immediate deduction of one point would be appropriate.
69. The Commission have been troubled by the way in which the effective application of this rule may depend in part upon the willingness of the parties to waive privilege in without prejudice negotiations. It is of course open to either side to make use of open correspondence.

SUSPENDED POINTS DEDUCTION

70. For the reasons given above, the circumstances of this case give rise to a particular concern as to the risk of a future breach of Regulation 64.7. In the circumstances, the Commission has decided to impose a suspended three-point deduction for the 2023/24 season on the basis further set out below.

PAYMENT INTO DEPOSIT ACCOUNT

71. Given the pattern of conduct in this case and the concern as to risk of future breach, the Commission considers the Club should pay an amount equal to 125% of the Club's forecast monthly wage bill into a deposit account. During the hearing the Commission invited the parties to agree the terms which would attach to any such order. On 9 August

2023 the parties communicated a large measure of agreement on the terms, but left to the Commission to determine the following:

71.1 The time within which payment should be made into the deposit account. Having considered the submissions of both sides, the Commission grants 28 days from the date of this Decision. This allows the Respondents some extra time to transfer the funds but seeks to ensure the protection is in place timeously.

71.2 The consequences of a draw down on the deposit. The agreed terms are restrictive as to the circumstances in which the deposit may be used to pay wages. The Commission did not consider it appropriate to provide for extension of the duration of the deposit in the event that it is used to pay wages as envisaged.

72. The Commission will issue a direction setting out the terms governing the deposit.

MR DAI'S SANCTION

73. Ms Potts accepted that a fine was appropriate for Mr Dai's admitted breach of Regulation 21.2. The submission was that it should be less than the £10,000 sought by the EFL on the basis that this was the sum ordered against the ultimate beneficial owner in *Wigan Athletic (no. 2)*⁸ and in that case there had been a failure to comply with an Agreed Decision which should be viewed more seriously than a breach of the Regulations alone. It was suggested that a fine of £7,500 with £5,000 suspended would be proportionate.

74. The Commission have considered the position and, while acknowledging that there is no exact science to the calculation of a fine, have concluded that £10,000 is an appropriate sum to order. Mr Dai has failed to arrange his affairs in a manner which allows him to provide the funds in a timely manner, notwithstanding that the financial affairs of the Club were structured so as to depend upon him doing so. Otherwise, the efforts of Mr Odell and others may be in vain.

⁸ 17 May 2023 – decision of HHJ Sycamore approving agreed position between the parties

75. The sanctions upon the Club reflect its conduct as a whole, including the efforts of Mr Odell to avert these problems. The (modest) additional sanction for Mr Dai is a reflection of his particular responsibility for the events giving rise to the charges, given the nature of the Club's funding arrangements.
76. The Commission also agrees with the proposal agreed between the parties that the order for payment of wages into a deposit account should impose an obligation upon Mr Dai personally to comply with the terms on which that order is made, and to procure that the Club does so.

CONCLUSIONS

77. For the reasons set out above we order the following sanctions:

77.1 An active one-point deduction applied for the 2023/2024 season;

77.2 The Second Respondent must arrange for an amount equal to 125% of the Club's forecast monthly player wages bill to be deposited in a designated Club account within 28 days of this decision, such funds to be available to the Club in the event of any future delays in processing Players' salary payments. The Commission directs that such a payment is made upon the terms it will direct, largely reflecting the terms agreed by the parties, subject to the matters set out above;

77.3 A suspended three-point deduction for the 2023/2024 season, to expire on 30 June 2024 if not activated, to become active if:

77.3.1 A deposit is not made by the Second Respondent in accordance with paragraph 77.2 above; or

77.3.2 There is any further failure to pay Players' salaries on time from the date of this decision until 30 June 2024;

77.4 The Second Respondent is to be fined £10,000 for his breach of Regulation 21.2.

77.5 The costs are reserved, parties to seek to agree the appropriate position and in the event that the position is not agreed make submissions to the Commission by 4pm on 8 September 2023 along with appropriate cost schedules, if not agreed.

77.6 The Decision is to be published on EFL.com

Tim Ward KC

On Behalf of the Disciplinary Commission

15 August 2023

London, England

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