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Citation:

IOANNIDIS, Gregory and PLUMLEY, Daniel (2023). The Premier League v Manchester City: Financial Fair Play Regulations Revisited Procedure & Practice in Sporting Justice. *International Sports Law Review*, 3, 43-50. [Article]

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The Premier League v Manchester City: Financial Fair Play Regulations Revisited Procedure & Practice in Sporting Justice

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✉ keywords to be inserted by the indexer

Football is a unique sport in respect of its economic structure and the way it operates as a business. Indeed, there are modern day academic textbooks (e.g. D. Plumley and R. Wilson, *The Economics and Finance of Professional Team Sports*, 1st edn (Oxfordshire, Routledge, 2023)) that are solely dedicated to the economics and finance of professional sport. In recent years, these economic and financial factors have increasingly interfaced with the world of sport law, most notably through financial regulation at league and competition level. Our article here focuses on perhaps one of the biggest cases ever to be considered in the world of sports law and finance, the case of the *Premier League v Manchester City FC*. Interestingly, the previous biggest case also involved Manchester City FC, when they took on UEFA at the Court of Arbitration for Sport (CAS) in 2020 (CAS 2020/A/6785 *Manchester City FC v UEFA*). Both these cases have one thing at their centre: Financial Fair Play, hereafter referred to as FFP. Against UEFA, Manchester City ultimately secured what could be considered as a serious dent to the efficacy (and importance) of the FFP, settling the case for a fine of €30 million. Total defeat for them would have meant exclusion from UEFA's flagship competition, the UEFA Champions League for two years. At the time of writing (2023), Manchester City have just won that exact same

competition and completed a domestic and European treble. Questions surrounding the UEFA verdict and the English Premier League case will always follow the club around, whatever the verdict. Yet, we are only discussing this as a topic of interest because the sport introduced financial regulation on its clubs in the first place.

The focal point of this paper is not sport finance, nor to provide chapter and verse on the regulations themselves. However, we do need to provide a brief history lesson so that readers understand the context of the case. Indeed, without FFP, there is no case for Manchester City to answer. In many ways, the whole concept of FFP is a product of the peculiar economics of professional football. Professional clubs are essentially seeking to balance two key objectives: financial sustainability and sporting success. In the European football market, sporting success through promotion, cup victories and qualification to European competitions come with significant financial gain. Additionally, football clubs exist in a peculiar emotional and social space, where unusually strong relationships often exist between the company and stakeholders. These relationships have the potential to impact business behaviour and decision making. There is also the concept of economic power at individual club level as clubs look to balance twin objectives.¹

Short-term pressure to deliver sporting success can lead to a "rat race" of overinvestment in playing talent,² resulting in a strain on club finances. The early 2010s saw a spate of financial problems in European club football, which was the backdrop to UEFA stepping in to intervene with FFP. Numerous clubs were accumulating unsustainable levels of debt resulting in a financial crisis across many European football leagues including England,³ France,⁴ Germany,⁵ Portugal,⁶ and Spain.⁷ Despite ever-increasing revenues, clubs were failing to break-even.⁸ Net losses among all 734 European member clubs had increased by 760% over the five-year period between 2006–2011.⁹ Cost control was a fundamental issue, and many European clubs were saddled with debt problems. Enter FFP in 2011.

Originally, FFP had two primary objectives. The first was to introduce discipline and rationality to club finances, with a view to securing the long-term financial sustainability of clubs (UEFA, 2015). In essence, the regulations would force clubs to spend within their means

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¹ S. Bennike, R.K. Storm, J.M. Wikman and L.S. Ottesen, "The organization of club football in Denmark—a contemporary profile" *Soccer and Society* 2020 Vol.21 No.5 pp.551–571.

² A. Francois, N. Dermit-Richard, D. Plumley, R. Wilson, and N. Heutte, "The effectiveness of UEFA Financial Fair-Play: Evidence from England and France, 2008–2018" *Sport, Business and Management*, Vol.12 No.3, pp.342–362.

³ B. Buraimo, R. Simmons and S. Szymanski, "English Football" *Journal of Sports Economics*, 7(1), 29–46.

⁴ W. Andreff, "French Football: A Financial Crisis Rooted in Weak Governance", *Journal of Sports Economics*, 8(6), 652–661.

⁵ H.M. Dietl and E. Franck, "Governance Failure and Financial Crisis in German Football" *Journal of Sports Economics*, 8(6), 662–669

⁶ C.P. Barros, "Portuguese Football" *Journal of Sports Economics*, 7(1), 96–104.

⁷ G. Ascari and P. Gagnepain, "Evaluating Rent Dissipation in the Spanish Football Industry" *Journal of Sports Economics*, 8(5), 468–490

⁸ R.K. Storm and K. Nielsen, "Soft budget constraints in professional football" *European Sport Management Quarterly*, 12:2, 183–201.

⁹ E. Franck and M. Lang, "A Theoretical Analysis of the Influence of Money Injections on Risk Taking in Football Clubs" *Scottish Journal of Political Economy*, 61(4):430–454.

and break-even. The second aim centred on competitive balance. This is slightly outside the scope of this paper but does have implications for club dominance that we have seen across the European game in recent seasons (e.g. Bayern Munich in Germany, Juventus in Italy and Paris Saint-Germain in France). The working theory was that the regulations would enable individual leagues to become more competitively balanced. However, there has been conjecture in the literature regarding UEFA's working theory of competitive balance versus the academic definition widely accepted in the field of sport economics.¹⁰

In relation to finance, FFP was UEFA's direct response to counteract what has been termed the "short-termism" of club decision making, seen as a threat to the stability of all European football.¹¹ However, FFP regulations have also received further criticism in various areas since their implementations. A high proportion of this criticism has been centred on the legality of the regulations themselves.¹² This has extended to specific items relevant to football clubs such as the impact that FFP could have on player wages¹³; the impact of FFP on the quality of all teams¹⁴; how FFP prevents the industry from benefitting from substantial injections of external financing¹⁵ and also how FFP can affect competitive balance.¹⁶

We must also be aware that any form of regulation may always be anticompetitive to some.¹⁷ For example, restricting or denying significant external investment may deter unsustainable financial performance of clubs in some instances, but it also reduces the number of clubs that can be seen as viable options for investment. Thus, in some ways, FFP has limited competition in domestic leagues because a situation has been created whereby the same clubs are qualifying for the Champions League year on year.¹⁸ These clubs then get access to pan-European competition revenues and continue to stretch the gap between them and the rest. Effectively, a situation has been created whereby the top clubs are not only at the

top of the ladder, but are also pulling the ladder up behind them, stopping the rest of the clubs closing the gap. This is because investors know clubs already positioned in well-established footballing markets have a chance of generating a significant return only if success on the pitch takes place.¹⁹ Therefore, clubs from smaller markets will find it considerably harder to compete for the top prizes in European football because of reduced investment imposed by FFP regulations.²⁰ The result of this is the further cementation of the existing hierarchy of European club football, creating a position where the wealthiest clubs strengthen their own power while simultaneously constraining the power and growth of smaller clubs.²¹ This is often demonstrated by the wages available to pay the top talent²² as well as the size of transfer fees paid.

Vopel goes further, stating that spending power provides the true competitive advantage in football, making it "almost impossible to catch-up to bigger clubs without external funding".²³ This argument is supported in academic literature in relation to the "big five" leagues in European football which have historically been characterised by competitive imbalance and dominance by a select number of clubs.²⁴ Garcia-del-Barrio and Rossi²⁵ suggest institutional and legal reforms applied in the context of sports competitions, such as FFP, often provoke structural changes yet this does not appear to be the case here with FFP in European football. Indeed, clubs may just have paid lip service to it. The regulations do just enough to keep finances in check (and have had some positive impact in respect of club balance sheets) but they are also not quite robust enough to challenge the status quo.

That is not to say FFP has not had some positive impact in the industry. It has been refreshing, in many ways, for clubs to be held accountable for failing to adhere to regulatory principles. The counter argument is that UEFA has not gone far enough in implementing the regulations. There have been several sporting and financial sanctions

¹⁰ A. Francois, N. Dermit-Richard, D. Plumley, R. Wilson, and N. Heutte, "The effectiveness of UEFA Financial Fair-Play: Evidence from England and France, 2008–2018" *Sport, Business and Management*, Vol.12 No.3, pp.342–362.

¹¹ J. Kalashyan, "The game behind the game: UEFA's Financial Fair Play Regulations and the need to field a substitute" *European Competition Journal*, 18:1, 21–81.

¹² e.g. J. Kalashyan, "The game behind the game: UEFA's Financial Fair Play Regulations and the need to field a substitute" *European Competition Journal*, 18:1, 21–81; T. Peeters and S. Szymanski, "Financial fair play in European football" *Economic Policy*, Vol.29, Issue 78, 1 April 2014, 343–390; S. Szymanski, "On the Ball" *Finance and Development* March 2014, Vol.51, No.1.

¹³ e.g. H. Dietl and M. Lang, "The Effect of Salary Caps in Professional Team Sports on Social Welfare" *The B.E. Journal of Economic Analysis & Policy* 9(1); T. Peeters and S. Szymanski, "Financial fair play in European football" *Economic Policy*, Vol.29, Issue 78, 1 April 2014, 343–390; H. Preuss, K.K. Haugen and M. Mathias Schubert, "UEFA financial fair play – the curse of regulation" *European J. of Sport Studies*, 2 33–51.

¹⁴ (e.g. B. Drut and G. Raballand, "Why does financial regulation matter for European professional football clubs?" *International Journal of Sport Management and Marketing* 11(1/2): 73–88; P. Madden, "Welfare economics of 'financial fair play' in a sports league with benefactor owners", *Journal of Sports Economics*, 16(2) 159–184.

¹⁵ e.g. Madden, 2012; E.P. Franck, "Financial Fair Play in European Club Football—What is it All About?" University of Zurich, Department of Business Administration, UZH Business Working Paper No.328 (April 2014).

¹⁶ A. Francois, N. Dermit-Richard, D. Plumley, R. Wilson, and N. Heutte, "The effectiveness of UEFA Financial Fair-Play: Evidence from England and France, 2008–2018" *Sport, Business and Management*, Vol.12 No.3, pp.342–362; C.J. Freestone and E.A. Manoli, "Financial fair play and competitive balance in the Premier League" *Sport, Business and Management: An International Journal* 7(2); S. Farquhar, R. Serrano, I. Acero and M. Espitia-Escuer, "Financial Fair Play and Competitive Balance in European Football: A Long-Term Perspective" *Sport, Business and Management: An International Journal*, 13(1), 74–92.

¹⁷ O. Budzinski, "Four Cases in Sports Competition Policy: Baseball, Judo, Football, and Motor Racing" *Ilmenau Economics Discussion Papers*, Vol.21, No.109, 2017.

¹⁸ D. Plumley and S.W. Flint, "The UEFA Champions League: maintaining the status quo?" *Team Performance Management*, Vol.21 No.5/6, pp.247–258.

¹⁹ O. Litvishko, R. Veynberg and Z. Sayabek, "Professional sports: strategic approaches to investment attractiveness formation" *Economic Annals-XXI*, 178, pp.105–113.

²⁰ J. Lindholm, "The Problem with Salary Caps Under European Union Law: The Case Against Financial Fair Play" *Texas Review of Entertainment and Sports Law*, Vol.12.2, pp.189–213; M. Sass, "Long-term Competitive Balance under UEFA Financial Fair Play Regulations" *FEMM Working Papers* No.5/2012.

²¹ S. Szymanski, "On the Ball" *Finance and Development* March 2014, Vol.51, No.1.

²² S. Kuper and S. Szymanski, *Soccernomics 2018* (New York: Bold Type Books, 2018).

²³ H. Vopel, "Is Financial Fair Play really justified? An economic and legal assessment of UEFA's Financial Fair Play rules", HWWI Policy Paper No.79, p.17.

²⁴ D. Plumley, G. Ramchandani and R. Wilson, "The unintended consequence of Financial Fair Play: An examination of competitive balance across five European football leagues" *Sport, Business and Management*, Vol.9 No.2, pp.118–133.

²⁵ P. Garcia-del-Barrio and G. Rossi, "How the UEFA Financial Fair Play regulations affect football clubs' priorities and leagues' competitive balance?" *European Journal of Government and Economics*, 9(2), 119–142.

applied during the era of FFP but some of these have gone under the radar and there is yet to be a seismic case of note which has really shocked the industry. In the first round of sanctions, UEFA fined major clubs such as Manchester City and Paris Saint-Germain for spending beyond their FFP imposed limits. Other clubs received stronger punishments, Turkish club Galatasaray were banned from the Champions League altogether for two seasons, effectively for excessive spending. FFP punishments have not been confined to clubs within the “big five” leagues. There have also been sanctions involving Dinamo Zagreb (Croatia), FC Astana (Kazakhstan) and Metalurh Donetsk (Ukraine).

A big challenge for FFP, from a competition perspective, has been the inconsistency of application and threshold standards, applied through domestic regulations. UEFA’s version of FFP only applies to clubs that compete in its competitions. Historically, this has just been the Champions League or Europa League but has since extended to cover the UEFA Conference League inaugurated in 2021. However, other domestic leagues across Europe have implemented their own versions of FFP regulations in their respective league systems throughout the last decade.²⁶ For example, in England, both the English Premier League (EPL) and English Football League (EFL) have their own version of FFP that applies to their members and differs significantly than the one enforced by UEFA. They both follow similar principles, but the acceptable loss threshold is different. UEFA set the threshold at €30 million cumulative loss over three years whereas the EPL set the same threshold at £105 million. The EFL Championship set their bar at a cumulative three-year loss of £39 million. These inconsistencies are further exacerbated by the fact that clubs can move between these leagues in an open league system and therefore have a plausible situation of having to conform to multiple sets of regulatory frameworks in respect of finance. Other leagues in Europe have introduced adaptations of FFP in their own league and whilst they may differ slightly in the detail, they are still derived from UEFA’s FFP regulations and, consequently, have similar legal frameworks.²⁷ However, the inconsistency in the regulations creates a practical problem at league level as theoretically some clubs do not have to conform at all to UEFA’s regulations if they have very little chance of qualifying for UEFA’s competitions. Other clubs, by contrast, have to conform to two separate regulations if they have aspirations of competing in UEFA’s competitions.

In 2022, and perhaps accelerated by the Covid-19 pandemic, UEFA implemented a new system of FFP, titled *Financial Sustainability Regulations* (FSRs). The emphasis moving forward will now be on three key pillars: no overdue payables rule, a football earnings rule, and a squad cost rule (*UEFA, 2022*). The No Overpayment Rule means clubs’ accounts will be checked

every quarter to make sure all bills are being paid on time. The Football Earnings Rule will allow clubs to lose €60 million over three years—double what was permitted under the original version of FFP. Clubs will be allowed to sustain an extra €10 million in losses a year if they are deemed to be “in good financial health”. As part of the Squad Cost Rule, spending on wages (players and head coaches), transfers and agent fees will be capped at 70% of a club’s revenue. This will be assessed over a calendar year and not a season, so spending in the summer transfer window will be included in the calculations. The new rules came into force in June 2022, but they will be implemented gradually over three years to give clubs time to adapt to the new regulations. The 70% Squad Cost Rule cap will be phased in over three years. In 2023/24 the cap will be 90%, in 2024/25 it will be 80% and from 2025/26 it will be 70%.

The new FSRs will undoubtedly shift the financial landscape of European football but there is also an argument that very little will change in terms of dominance and hierarchy. The empirical analysis of the impact of these new regulations will follow in years to come but it does create a further interesting dynamic in respect of the Premier League’s case against Manchester City. So far, we have not seen any changes on the horizon to the Premier League’s version of FFP. The change in UEFA regulation also comes at a time when the Premier League have decided to charge Manchester City. As always, there will be politics and economic power, for both the league and club, in the subtext of this verdict. From a legal standpoint, however, we must ignore this noise. The next section of the article presents the legal position outlining the charge sheet, before discussing concepts such as the burden and standard of proof and proportionality, before offering some conclusions on the case as it stands.

The legal position

This is an extremely serious matter for Manchester City. Notwithstanding the fact that the allegations, as they are envisaged in the charge sheet, are of a grave nature, the potential legal, and otherwise, consequences of a possible conviction, could be devastating. An explanation of the importance of FFP Regulations has already been provided above. From a legal standpoint, what deserves further enquiry, is a careful consideration of the charge sheet and its content. Such is the plethora of allegations in it, that an independent observer may conclude that defending such charge sheet, may prove to be a mammoth task.

In summary, the following elements in the charge sheet must be deducted and must be carefully analysed:

- a. The allegations stem from a variety of different alleged breaches.

²⁶ S. Szymanski, “On the Ball” *Finance and Development* March 2014, Vol.51, No.1.

²⁷ C.J. Freestone and E.A. Manoli, “Financial fair play and competitive balance in the Premier League” *Sport, Business and Management: An international Journal* 7(2).

- b. The allegations concern a rather unprecedented and long period of time starting from 2009 and covering the season that just finished (2022–2023).
- c. The charge sheet includes allegations for 108 alleged breaches of rules, for the aforementioned period.
- d. The charge sheet includes five different Categories of alleged breaches spanning from 2009 to date (see specific analysis below).
- e. The charge sheet does not only include allegations for breaches of Premier League Rules, but it also includes allegations for breaches of UEFA Rules too.

At a first glance, all five categories of alleged breaches would most certainly give rise to a fact/evidence-based exercise. The prosecuting authority (Premier League) would have to demonstrate to the Panel of adjudicators (to their comfortable satisfaction) that the alleged breaches, as a matter of fact and evidence, did occur, and that such breaches are within the meaning of the relevant regulations, and they meet the legitimate aim pursued by the regulator.

Before we examine these different categories of alleged breaches in terms of specificity, it would be prudent to explain the applicable standard of proof, within the meaning offered by the established sports law/football law jurisprudence.

Burden and standard of proof

It is a long-established principle in the jurisprudence of the Court of Arbitration for Sport (CAS) that the burden of proof related to the existence of a legal interest worthy of protection lies on the party that has introduced the claim/appeal. In CAS 2007/A/1380 *MKE Ankaragucu Spor Kulubu v S* at [25] the CAS Panel explained:

“According to the general principles of law, facts pleaded have to be proved by those who plead them. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right question is based.”

To this effect, the burden of proof rests with the Premier League, in that it must prove the allegations contained in the charge sheet, to the comfortable satisfaction of the Tribunal, which is the established standard of proof in the sports law discipline.

At this juncture, it is worth stating that the jurisprudence of the CAS is not binding upon national disciplinary tribunals (as opposed to being binding on the parties to an arbitration), as there is no established system of judicial precedent, within the discipline of sports law, and that of international commercial arbitration. This means that the members of the Panel in the *Premier*

League v Manchester City matter, will not be obliged to follow such jurisprudence. Our respectful suggestion, however, would be for the members of the Panel to follow and apply such jurisprudence, particularly on points of fact and evidence. Although such jurisprudence is not binding, Panels, nevertheless, tend to follow it, and when they decide to depart from it, they tend to offer valid reasons for their departure.

Considering the above, it follows that the Premier League has the burden of proving the allegations, and it must do so to the comfortable satisfaction of the tribunal. CAS jurisprudence explains that such standard is below the criminal standard of proof, but above the civil standard of proof (CAS 2010/A/2229 *WADA v FIVB & Gregory Berrios*). It also explains that the more serious the allegation, the higher the degree of evidence required, hence a higher standard of proof must be met. This means the allegation must be proven to a high threshold within the onus of comfortable satisfaction. In practice, this means that the comfortable satisfaction standard may take the form of a “*sliding scale*”. In other words, the more serious the allegation, the closer the scale to proof beyond reasonable doubt.

And what does the Premier League have to prove to this high threshold? They would need to demonstrate, to the comfortable satisfaction of the Tribunal, that the particulars of the different offences can be proven with the production of accurate information, backed up by reliable evidence whose probity cannot be questioned, and quite possibly, with the testimonies of expert witnesses. It would not be good enough for the Premier League to argue that Manchester City failed to co-operate with the Premier League’s investigation. The Premier League would have to go beyond this, by proving that Manchester City, as a matter of fact and evidence, failed to produce accurate financial information (and/or lied about it) in relation to their revenue, within the meaning of the current regulations. This is not an easy burden for the Premier League. But it should not be easy, because the allegations produced are of a very serious nature. Should the Premier League be able to discharge such a burden, the burden will then shift to Manchester City, who would, in turn, have to respond, and attempt to discharge it. The *sliding scale*, therefore, of the standard of proof, will be in full force and action here. Advisors must, therefore, make a note that the weight of the evidence and the manner in which it is presented, may be the deciding factors in the final decision making of the Panel.

The Charge Sheet

Based on the above analysis of the burden and standard of proof, it is now prudent to outline and explain the charges against Manchester City FC. As the Premier League explains:

“In accordance with Premier League Rule W.82.1, the Premier League confirms that it has today referred a number of alleged breaches of the Premier

League Rules by Manchester City Football Club (Club) to a Commission under Premier League Rule W.3.4.”

Details of the Premier League Rules that the Club is alleged to have breached are as follows:

1. In respect of each of Seasons 2009/10 to 2017/18 inclusive, the Premier League Rules applicable in those seasons that required provision by a member club to the Premier League, in the utmost good faith, of accurate financial information that gives a true and fair view of the club's financial position, in particular with respect to its revenue (including sponsorship revenue), its related parties and its operating costs, namely:
 - (a) for Season 2009/10, Premier League Rules B.13, C.71, C.72 and C.75 (from 10 September 2009, Premier League Rules B.13, C.71, C.72, C.79 and C.80);
 - (b) for Season 2010/11, Premier League Rules B.13, C.78, C.79, C.86 and C.87;
 - (c) for Season 2011/12, Premier League Rules B.13, C.78, C.79, C.86 and C.87;
 - (d) for Season 2012/13, Premier League Rules B.16, E.3, E.4, E.11 and E.12;
 - (e) for Season 2013/14, Premier League Rules B.15, E.3, E.4, E.11, E.12 and E.49;
 - (f) for Season 2014/15, Premier League Rules B.16, E.3, E.4, E.11, E.12 and E.50;
 - (g) for Season 2015/16, Premier League Rules B.16, E.3, E.4, E.11, E.12 and E.50;
 - (h) for Season 2016/17, Premier League Rules B.16, E.3, E.4, E.11, E.12 and E.51; and
 - (i) for Season 2017/18, Premier League Rules B.16, E.3, E.4, E.11, E.12 and E.51.
2. In respect of:
 - (a) each of Seasons 2009/10 to 2012/13 inclusive, the Premier League Rules applicable in those Seasons requiring a member club to include full details of manager remuneration in its relevant contracts with its manager, namely:
 - (1) for Seasons 2009/10 to 2011/12 inclusive, Premier League Rules Q.7 and Q.8; and
 - (2) for Season 2012/13, Premier League Rules P.7 and P.8; and
 - (b) each of Seasons 2010/11 to 2015/16 inclusive, the Premier League Rules applicable in those Seasons requiring a member club to include full details of player remuneration in its relevant contracts with its players, namely:
 - (1) for Seasons 2010/11 and 2011/12, Premier League Rules K.12 and K.20;
 - (2) for Season 2012/13, Premier League Rules T.12 and T.20;
 - (3) for Seasons 2013/14 and 2014/15, Premier League Rules T.12 and T.19; and
 - (4) for Season 2015/16, Premier League Rules T.13 and T.20.
3. In respect of each of Seasons 2013/14 to 2017/18 inclusive, the Premier League Rules applicable in those Seasons requiring a member club to comply with UEFA's regulations, including UEFA's Club Licensing and Financial Fair Play Regulations, namely:
 - (a) for Season 2013/14, Premier League Rule B.14.6; and
 - (b) for Seasons 2014/15 to 2017/18 inclusive, Premier League Rule B.15.6.
4. In respect of each of the Seasons 2015/16 to 2017/18 inclusive, the Premier League Rules applicable in those Seasons on Profitability and Sustainability, namely:
 - (a) for Season 2015/16, Premier League Rules E.52 to E.60; and
 - (b) for Seasons 2016/17 and 2017/18, Premier League Rules E.53 to E.60.
5. In respect of the period from December 2018 to date, the Premier League Rules applicable in the relevant Seasons requiring a member club to cooperate with, and assist, the Premier League in its investigations, including by providing documents and information to the Premier League in the utmost good faith, namely:
 - (a) for Season 2018/19, Premier League Rules B.16, B.19, W.1, W.2, W.12 and W.13;
 - (b) for Season 2019/20, Premier League Rules B.16, B.19, W.1, W.2, W.12 and W.13;

- (c) for Season 2020/21, Premier League Rules B.16, B.19, W.1, W.2, W.12 and W.13;
- (d) for Season 2021/22, Premier League Rules B.15, B.18, W.1, W.2, W.12 and W.13; and
- (e) for Season 2022/23, Premier League Rules B.15, B.18, W.1, W.2, W.15 and W.16.

As an initial matter, it is submitted that the different charges included in the charge sheet indicate not only the seriousness of the matter, but also the premise that this is not a frivolous claim. A note must be made of the fact that the charge sheet contains not only allegations of Premier League Rule breaches, but it also incorporates allegations of UEFA Rules breaches too (see Category 3). In terms of the relevant applicability of the law for this matter, the Panel would be obliged to examine the UEFA Rules too, as the Premier League's regulatory framework, makes it clear that there is a binding agreement between the Premier League and each club (see Rule B.14.6 of 2013/2014). One of the provisions of this agreement clearly states that clubs (and the Premier League) are bound by and must comply with the statutes and regulations of UEFA. Consequently, the Panel would have to examine, very carefully, Category 3 of the Charge Sheet, which refers to allegations of breaches of UEFA's regulations, including UEFA's Club Licensing and Financial Fair Play Regulations, for the period of 2013-2018 (inclusive).

Further, a careful examination of the Charge Sheet may alert the reader to Category 5, which incorporates allegations for lack of co-operation and assistance, including by providing documents and information to the Premier League in the utmost good faith, for the period of 2018-to date (see Rules B.15, B.16, B.18, B.19, W.1, W.2, W.12, W.13, W.15 and W.16). This adds to the seriousness of the totality of the claim, in that, it creates a safety net for the Premier League. If a hypothesis could be created in that Manchester City successfully defend the allegations in the first four categories, there is no certainty that they would equally do so in the final fifth category. This is because all the Premier League must do is demonstrate that they asked for information on several occasions, and Manchester City refused to co-operate. This rule alone may prove to be decisive in the final outcome and it is not surprising the Premier League left it as a final Category in the charge sheet.

At this juncture, it is the authors' opinion that Category 5 may be the reason for possible delays in the resolution of this dispute, in that the Tribunal may need to establish what information/documents the Premier League sought to receive from Manchester City and whether such documents do exist, as a matter of fact, and are relevant. It follows, procedural delays would be inevitable as applications for disclosure may be lengthy and complicated, as they would probably invite voluminous submissions from either side.

Consequently, an argument could be made that this creates an open field of liability against Manchester City, which could potentially make it difficult for the club to defend against such allegations. Although the allegations can only be proven with the production of reliable evidence, a careful reading of the charge sheet demonstrates the careful choice of different aspects that relate to the alleged violations, within the meaning of the regulations. Put it simply, Manchester City would have to defend five different aspects of the rules they are obliged to follow, and this may prove to be problematic for the club.

Moreover, and in relation to Category 1, the reader must be alerted to the fact that this Category contains nine different allegations, regarding the period of 2009–2018 (inclusive). A breakdown of the different elements of the relevant rules may indicate the seriousness of the offence if it is proven. Here, there is a rather complex issue, in that the different elements of the offence create a difficult job for the prosecuting authority, although such elements are not cumulative. The requirement of good faith against a club lays the ground for the main elements of the offence and it highlights the obligation of a club to conduct its affairs with the highest of standards. The intention of the regulator here is to ensure that there is a level playing field in terms of financial responsibility and clubs are under an obligation to produce, in good faith, *accurate financial information that offers a true and fair view of their financial position* (emphasis added). Such a financial position may relate to a club's revenue, including its sponsorship revenue, its related parties, and its operating costs.

Again, the evidential burden here for the Premier League would be a difficult one to discharge, as the seriousness of the allegations is grave, given the hypothesis that the accounts submitted by Manchester City are not accurate and/or do not represent a fair and true view of their financial position. This is obviously a fact/evidence-based exercise and the manner in which it is presented would determine, to a great extent, whether the Panel can be comfortably satisfied, that the allegations are true. It is expected that a great deal of evidence will be presented, along with the use of expert witnesses (and their statements). It is also expected that several arguments will be raised against the admissibility (or otherwise) of such evidence, in which case the reader must expect further delays.

Similarly, the allegations in Category 2 of the charge sheet, appear to be of a serious nature. In this Category, six (6) different allegations are presented that correspond to equal breaches of rules that relate to *full details* of manager and players remuneration. As before, the Panel must be comfortably satisfied that the allegations are true, and the Premier League, therefore, must present a great deal of reliable evidence that supports the allegations. Although certain paperwork in relation to contractual agreements must be in the hands of the Premier League, if the allegations are true, the implication here is that there are separate (secret) agreements that have not been

disclosed to the Premier League. If this is the case, the Premier League must demonstrate to the Panel why it believes there are undisclosed secret agreements and what evidence exists that may support such an assertion. As before, it is expected that a great deal of submissions will be raised on this point, and a greater deal of disclosure applications may be filed in support of the assertions. Given the seriousness of the allegations and the effect the outcome of a disclosure application may have on the parties, the Panel may need ample time to carefully examine such applications and the evidence that accompanies them.

Finally, the allegations in Category 4 of the charge sheet are of an equally grave nature, as the consequences for breaching the relevant rules on sustainability and profitability may span from a single fine to a points deduction. Manchester City may of course divert their arguments from the rhetoric which suggests that other clubs too spend more than what they can afford (and they have not been charged), as the Panel may take the view that each matter is decided on its individual merits and characteristics and, therefore, the Premier League's alleged lack of prosecution against other clubs is not relevant. Although the allegations in this Category are two (2), nevertheless, all the Premier League must demonstrate here is that Manchester City's balance sheet extends far beyond the permissible amount, particularly in a three-year period. This is true, especially if one considers that the allegations in Category 4 concern the period of 2015–2018 (inclusive).

Proportionality

Regardless of the Panel's final decision on this dispute, it is almost certain that the Panel would invite the Parties to produce arguments in relation to the principle of proportionality. This would be relevant if the Panel takes the view that rules have been breached and, consequently, sanctions must be applied. In doing so, the Panel would need to assess whether a sanction would be disproportionate under the unique facts of a particular case. We must make it clear that we do not advocate for, nor do we attempt to predict the decision of the Panel in this dispute. We simply argue that in the event of a decision against Manchester City, the club will be forced to raise arguments in favour of proportionality. Out of courtesy to the club and respect for its right to a fair hearing, we shall refrain from critically analysing any possible defences.

In terms of proportionality, however, the application of relevant regulations and statutes of the relevant sport governing bodies may produce scenarios in which the result would be neither just nor proportionate. It is a general principle of sports law that any sanction must be just and proportionate to the legitimate aim pursued by the regulator. Although the applicable law in the present dispute will be English law, the Panel may find assistance in the jurisprudence of CAS and that of general sports law. For example, in the *FIFA & WADA CAS Advisory*

Opinion (CAS 2005/C/976 & 986), the Panel ruled that any sanction must "comply with the principle of proportionality, in the sense that there must be a reasonable balance between the kind of the misconduct and the sanction".

Similarly, proportionality has been applied to reduce sanctions that would otherwise be mandatory under the relevant regulatory framework of the sport governing body concerned. This has taken place in several instances (each of these cases was submitted to the first instance tribunal). See for example, *FINA v Mellouli* TAS 2007/A/1252; *Walilko v Federation Internationale de l'Automobile* CAS 2010/A/2268; *Puerta v ITF* CAS 2006/A/1025; *Livermore v FA*; *Klein v ASADA* CAS A4/2016.

The above, it is submitted, can be applied by the Panel in the *Premier League v Manchester City FC* matter. In doing so, the Panel may consider the premise that all the relevant sport-specific rules and procedures, aimed at enforcing some sort of harmonisation of football law principles, are distinct in nature from criminal and civil proceedings. This means that, inevitably, any decision on the issue of proportionality would have to consider factual and evidential circumstances, as well as individual characteristics (see *Cielo and others v FINA*, CAS 2011/A/2495-2498, *Alabbar v FEI*, CAS 2013/A/3124, *Football Association v Marshall, FA Regulatory Commission*).

Consequently, the Panel must consider both the objective and subjective elements of the matter, when reference is made to the legitimate aim pursued by the regulator. This would allow the Panel to apply flexibility in the principle of proportionality, which gains further ground in the premise that national systems must recognise such principles. Similarly, CAS has also consistently held that Tribunals have full power to consider and apply the principle of proportionality and use flexibility where the sanction (or the request of) is disproportionate (see *Mutu and Pechstein v Switzerland* No.40575/10 and 67474/10, 2 October 2018. See also *Case C-519/04 P, Meca-Medina and Majcen v Commission* [2006]).

Finally, the Panel will almost certainly be invited to consider the point that even regulations that emanate from the regulatory framework of a sport governing body, cannot substitute fundamental and general principles of law (see *Hipperdinger v ATP*, CAS 2004/A/690, para.85 and *Squizzato v FINA* CAS 2005/A/830, para.10.23). This point is also highlighted in the matter of *FIFA & WADA* CAS 2005/C/976. There, the CAS Panel stated that the principle of proportionality supersedes any rule mandating the imposition of a specific sanction. At para.143 of its Award, it stated:

"To find out whether a sanction is excessive, a judge must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender."

Consequently, and in the hypothetical scenario that the charges are proven, any sanction against the club would have to consider the principle of proportionality. This is not going to be an easy task for the Panel, as apart from the wide range of available sanctions (from a fine to expulsion from the league), the Panel “may consider any other sanction it deems appropriate”.

Conclusion

We considered in this work the significance of the Financial Fair Play Regulations towards UEFA's attempt to control the financial responsibility of football clubs, and we demonstrated that on certain occasions, such rules may prove to be problematic. From a legal standpoint, the present matter indicates the complexity of these rules and the lack of consistency in their application. From the football finance point of view, we demonstrated that accounting principles and mathematical certainties may disappear in the mist of calculations.

One thing is certain, however, and that is the need for an immediate revision of these regulations. UEFA knows very well that the creation of the European Super League will not go away and the more disputes that could arise in relation to FFP, the stronger the possibility that more clubs will break away from UEFA (and possibly from their national leagues). UEFA have now implemented a new version of FSRs, but it is unlikely that these will stop cases like this from happening completely, especially when leagues continue to deploy their own variations of FFP. As an example, we only need to look at the English Premier League and the potential case against Everton FC for breach of financial regulations. No penalty has been brought to Everton yet and the English Premier League has been criticised in this case as well for not applying appropriate financial and/or sporting penalties. What is appropriate in this regard, however, is subjective and links once again to our notion of *proportionality* presented in this paper.

Although the authors shall refrain from making any predictions as to the outcome of the present matter, one thing is certain, and that is the danger the autonomy of sport is facing regarding its self-regulation. There are different dynamics present that control the decision making of all stakeholders. Whatever the result of the present dispute, it is almost certain that UEFA will face serious unrest from its member clubs to a point of mutiny. The financial prowess of football clubs such as Manchester City, with the expert lawyers taking apart the inefficiency and complexity of the regulations (*contra preferentem* comes to mind), can only demonstrate how weak such regulations are in their application.

In the introduction, we drew parallels to a previous case regarding Manchester City against UEFA (see CAS 2020/A/6785 *Manchester City FC v UEFA*) and people

will inevitably draw comparisons between the present matter and this one. It is true some submissions may be similar between the two matters, regarding their substantive parts. For example, the Premier League may refer the present Panel to the CAS Panel's Award in the matter of *Manchester City FC v UEFA*, where the Panel stated at p.327:

“As argued by UEFA, the entire FFP system depends for its effectiveness on complete and accurate reporting by clubs of their football income and expenses. If clubs do not truthfully disclose such information, the system cannot work.” Similarly, the CAS Panel stated at paragraph 331 of the Award: ‘Thus, the majority of the Panel finds that MCFC's failure to cooperate with the CFCB's investigation is a severe breach and that MCFC is to be seriously reproached for obstructing the CFCB's investigations’.”

In the authors' opinion, however, the present matter refers to additional and more complicated substantive and procedural complexities. Notwithstanding the fact that Manchester City FC will not have a right of appeal to CAS (they signed up to such rule as a pre-condition of their participation in the Premier League competition), they would also have to face considerably more allegations than the ones they faced in their previous matter at CAS in 2020, considerably more pieces of evidence against them, and a rather more flexible applicability of the law, than the one they faced in Switzerland. Put simply, defending this claim would require the deployment of enormous resources, intuitive legal reasoning, and persuasion beyond known boundaries.

Finally, the authors are of the view that any decision making in this matter must exclude political/floodgates considerations. It is true, that rhetoric to the effect “they have to be punished because they are rich” or “a simple fine would do nothing to them” may be present at all stages of this procedure. We submit, however, that the experience, quality, and stature of the adjudicating Panel in the present matter would not allow room for such rhetoric. We are convinced that the Panel will rule subject to the available evidence and with a purposeful construction and interpretation of the rules in mind. Above all, we are convinced the Panel, in its quest for a fair result, will not stretch its boundaries of judicial creativity.

As Aristotle wrote: “The virtue of justice consists in moderation, as regulated by wisdom.”

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June 2023