In IN THE MATTER OF AN ARBITRATION

UNDER SECTION X OF THE RULES OF THE PREMIER LEAGUE

BETWEEN:

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED

Claimant

and

LEICESTER CITY FOOTBALL CLUB

Respondent

AWARD

Background

1. By a Request for Arbitration dated 3 October 2024 ("the RFA") the Claimant ("the PL") referred to arbitration under Section X of the Rules of the Premier League ("the Rules") two disputes regarding the PL's jurisdiction to investigate and proceed against the Respondent ("LCFC") in respect of alleged breaches of the PL's profitability and sustainability rules ("the PSR").

2. LCFC challenged on various bases both the validity of the RFA and this Tribunal's jurisdiction to determine the disputes which it purported to refer. In light of these challenges, on 5 November 2024 the parties agreed comprehensive arrangements for the future conduct of the arbitration. That agreement provided for issues regarding the validity of the RFA and the Tribunal's jurisdiction to be determined in a Preliminary Phase and, depending on the outcome of the preliminary issues, for the Tribunal to proceed to determine the two disputes referred to arbitration under the RFA.

3. On 17 October 2024, the PL appointed Lord Mance of 7 King's Bench Walk, Temple EC4Y 9DS as its arbitrator under the RFA. On 5 November 2024, LCFC in turn appointed Lord Neuberger

of One Essex Court, Temple EC4Y 9AR as its arbitrator under the RFA and on 8 November 2024 Lords Mance and Neuberger appointed Michael Crane KC of Fountain Court Chambers, Temple EC4Y 9DH under the procedure specified in X.9 of the Rules to serve as third arbitrator and chair.

4. By an award dated 28 January 2025 the Tribunal rejected LCFC's challenges to the validity of the RFA and held that the Tribunal had jurisdiction to determine the issues referred to it. Accordingly, we now proceed to consider the disputes referred to arbitration by the RFA.

The FY23 Dispute

5. This is described in the RFA as a dispute as to whether LCFC can be held liable for a breach of the PSR in respect of the financial year 2022/23.

6. That dispute comes before the Tribunal as a review of a decision of 30 August 2024 of an Appeal Board constituted under Rule W.62 ("the Appeal Board"), which determined that the PL had no jurisdiction to investigate or proceed against LCFC for breach of the 2022/23 PSR. The Appeal Board comprised the Rt Hon Sir Stanley Burnton, the Rt Hon Sir Maurice Kay and Mr Robert Glancy KC. By their ruling, the Appeal Board overturned a decision of the Commission issued on 13 June 2024 that the PL had such jurisdiction.

7. The factual background is not in dispute and is as follows.

8. LCFC competed in the Premier League during the Season 2022/23 but was relegated to the Championship of the English Football League ("the EFL") at the end of that Season. As explained in the Tribunal's award of 28 January 2025, LCFC ceased to be a member of the PL, and accordingly, ceased to be a Club as defined by the Rules when, in accordance with the procedure specified in the Rules regarding relegated Clubs, it transferred its member's share to Luton Town Football Club ("Luton Town") on 13 June 2023.

9. LCFC competed in the Championship during the 2023/24 Season and at the end of that Season was promoted to the PL, becoming a member once more when it acquired the share of a relegated Club on or about 5 June 2024.

10. On 2 April 2024, LCFC provided to the PL its Annual Accounts for FY23 (prepared for a period ending 30 June 2023). As explained in detail below, with these accounts available it became possible to perform the final PSR Calculation set out in the Rules in force for the 2022/23

Season. According to the PL, that calculation showed aggregate Adjusted Earnings Before Tax for the financial years in question (effectively aggregate losses after deduction of certain specified costs) of £124.5 million. That figure exceeded by £19.5 million the loss threshold of £105 million set out in the Rules and, according to the PL, disclosed a breach of the PSR.

The Rules

11. As explained in the Tribunal's award on the Preliminary Issues, the Rules continue from year to year subject to amendments passed at shareholders' General Meetings. Unless otherwise stated, references below are to the Rules in force during the 2022/23 Season.

12. Section A of the Rules comprises a series of definitions. Rule A.1.178 states that:

> *""**PSR Calculation**" means, save as indicated below, the aggregation of a Club's Adjusted Earnings Before Tax for T, T-1 and T2.*
> *In respect of Season 2022/23, the PSR Calculation shall be the aggregation of:*
> *(a) the Adjusted Earnings Before Tax for T;*
> *(b) the mean of the Adjusted Earnings Before Tax of T-1 and T-2; and*
> *(c) the Adjusted Earnings Before Tax of T-3;"*

Ordinarily, the PSR Calculation involves aggregating Adjusted Earnings Before Tax for the financial years T, T-1 and T-2. The averaging out of losses incurred during financial years T-1 and T-2 was a measure introduced for the 2022-23 Season only, to take account of the financial impact on Clubs of the Covid pandemic.

13. "T" is defined in the Rules as the Club's Accounting Reference Period ending in the year in which the PSR assessment under the Rules is made. T-1 means, in turn, the immediately preceding Accounting Reference Period, T-2 the Accounting Reference Period before T-1, and so on. Conversely, T+1 means the Accounting Reference Period after T, T+2 the Accounting Reference Period after T+1, and so on. "Accounting Reference Period" means "*the period in respect of which Annual Accounts are prepared*".

14. By tracing back through several interlocking definitions, it may be seen that the PSR Calculation for any financial year is made by reference to the Annual Accounts for that year and the relevant preceding years. Thus, Adjusted Earnings Before Tax means "Earnings Before Tax" excluding certain specified categories of costs and:

*""**Earnings Before Tax**" means profit or loss after depreciation and interest but before tax, as shown in the Annual Accounts;"*

*"**Annual Accounts**"* in turn is defined as meaning*:*
"...(a) the accounts which each Club's directors are required to prepare pursuant to section 394 of the Act; or
(b) if the Club considers it appropriate or the Board so requests, the Group Accounts of the Group of which the Club is a member and which it is required to prepare pursuant to section 399 of the Act, or which it is required to deliver to the Registrar of Companies pursuant to section 400(2)(e) or section 401(2)(f) of the Act,
provided that in either case the accounts are prepared to an accounting reference date (as defined in section 391 of the Act) which falls between 31 May and 31 July inclusive. If the accounting reference date falls at any other time, separate accounts for the Club or the Group (as appropriate) must be prepared for a period of 12 months ending on a date between 31 May and 31 July inclusive, and in such a case "Annual Accounts" means those accounts.
Annual Accounts must be prepared and audited in accordance with all legal and regulatory requirements applicable to accounts prepared pursuant to section 394 of the Act;"

15. A Club's Annual Accounts are, therefore, its statutory accounts as prepared and audited in accordance with the Companies Act 2006. Having regard to the issue before the Appeal Board, it is important to note that the definition of Annual Accounts includes a permitted date range for accounting reference periods. The period to which a Club's Annual Accounts are prepared must fall between 31 May and 31 July inclusive. As a Season, as defined, ends before 31 May and begins after 31 July, the permitted range for accounting reference dates ensures that a Club's Annual Accounts for any financial year will span the whole of the Season falling within that year, in that, a Club's financial year will commence before the start of the corresponding Season and close after the Season's end. By this mechanism each financial year relevant for the purposes of the PSR Calculation is tied to a particular Season.

16. The definition of Club was of central relevance to the Appeal Board's decision. Section A.1.39 states that:

*"**Club**" means an association football club in membership of the [PL] and:*
(a) for the purposes of Rules E.33 to E.42 (inclusive) includes any club which is entitled to be promoted from The Football League to the [PL];
(b) for the purposes of Rules A.1.59, A.1.70, A.1.216, and Sections F and H of these Rules (including any Forms prescribed therein) includes any Associated Undertaking, Fellow Subsidiary Undertaking, Group Undertaking, or Parent Undertaking of such Club; and
(c) for the purposes of Section G of these Rules, Section I and Rule J.3 (and including any Forms prescribed therein) includes any Associated Undertaking, Fellow Subsidiary Undertaking, Group Undertaking, Parent Undertaking or Subsidiary

Undertaking of such Club;"

17. A Club therefore means only those clubs in membership of the PL save for the purposes of Rules E.33 to E.42 where that definition is (by virtue of Rule A.1.39(a)) extended to include any club entitled to be promoted to the PL.

18. B.14 of the Rules states that membership of the PL constitutes an agreement between the PL and the Club and between each Club to be bound by, amongst other instruments, the Rules. A relegated Club ceases to be a member of the PL when, in accordance with B.5 of the Rules, it transfers the ordinary share it holds as a member of the PL to a newly promoted Club. Accordingly, LCFC ceased for the time being to be a member of the PL, and ceased to be a Club as defined, when, following relegation, it transferred its member's share to Luton Town on 13 June 2023.

19. Meanwhile, on 8 March 2023, LCFC informed the PL that it intended to change its Accounting Reference Period from 31 May 2023 to 30 June 2023. It is not disputed that this was something LCFC was entitled to do. The change of Accounting Reference Period to 30 June meant, however, that by the time the PSR Calculation could be done by reference to its accounts for 2022/23, LCFC had ceased to be a member of the PL. This was of crucial significance to the Appeal Board, because as explained more fully below, it enabled LCFC to submit successfully that the PSR applied only to members of the PL, with the result that no breach of the PSR could have occurred in relation to FY23 and the relevant preceding financial years before the Annual Accounts were prepared for the financial year ending 30 June 2023.

20. Profitability and sustainability is covered by E.45 to E.50 of the Rules. This section of the Rules provides as follows:

> *"E.45. Each Club shall by 1 March in each Season submit to the Board:*
>
> *E.45.1. copies of its Annual Accounts for T-1 (and T-2 if these have not previously been submitted to the Board) together with copies of the directors' report(s) and auditors' report(s) on those accounts;*
>
> *E.45.2. its estimated profit and loss account and balance sheet for T which shall:*
>
> *E.45.2.1. be prepared in all material respects in a format similar to the Club's Annual Accounts; and*
>
> *E.45.2.2. be based on the latest information available to the Club and be, to the best of the Club's knowledge and belief, an accurate*

estimate as at the time of preparation of future financial performance; and

E.45.3. if Rule E.46 applies to the Club, the calculation of its aggregated Adjusted Earnings Before Tax for T, T-1 and T-2 in Form 3A.

Guidance

The Board will in due course consider the Annual Accounts for the Accounting Reference Period in respect of which information pursuant to Rule E.45.2 is submitted and in particular examine whether any material variances indicate that the estimated financial information was not prepared in accordance with Rule E.45.2.2.

E.46. If the aggregation of a Club's Earnings Before Tax for T-1, T-2 and T-3 results in a loss then the Club must submit to the Board the calculation of its Adjusted Earnings Before Tax for each of T, T-1, T-2 and T-3.

E.47. If the PSR Calculation results in a loss of up to £15m, then the Board shall determine whether the Club will, until the end of T+1, be able to pay its liabilities described in Rule E.14.7.1 and fulfil the obligations set out in Rules E.14.7.2 and E.14.7.3.

E.48. If the PSR Calculation results in a loss of in excess of £15m then the following shall apply:

E.48.1. the Club shall provide, by 31 March in the relevant Season, Future Financial Information to cover the period commencing from its last accounting reference date (as defined in section 391 of the Act) until the end of T+2 and a calculation of estimated aggregated Adjusted Earnings Before Tax until the end of T+2 based on that Future Financial Information;

E.48.2. the Club shall provide such evidence of Secure Funding as the Board considers sufficient; and

E.48.3. if the Club is unable to provide evidence of Secure Funding as set out in Rule E.48.2, the Board may exercise its powers set out in Rule E.15.

E.49. If the PSR Calculation results in losses of in excess of £105m:

E.49.1. the Board may exercise its powers set out in Rule E.15; and

E.49.2. the Club shall be treated as being in breach of these Rules and accordingly the Board shall refer the breach to a Commission constituted pursuant to Section W of these Rules (Disciplinary).

E.50. The sum set out in Rule E.49 shall be reduced by £22m for each Season covered by T-1, T-2 and T-3 in which the Club was in membership of The Football League."

21. The effect of these Rules is thus as follows. By a combination of Rules 45 and 46, each Club, competing in the PL in each Season was required to submit by 1 March its accounts for T-1 and T-2 and its estimated profit and loss account and balance sheet for T. The latter were to be prepared in all material respects in a format similar to the Club's Annual Accounts and

were to be, on the information then available to the Club, an accurate estimate of future financial performance. If the Club's aggregate Earnings Before Tax for the three previous financial years resulted in a loss, then the Club was required to submit the calculation of its Adjusted Earnings Before Tax for each of T, T-1, T-2 and T-3.

22. In each of the immediately following Rules (E.47, E.48 and E.49) the exercise that was to be done and submitted to the Board by 1 March in each Season pursuant to E.45.3., is referred to as "the PSR Calculation".

23. Depending upon the level of loss revealed by the PSR Calculation, certain consequences followed. By Rule E.47, if the PSR Calculation resulted in a loss of up to £15 million the Board of the PL was to determine whether the Club would be able to discharge certain liabilities and fulfil certain obligations until the end of the 2023/24 Season (T+1).

24. By Rule 48, if the loss revealed by the PSR Calculation exceeded £15 million, certain more serious consequences followed. In that event, the Club was required to provide by 31 March certain defined financial information along with a forecast of its Adjusted Earnings Before Tax for the period up to the end of the 2024/25 Season (T+2). If the forecast losses exceeded £15 million, the Club would also be required to provide evidence sufficient to the Board of Secure Funding; and if the Club proved unable to do this, the Board had power to refuse applications by the Club for the registration of players. In that event, the Board would also have power to require the Club to produce and submit to a budget and to provide additional financial information (in summary, the powers conferred by Rule E.15).

25. By Rule 49, if the PSR Calculation resulted in a loss exceeding £105 million then, in addition to exercising the powers conferred by Rule E.15, the Club was to be "*treated as being in breach of these Rules*" and the Board was to refer the breach to a Commission constituted pursuant to the disciplinary provisions in the Rules.

26. Finally, Rule 50 provided for the loss threshold of £105 million to be reduced for each of the previous relevant Seasons in which the Club had been a member of the English Football League ("the EFL").

27. Rules 45 to 50 are evidently intended to operate as a coherent scheme which envisages a sequence of steps and, depending on the existence and extent of a forecast loss, provides for consequences of increasing seriousness. On its face, the scheme would appear to apply to

the Clubs that compete in the PL for the Season in which the PSR Calculation is to be made. Thus, E.45 begins with the words "Each Club shall by 1 March in each Season…"; and the further references to "the Club" in each of the ensuing Rules tend to suggest that each such reference is a reference back to the same set of Clubs.

28. As noted above, "PSR Calculation" is a term defined by reference to a Club's Annual Accounts. However, the references to the PSR Calculation in Rules E.47 and E.48 cannot refer to a PSR Calculation as defined, as the steps contemplated by Rules E.47 and 48 take place before 31st May, the first date to which a Club's Annual Accounts may be prepared under the Rules. In those Rules therefore, the reference to the PSR Calculation must be to a calculation that included the Club's forecast Adjusted Earnings Before Tax for T submitted pursuant to Rule E.45.3.

29. Before the Appeal Board it was common ground that while Rules E.47 and E.48 referred to a PSR Calculation assessed on the basis of estimated Adjusted Earnings Before Tax for T, the PSR Calculation referred to in Rule E.49 referred, in contrast, to an assessment made by reference to the Earnings Before Tax stated in the Annual Accounts for T. As will become apparent, on the reasoning of the Appeal Board this proved to be an important concession, as it meant that by the time the PSR Calculation referred to in Rule E.49 could first be made, LCFC had transferred its PL share and had ceased to be a member of the PL.

30. Against this background, the Appeal Board held that Rule E.49 applied only to a Club as defined and LCFC was no longer a Club to which the Rules applied by the time the PSR Calculation for FY 23 could first be made. On the Appeal Board's reasoning, as no breach of the PSR during FY 2022/23 could have occurred before the Annual Accounts for that year had been prepared, it followed that LCFC could not have been in breach of the PSR. Further, to take into account under Rule E.49 figures which, inter alia, reflected the now relegated Club's financial decisions and fortunes in the period after its relegation was incongruous. Its financial fortunes might have been affected by decisions taken after its relegation; for example, it might have received sponsorship or have transferred players, so as to eliminate or reduce any final accounting loss. On this basis the Appeal Board ruled that the Commission's conclusion that it had jurisdiction to investigate an alleged breach of the PSR in FY 2022/23 was wrong.

31. It is against this decision that the PL appeals to the Tribunal under Section X of the Rules.

The hearing of the disputes

32. The present appeal along with the FY 24 Dispute, was heard before the Tribunal over two days on 4 and 5 April 2025. At the hearing the PL was represented by Mr Connall Patton KC, instructed by Linklaters LLP and LCFC was represented Mr Timothy Otty KC and Mr David Lowe, instructed by Centrefield LLP. Neither party adduced oral evidence and both parties submitted helpful skeleton arguments in advance of the hearing.

Grounds for review of a decision of the Appeal Board

33. Under Rule X.3 a dispute arising from a decision of the Appeal Board is categorised as a "Disciplinary Dispute".

34. Rule X.4 states:

> *"In the case of a Disciplinary Dispute, the only grounds for review of a decision of a Commission or Appeal Board by way of arbitration under this Section X shall be that the decision was:*
> *X.4.1. reached outside of the jurisdiction of the body that made the decision;*
> *X.4.2. reached as a result of fraud, malice or bad faith;*
> *X.4.3. reached as a result of procedural errors so great that the rights of the applicant have been clearly and substantially prejudiced;*
> *X.4.4. reached as a result of a perverse interpretation of the law; or*
> *X.4.5. one which could not reasonably have been reached by any Commission or Appeal Board which had applied its mind properly to the facts of the case."*

35. The PL's principal case was advanced under X.4.4, that the Appeal Board's decision was reached "*as a result of a perverse interpretation of the law"*. As the issue before the Appeal Board was one of construction of the Rules, and as contractual construction is a question of law, the PL submitted that the Appeal Board's construction of the Rules proceeded on the basis of a misinterpretation of English rules of construction. That, so the PL submitted, involved a misinterpretation of the law that could properly be described as "*perverse*".

36. The PL's alternative case, that the Appeal Board's decision was "*one which could not reasonably have been reached by any Commission or Appeal Board which had applied its mind properly to the facts of the case*" was argued only faintly. It was conceded that as the issue is one of contractual construction, X.4.5 is unlikely to add materially to the PL's case. It was contended, however, that the fact that the Appeal Board's construction of the Rules produced an outcome that was bizarre and unintended when considered against the

ostensible purpose of the PSR, suggested that it proceeded from a perverse interpretation of English principles of construction.

37. The PL invoked the range of dictionary meanings of the word perverse, contending that no further gloss was required. The definition of "*perverse*" in the Oxford English Dictionary includes: *"(of an argument, interpretation, etc.) unjustifiable, contradictory, distorted)"*. The definition also includes *"going or disposed to go against what is reasonable, logical, expected or required"* and *"contrary to an accepted standard or practice; incorrect, mistaken, wrong"*.

38. It is apparent that the dictionary definitions cover a range of meanings from merely incorrect, mistaken or wrong to holding an opinion that is contrary to or distorts that which is generally accepted as reasonable or orthodox. In oral argument before the Tribunal Mr Patton contended that it was enough for his purposes to show that the Appeal Board's decision was reached on a plain error of law. Although he rejected the analogy of the grounds for appeal of an arbitration award set out in section 69 of the Arbitration Act 1996, he contended that he could, if necessary, demonstrate that the Appeal Board's interpretation of the law of construction was "*obviously wrong*".

39. Mr Patton also rejected the argument that "*perverse*" connoted irrationality in the public law *Wednesbury* sense. He pointed out that the public law test of irrationality was habitually invoked to test the legality of the exercise of a statutory discretion and was not apposite in the current context. Furthermore, *Wednesbury* irrationality, which connotes a decision which no reasonable tribunal could have reached had it applied its mind only to relevant considerations, is reflected in the wording of X.4.5 . The reference to perversity in X.4.4 must, so Mr Patton submitted, mean something different.

40. Against this, Mr Otty for LCFC submitted that it is evident from a consideration of Rule X.4 and from the Rules generally that the intention was to circumscribe tightly a right to review by arbitration, decisions of the Commission or Appeal Board. The Rules, in particular the tight procedural time limits for the determination of PSR issues set out in Appendix 1 to the Rules, emphasise the desirability of speedy decision making. Furthermore, the narrow grounds for review in Rule X.4 are to be contrasted with the unfettered right to appeal decisions of the Board or Commission under Rule W.62. The words of Rule W.79 that "*Subject to the provisions of Section X of these Rules (Arbitration) the decision of an Appeal Board shall be final*" suggest a concern for finality other than in unusual, if not exceptional, cases. Finally, under Rule W.63 an Appeal Board is appointed by the Chair of the PL's Judicial Panel and must

include at least one member who has held judicial office. In this case the Appeal Board comprised two former members of the Court of Appeal and a senior King's Counsel.

41. The Tribunal accepts that a "*perverse interpretation of the law*" is intended to set a high bar. Had the intention been to allow a review on any error of law, X.4.4 could easily have so provided. In other areas of the law *"perversity"* is used as a synonym for *"irrational"*. See for example:

    R v Secretary of State for Home Department ex p. Brind [1991] AC 696 at 751D
    Tayeh v Barchester Healthcare Limited [2013] EWCA Civ. 29 at para 49; and
    Barrett v Wakefield [2010] EWCA Civ. 897 at para 11.

The Tribunal accepts that these are citations from very different legal contexts and must, accordingly, be treated with caution. Nevertheless, in conveying the notion of a failure in reasoning sufficiently serious to suggest irrationality, they are helpful in shedding light on what is meant in X.4.4. In our judgment a perverse interpretation of the law in the current context connotes an error of law so contrary to established principle as to have been the result of a serious want of reasoning or rationality. The test is intended to ensure that it will only be in cases of egregious misinterpretation of the law that decisions of the Appeal Board will be reversed.

The Appeal Board's Decision

42. The Appeal Board recognised that, while the appeal from the Commission was presented as an issue of jurisdiction, it turned on whether LCFC was, or could have been, in breach of the Rules.

43. The Appeal Board's decision began by setting out the relevant sections of the Rules. These included Rule B.3, the provision for a relegated Club to transfer its share in the PL to a promoted Club, whereupon the relegated Club ceases to be a member of the PL. The Appeal Board also referred to B.14 which, as noted above, provides that membership of the PL shall constitute an agreement between the Club and the PL and between each Club to abide by various instruments, including the Rules. The decision then set out or referred to the relevant definitions, including the definitions of "Club", "Annual Accounts", the Accounting Reference Period indicated by "T", and the Accounting Reference Periods preceding and following T. The

decision also cited the definition of "Adjusted Earnings Before Tax" which, as explained above, was defined by reference to "Earnings Before Tax" as stated in the Annual Accounts.

44. The Appeal Board went on to observe that the PSR were contained within Section E of the Rules entitled "*Clubs – Finance*", under the sub-heading "*Profitability and Sustainability*". It then proceeded to set out in full Rules E.45 to E.50.

45. Having set out or referred to the relevant Rules and definitions, the Appeal Board proceeded to recite the material facts, including that during 2023 LCFC prepared its accounts to the year ending 30 June 2023, as it was entitled to do under section 392 of the Companies Act 2006. As the Appeal Board observed, 30 June was an accounting reference date that fell within the date range permitted by the definition of Annual Accounts in Section A of the Rules. Crucial to the Appeal Board's later reasoning and conclusion was that on 13 June 2023 LCFC had ceased to be a member of the PL upon transfer of its share to Luton Town. At that point LCFC ceased to be a Club within the definition in Section A of the Rules.

46. After citations from the PL's Complaint, the parties' respective submissions and the Commission's decision, the Appeal Board set out its reasoning.

47. The reasoning was prefaced by a citation from the judgment of Lady Justice Carr DBE in *ABC Electrification Limited v National Rail Infrastructure Ltd* [2020] EWCA Civ. 1645. The passages cited collected together the material sections of the judgments of the Supreme Court in:
Rainy Sky SA v Kookmin Bank [2011]1 WLR 2900;
Arnold V Britton and others [2015] AC 1619; and
Wood v Capita Insurance Services Ltd [2017] AC 1173.
These three judgments of the Supreme Court cited in ABC *Electrification* authoritatively settled English law on contractual construction.

48. The common ground between the parties cited at paragraph 49 of the Appeal Board's decision (and mentioned in paragraph 29 above) evidently had an important influence on its reasoning. There the Appeal Board observed that it was common ground that Rules E.45, E.47 and E.48 refer to a PSR Calculation based, so far as T is concerned, on an estimate, whereas Rule E.49 refers to a PSR Calculation based on audited accounts.

49. Against this background, the Appeal Board rejected the Commission's finding that it was impossible to determine at what point in time the PSR had been breached. The Appeal Board

found to the contrary, namely that the PSR Calculation as regards T (which required LCFC's Adjusted Earnings Before Tax to be calculated from the Annual Accounts for the Accounting Reference Period ending 30 June 2023) could not be carried out until, at the earliest, the accounts for that financial year had been prepared. No breach of the PSR could have occurred before that date; and until that date it remained open to LCFC to take whatever steps were necessary to bring its losses below the threshold set by Rule E.49.

50. The Appeal Board found that the Rules, including in particular the PSR, applied only to Clubs as defined, or at most to clubs which were members of the PL when the alleged contravention occurred or entitlement arose. As LCFC was no longer a Club by the earliest date on which the PSR could have been breached, the Appeal Board concluded that there had been no breach of the PSR.

51. In its conclusion the Appeal Board recognised that the outcome depended upon the adventitious decision of LCFC to change its accounting reference date for 2022/23 to a date that fell after it had ceased to be a member of the PL. However, the Appeal Board went on to observe *"... this results from the discrepancy between the requirement of Rule A.1.8[1] and the chronology in the PSRs. The PSRs would seem to have been drafted without taking Rule A.1.8 into account*."

The PL's criticisms of the decision

52. The PL's criticisms focus on paragraphs 45 and 46 of the Appeal Board decision which state as follows:

> *"45. As can be seen in the above judgment of Lady Carr LCJ (as she now is), primacy is to be given to the express words of a contract as against appeals to common sense or economic considerations. As she said:*
>
> *"Commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language."*
>
> *46. In the judgment of the Appeal Board, a Club should be able to determine its conduct and liabilities from the words of the Rules, and unless they are truly ambiguous or nonsensical should not have to consider the unwritten intentions of the PL and the other Clubs."*

[1] The definition of Annual Accounts, containing the permitted accounting reference dates.

53. The passage cited by the Appeal Board in its paragraph 45 is drawn from paragraph 18 iv) of the judgement of Lady Justice Carr in *ABC Electrification Ltd.* That passage was taken in turn from the judgment of Lord Neuberger in *Arnold v Britton*. The relevant passage continued as follows:

> "*Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made"*

54. In brief therefore, Lord Neuberger in *Arnold v Britton* and Lady Carr in citing the passage in *ABC Electrification* drew a distinction between invoking commercial considerations retrospectively to rewrite the meaning of a contract in light of how it had worked out for one of the parties, and having regard to commercial common sense when interpreting what the parties must be taken to have intended at the time they contracted. It is not just permissible but obligatory to have regard to the context in which an agreement was made in deciding what a reasonable person in the position of the parties at the time of the agreement would have understood the parties to mean.

55. The crux of the PL's criticism of the Appeal Board's decision focusses on paragraph 46. There, it is said, the Appeal Board clearly erred in law by holding that the "*unwritten intentions of the PL and the other Clubs*" should not be considered unless the Rules in question "*are truly ambiguous or nonsensical*".

56. The reference to "*unwritten intentions*" is somewhat obscure, but the PL submits that it must be taken as a reference to the objectively inferred intentions of the parties, as it is axiomatic that the subjective intentions of contracting parties are inadmissible in construing a contract. But whatever the reference to unwritten intentions may be taken to mean, the PL submits that this passage in the Appeal Board's decision reveals the error of failing to have proper regard in interpreting the meaning of the Rules to their presumed purpose and to considerations of commercial common sense. The PL submits that it is apparent from paragraph 46 of the decision that the Appeal Board considered it unnecessary to have regard to such considerations unless the words in question were first found to be truly ambiguous or nonsensical.

57. This, so the PL contended, involved a misinterpretation of *Rainy Sky* and the two later decisions of the Supreme Court that considered it.

58. In his judgment in *Rainy Sky* Lord Clarke addressed a difference of opinion apparent in the judgments in the court below regarding the weight to be attached to considerations of business sense in interpreting the meaning of words in a contract and the circumstances in which it was permissible to have recourse to such considerations in deciding whether to give effect to the natural meaning of the words in question.

59. In his judgment in the Court of Appeal in *Rainy Sky*, Sir Simon Tuckey had cited with approval the well-known dictum of Lord Reid in *Wickman Machine Tools Sales Ltd v L Schuler AG* [1974] AC 235, 251:

"The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result, the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear".

Sir Simon went on to cite the equally familiar passage in the speech of Lord Diplock in *The Antaios [1985]* AC 191, 201:

"If detailed and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense it must yield to business common sense"

On the approach of Sir Simon Tuckey, such considerations, while not justifying the rewriting of a contract that is amenable to only one construction, form part of the process of ascertaining what the words in question would have meant to a reasonable person in the position of the contracting parties, possessed with knowledge of all relevant circumstances known or available to the parties. Accordingly, where there are two possible constructions, such considerations justify the rejection of an interpretation that flouts business sense.

60. In contrast, in his judgment in the Court of Appeal Patten LJ said that:

"*Unless the most natural meaning of the words produces a result which is so extreme as to suggest that it was unintended, the court has no alternative but to give effect to its terms. To do otherwise would be to risk imposing obligations on one or other party which they were never willing to assume and in circumstances which amount to no more than guesswork on the part of the court*"

61. After citing the different approaches, Lord Clarke, in a judgment with which the other members of the court agreed, rejected this passage in the judgment of Patten LJ, observing at paragraph 20:

> *"It is not in my judgment necessary to conclude that, unless the most natural meaning of the words produces a result so extreme as to suggest that it was unintended, the court must give effect to that meaning.*
>
> *21 The language used by the parties will often have more than one potential meaning. I would accept the submission made on behalf of the appellants that the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other."*

62. In *Arnold v Britton* the Supreme Court was called upon to consider Lord Clarke's judgment in *Rainy Sky* in the context of a covenant in leases which provided for the payment of a service charge to be increased at a compound rate of 10% per annum. The court found that the covenant would have had an explicable commercial rationale when the leases were agreed but had since worked out badly for the tenant as a result of the rates at which inflation had developed subsequently.

63. Lord Neuberger gave the judgment with which the other members of the court agreed. At paragraph 15 of the judgment, he said this:

> "*When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean, to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of a party's intentions.*"

64. Lord Neuberger went on to explain that while regard must be had to commercial common sense and the apparent overall purpose of the contract in determining what the words in question would have meant to a reasonable person having the background knowledge

available to the parties at the time of contract, commercial common sense is not to be invoked retrospectively to justify departure from a contractual arrangement that is clear in its natural language but which has worked badly, or even disastrously, for one of the parties. Thus, at paragraph 19:

> *"Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made. Judicial observations such as those of Lord Reid in Wickman Machine Tools Sales Ltd v L Schuler AG [1974] AC 235, 251 and Lord Diplock in Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios) [1985] AC 191, 201, quoted by Lord Carnwath JSC at para 110, have to be read and applied bearing that important point in mind."*

65. The importance ascribed in Lord Neuberger's judgment to the natural meaning of words in determining the meaning intended when parties use them in their contract, along with his strictures against retrospective recourse to commercial considerations to resist the clear meaning of a contract that had worked out badly for one of the parties, led to it being suggested in *Wood v Capita* that the Supreme Court in *Arnold v Britton* had "rowed back" from the approach evident in *Rainy Sky*.

66. This proposition was firmly rejected by the Supreme Court in *Wood v Capita*. The judgment, with which the other members of the court agreed, was given by Lord Hodge and the other members of the court included Lords Neuberger and Clarke. In explaining why he did not accept that *Arnold v Britton* involved a recalibration of the approach summarised in *Rainy Sky* Lord Hodge said this:

> *"10 The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.*
>
> .....
>
> *11 Lord Clarke of Stone-cum-Ebony JSC elegantly summarised the approach to construction in the Rainy Sky case [2011] 1 WLR 2900, para 21f. In the Arnold case [2015] AC 1619 all of the judgments confirmed the approach in the Rainy Sky case: Lord Neuberger of Abbotsbury PSC, paras 13—14; Lord Hodge JSC, para 76 and Lord Carnwath JSC, para 108. Interpretation is, as Lord Clarke JSC stated in the Rainy Sky case (para 21), a unitary exercise; where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense. But, in striking a balance between the indications given by the language and the implications of the competing constructions the*

court must consider the quality of drafting of the clause (the Rainy Sky case, para 26, citing Mance LJ in Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd (No 2) [2001] 2 All ER (Comm) 299, paras 13, 16); and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest: the Arnold case, paras 20, 77. Similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms."

67. Lord Hodge went on to explain that while it does not matter in what order it is carried out, the unitary exercise of construction involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences. Finally, while a court may be more amenable to departing from the literal meaning of words in cases of informal agreements than in cases concerning detailed and professionally drawn contracts, this is by no means a principle of universal application as "*negotiators of complex formal contracts may often not achieve a logical and coherent text*".

68. It is clear, therefore, that in interpreting the meaning of words in a contract it is obligatory to consider the words in question in their contractual setting and the contract in which they appear in its context. This is merely part of considering all relevant circumstances known or reasonably available to the parties when they reached agreement which might shed light on the contract's overall purpose and intended meaning. If, but only if, that exercise, reveals two possible constructions, a court is entitled to prefer the construction that is consistent with business common sense and to reject the other.

Analysis

Interpretation of the Rules

69. Having reviewed the decision of the Appeal Board in light of the approach to construction mandated by the Supreme Court in *Rainy Sky*, *Arnold v Britton* and *Wood v Capita,* the Tribunal has come to the conclusion that the PL's criticism of the Appeal Board's approach to construction is well founded.

70. In the Tribunal's judgment the Appeal Board erred in law in determining that effect should be given to the natural meaning of the words of the Rules unless the words in question "*are truly ambiguous or nonsensical*". The proposition that there should be no consideration of "*the unwritten intentions of the PL and other Clubs*" other than in cases

of true ambiguity or a nonsensical outcome involved adopting the approach rejected by the Supreme Court in *Rainy Sky* in a passage subsequently endorsed by *Arnold v Britton* and *Wood v Capita*. Specifically, the approach of the Appeal Board was contrary to the conclusion of Lord Clarke in *Rainy Sky* that:

> " *It is not in my judgment necessary to conclude that, unless the most natural meaning of the words produces a result so extreme as to suggest that it was unintended, the court must give effect to that meaning"*.

71. As previously observed, the Tribunal finds the reference to "unwritten intentions" somewhat ambiguous; but whatever those words were intended to mean, in the Tribunal's judgment they reveal an approach by which effect was given to the most natural meaning of the words in question without attempting to interpret their intended meaning in context, that is to say, having regard to the evident business purpose of the section of the Rules of which the words formed part. In the Tribunal's judgment this amounted to an exercise in literalism which gave no, or insufficient, consideration to context as an aid to determining intended meaning.

72. It is correct, as Mr Otty pointed out, that the Appeal Board tested its construction against the commercial consequences it produced. In the Tribunal's judgment, however, this was simply an exercise in asking whether application of the natural meaning of the language produced a "*nonsensical*" outcome – the incorrect test posed by paragraph 46 of the Appeal Board's decision.

73. In testing whether giving effect to the natural meaning of the words in question would produce a nonsensical outcome, the Appeal Board observed, correctly, that it was open to LCFC to bring itself within the £105 million loss threshold at any time before its accounting reference date by, for example, selling players. And, as Mr Otty pointed out, LCFC would have succeeded in doing just that had the transfer monies from the sale of Player A to [redacted] come through in June rather than in July 2023. But although this may afford support for the Appeal Board's conclusion that no breach of the PSR may be committed before the Annual Accounts for the financial year in question are prepared, it is neutral as to whether all Clubs that competed in the PL during the Season in question remain liable for breaches of Rule E.49 notwithstanding their relegation at the end of the Season and cessation of membership of the PL before their accounting reference date.

74. The Appeal Board also considered that the effects of a breach of the PSR by a relegated club would only be felt in the EFL and that an outcome that left any jurisdiction over the matter to the EFL was not, therefore, inappropriate. But this appears to have overlooked the fact that, having found there was no breach of the PSR, there was nothing left for the EFL to investigate. Furthermore, a breach of the PSR may have an unfair impact on a relegated Club's end of Season position in the PL and thus on the relative share of other relegated Clubs in the Merit Payments Fund.

75. The real problem, however, with the Appeal Board's approach is that it appears to have disregarded the evident purpose of the scheme contained in Rules E.45 to E.50. Specifically, in considering whether Rule E.49 was intended to apply to any Club that had competed in the PL during the Season in which the PSR Calculation was to be performed, the decision of the Appeal Board appears not to have had regard to the evident purpose of the scheme constituted by this section of the Rules.

76. As mentioned previously, Rules E.45 to 49 provide for a sequence of steps and for measures of increasing seriousness depending upon the scale of losses produced by the calculation required by E.45.3. The opening words of E.45 "*Each Club shall by 1 March in each Season…*" strongly suggest that if, as is evidently the case, these Rules do operate as a series of steps in a scheme, the scheme is intended to apply to each Club that is a member of, and competing in, the PL during the Season in question. The multiple references to "*the Club*" in the Rules that follow in this section obviously refer to the same Clubs to which E.45 applies.

77. The clear impression evident from the content and sequencing of these Rules is that they are intended to operate as a coherent scheme which applies in its entirety to each Club competing in the PL during the Season in which the PSR Calculation is to be performed. That impression is strengthened by the "Guidance" that follows Rule E.45. The "Guidance" makes it clear that in due course the Board will examine the Annual Accounts for the accounting reference period in respect of which the information pursuant to E.45.2 has been supplied in order to check that the Clubs have been consistent in their methodology. The expectation, therefore, is that the PL will maintain jurisdiction to investigate in due course the Annual Accounts for each Club. There is no suggestion that this may exclude those Clubs that are relegated at the end of the Season and whose Annual Accounts may be prepared to dates that postdate their departure from the PL.

78. The fact that "Club" is a term defined in the Rules by reference to membership of the PL weighed heavily with the Appeal Board. Furthermore, the Appeal Board noted that the definition of Club was extended for certain limited purposes and included clubs that were entitled to be promoted. As LCFC mentioned in argument, there is also a definition of Relegated Club, meaning a club that remains relegated for three successive Seasons. It was, accordingly, submitted forcefully by LCFC that the fact that these definitions do not include a relegated club that has ceased to be a member of the PL, conclusively demonstrates that Rule E.49 cannot be breached by a club that competed in the PL during the Season in question but which, following relegation to the EFL, had ceased to be a member of the PL by the date to which its Annual Accounts were prepared.

79. These are undoubtedly highly material considerations, but in the Tribunal's judgment the Appeal Board was wrong to conclude that they were conclusive. It is clear, in fact it was common ground before the Appeal Board, that terms are not always used in their defined sense in Rules E.45 to E.49. Thus, "*PSR Calculation*" is a term defined by reference to the Annual Accounts, but it is accepted that it is not used in this sense in Rules E.47 and E.48.There is evidence, therefore, of words not being given their defined meaning in this section of the Rules.

80. Similarly, although "*Club*" is a defined term, a fair reading of Rules E.45 to E.50 suggests that the repeated references to "*the Club*" throughout these Rules all echo the reference to "*Each Club*" in the opening words of Rule E.45. All such references denote a Club competing in the PL on and before 1 March during the Season in which the machinery in E.45 to E.50 is triggered. The inference from these Rules is that a Club to which E.45 to E.48 applies does not cease to be a Club to which E.49, the culminating Rule in the sequence, applies, simply because it is relegated and ceases to be a member of the PL before its Annual Accounts are prepared.

81. In *Europa Plus SCA IF & another v Anthracite Investments (Ireland) PLC* [2016] EWHC 437 (Comm), Mr Justice Popplewell considered the weight to be afforded to defined terms in the process of contractual construction. Pertinently for present purposes, at paragraph 29 of his judgment he began his analysis by citing the judgment of Lewison LJ in *Napier Park European Credit Opportunities Fund v Harbourmaster Pro-Rata* [2014] EWCA Civ. 984. At paragraph 36 of his judgment, in a passage which addressed the correct approach

to determining whether contractual language was ambiguous and susceptible to more than one meaning, Lewison LJ said this:

"I do not therefore agree with Mr Snowden that commercial considerations have no part to play in deciding whether a particular interpretation is or is not ambiguous. Moreover, to say that ambiguity or unambiguity is the governing factor may be to miss the point. As Lord Sumption observed in Sans Souci Ltd v VRL Services Ltd [2012] UKPC 6 at [14]: "It is generally unhelpful to look for an "ambiguity", if by that is meant an expression capable of more than one meaning simply as a matter of language. True linguistic ambiguities are comparatively rare. The real issue is whether the meaning of the language is open to question. There are many reasons why it may be open to question, which are not limited to cases of ambiguity""

82. Having comprehensively set out the principles of construction that have been set out earlier in this Award and having cited this passage in the judgment of Lewison LJ, Popplewell J turned [at paragraph 30] to the implications of defined terms in questions of construction:

"These principles apply to the interpretation of contractual provisions using defined terms. As is well known, the use of defined terms in commercial contracts is a commonplace; they are a convenient drafting technique as shorthand labels to express a concept or meaning more fully set out in the defined term (cf) Chartbrook at [17]). Where the Court is interpreting a contractual provision which uses a defined term, the starting point for a textual analysis will often be the defined meaning, because the fact that the parties have chosen to use it in the provision being interpreted is often an indication that they intended it to bear its defined meaning when so used. Often, but not always. It is a common experience that defined terms are not always used consistently by contractual draftsmen throughout a commercial contract. Where a defined term is used inconsistently within a contract, so as sometimes to bear the defined meaning and sometimes a different meaning, the potency of the inference that the parties intended it to bear its defined meaning in a particular provision is much diminished. The question becomes whether they intended to use it in its defined meaning, as in some other clauses, or as meaning something other than its defined meaning, as in different other clauses. Even where there is no inconsistency of use within the contract outside the provision being interpreted, it does not follow that effect must always be given to the defined meaning. If, as is well known, parties sometimes use defined terms inappropriately, it follows that they may have done so only once, in the provision which is being interpreted. The process of interpretation remains the iterative process in which the language used must be tested against the commercial consequences and the background facts reasonably available to the parties at the time of contracting. Such an exercise may lead to the conclusion that the parties did not intend the defined term to bear the defined meaning in the provision in question. That is no different from the Court concluding that the parties intended a word or phrase to have a different meaning from what would at first sight seem to be its ordinary or natural meaning."

83. The Appeal Board does not appear to have had the advantage which we have had of having this judgment cited. Adopting the approach to construction described in *Europa Plus* in cases

in which the meaning of a defined term is in issue, the Tribunal has come to the clear conclusion that the expression "the Club" bore a consistent meaning throughout Rules E.45 to E.50: in Rule E.49, as in the rest of this section of Rules, it meant any Club competing in the PL for the Season in which the PSR Calculation falls to be performed. Accordingly, the fact that LCFC was such a Club means that the PL had jurisdiction to investigate a breach of the PSR during FY23 notwithstanding LCFC had ceased to be a member of the PL by the time its Annual Accounts for 2022/23 came to be prepared. The Tribunal acknowledges that this conclusion means that a Club with an accounting period which extends beyond a date when it is relegated (as here, with respect to the period from 31 May to 30 June 2023) will have a PSR Calculation for the purposes of Rules E.47 to E.49 which may have been influenced by its changed circumstances after relegation. That is a matter that could be very relevant if and when the Board of Directors came to exercise its discretion under any of those Rules. It is not however a matter which in the Tribunal's view outweighs the evident anomaly which arises from the Appeal Board's conclusion that a relegated Club with an accounting period which by a short period extends beyond the date of relegation cannot answer at all under the PSR for any part of the relevant Season. In the Tribunal's judgment, therefore, The Commission did have jurisdiction to investigate the PL's FY23 complaint.

Perverse Interpretation of the Law?

84. It does not follow, however, from the Tribunal's conclusion that the Appeal Board was wrong in concluding that the Commission had no jurisdiction to investigate a breach of the PSR by LCFC in FY 2022/23 that its decision was the result of a perverse interpretation of the law.

85. The Appeal Board's decision was logically reasoned and resulted from a coherent application of defined terms in the Rules. It is clear from paragraphs 42 to 51 above that the Appeal Board did consider the issue by reference to the wording of the relevant sections of the Rules and that it did address the commercial or practical implications of its construction (see paragraphs 72 and 73 above) albeit, in our judgment, for the limited purpose of testing whether the interpretation at which it had arrived produced an absurd or nonsensical outcome. Furthermore, the Appeal Board was justified in observing that the drafters of the PSR appear simply to have overlooked the implications of the range of accounting reference dates permitted by Rule A.1.18 in the application of these dates to relegated Clubs (see paragraph 51 above).

86. Having said that, the Tribunal has found justified the criticism that the Appeal Board failed to have due regard to the evident purpose of the scheme contained in Rules E.45 to E.50. However, we have no doubt that the concession that Rule E.49 could only apply to a PSR Calculation performed by reference to final figures in the Statutory Accounts (a concession which in the Tribunal's view is incorrect[2]) deflected the Appeal Board from engaging in detailed analysis of the scheme contained in Rules E.45 to E.50. Furthermore, in treating the defined meaning of "*Club*" as decisive the Appeal Board did not have the advantage afforded to us of the judgment and reasoning in *Europa Plus*.

87. Although in the Tribunal's judgment the Appeal Board's approach to construction was wrong in the respects we have described, its decision cannot sensibly be seen as resulting from a perverse interpretation of the law. There was no want of rationality and no failure of reasoning. Accordingly, the PL's appeal under Rule X.4.4 is dismissed.

88. It follows from the Tribunal's conclusion, that the PL's argument under X.4.5 also fails. The Appeal's Board's decision cannot be characterised as one to which no reasonable Appeal Board that had applied its mind properly to the facts of the case could have come.

The FY 24 dispute.

89. The issue here is whether under the Rules in force for the 2024/25 Season, the PL has jurisdiction to investigate a breach by LCFC of the EFL's profitability and sustainability rules ("the P&S Rules) occurring during the 2023/24 Season when LCFC competed in the EFL Championship.

90. This depends upon whether the provisions for transfer jurisdiction in the Rules of the PL for the 2024/25 Season when LCFC was promoted and once again became a member of the PL, are engaged on the facts.

91. E.77 of the Rules of the PL for the 2024/25 Season states as follows:

> "*Where a Promoted Club or any Official or Director of that Promoted Club, at the point at which it becomes a member of the League pursuant to Rule B.4, is the subject of an investigation by the EFL for alleged breaches of any aligned provisions within the EFL Regulations, responsibility for that investigation will pass to the Board. In such a case:*

[2] See by analogy paragraphs 100 and 101 below.

E.77.1. the Board's powers of inquiry set out at Rule W.1 will apply in full in respect of the investigation (with the reference to 'these Rules' in Rule W.1 deemed to include the relevant aligned EFL Regulations); and
E.77.2. the Board's disciplinary powers set out in Section W (Disciplinary) of these Rules will apply in full in respect of the matter (with the reference to 'these Rules' in Rule W.3 and W.7, deemed to include the relevant aligned EFL Regulations)."

92. Thus, the PL acquires transfer jurisdiction under E.77 only when a Promoted Club at the time at which it is admitted to membership of the PL is the subject of an investigation by the EFL for an alleged breach of any aligned provisions within the EFL Regulations. It is not disputed that the P&S Rules are aligned to the PSR, the issue is whether LCFC, on the date on which it once again became a member of the PL (on or about 5 June 2024), was under investigation by the EFL for an alleged breach of its P&S Rules.

93. The P&S Rules applicable to LCFC during the 2023/24 season are contained in Appendix 5 of Section 6 of the EFL Regulations: they are the Championship Profitability and Sustainability Rules in Part 1 of the Financial Fair Play Rules. The PL's Rules E.45 to E.49 are substantially reproduced in Rule 2 of the P&S, albeit the terminology and loss thresholds are different and Rule 2 of the P&S contains some additional provisions. The sections of Rule 2 of the P&S Rules that substantially reproduce E.45 to E.49 of the Rules state:

"***Profitability and Sustainability***"
2.1 Each Club shall by 1 March in each Season submit to The League:
2.1.1 copies of its Annual Accounts for T-1 (and T-2 if these have not previously been submitted to The League) together with copies of the Directors' report(s) and auditor's report(s) and agreed upon procedures (where relevant), on those accounts;
2.1.2 a Player Registration Schedule;
2.1.3 its estimated profit and loss account and balance sheet for T which shall:
(a) be prepared in all material respects in a format similar to the Club's Annual Accounts; and
(b) be based on the latest information available to the Club and be, to the best of the Club's knowledge and belief, an accurate estimate as at the time of preparation of future financial performance; and
(c) if Rule 2.5 applies to the Club its P&S Calculation in a form approved by The League from time to time and which as at the date of these Rules is set out in Annex 1;

.....

<u>Guidance</u>
The League will in due course consider the Annual Accounts for the Accounting Reference Period in respect of which information pursuant to Rule 2.2 is

submitted and in particular examine whether any material variances indicate that the estimated financial information was not prepared in accordance with Rule 2.1.3(b)

.....

2.5 If the aggregation of a Club's Earnings Before Tax for T-1 and T-2 results in a loss, any consideration from Associated Party Transactions having been adjusted (if appropriate) pursuant to Rule 2.3, then the Club must submit to the Secretary its P&S Calculation.

2.6 If the P&S Calculation results in a loss of up to the Lower Loss Threshold (calculated in accordance with Rule 3), then The League shall determine whether the Club will, until the end of T+1, be able to fulfil its obligations as set out in 16.20.8 (a) to (d).

2.7 Where The League determines, in its reasonable opinion and having considered any information provided to it by the Club, that the Club may not be able to fulfil its obligations as set out in Regulations 16.19.1, 16.19.2 or 16.19.3, The League shall have the powers set out in Regulation 16.21.

2.8 If the P&S Calculation results in a loss that exceeds the Lower Loss Threshold, then the following shall apply:
2.8.1 the Club shall provide, by 31 March in the relevant Season, Future Financial Information to cover the period commencing from its last accounting reference date (as defined in section 391 of the 2006 Act) until the end of T+2 and a calculation of estimated aggregated Adjusted Earnings Before Tax until the end of T+2 based on that Future Financial Information;
2.8.2 the Club shall provide such evidence of Secure Funding as The League considers sufficient; and
2.8.3 if the Club is unable to provide evidence of Secure Funding as set out in Rule 2.8.2, The League shall have the powers set out in Regulation 16.21.

2.9 Where The League determines, in its reasonable opinion and having considered the Future Financial Information provided by the Club in accordance with Rule 2.8, that the Club is forecasting to breach the Upper Loss Threshold in T+1 and/or T+2 then The League shall have the powers set out in Regulation 16.21.

.....

2.10 If the P&S Calculation results in a loss that exceeds the Upper Loss Threshold (calculated in accordance with Rule 3) then:
2.10.1 the Club shall be subject to a Player registration embargo such that The League shall have the right to refuse any application made by that Club to register any Player or any new contract of an existing Player with that Club; and
2.10.2 the League may exercise its powers set out in Regulation 16.21; and
2.10.3 the Club shall be treated as being in breach of these Rules and accordingly the CFRU shall refer the breach to the CFRP in accordance with Appendix 6 of the Regulations."

94. The question before the Tribunal is whether the correspondence passing between the EFL and LCFC and their respective solicitors demonstrates that LCFC was the subject of an investigation by the EFL for an alleged breach of the P&S Rules by the date of its promotion

and readmission to the PL. No oral evidence was called; the issue was argued before us solely on the basis of the correspondence.

95. On 1 March 2024, the EFL and Club Financial Reporting Unit ("CFRU") wrote to LCFC noting that its P&S Calculation submitted under Rule 2.5 of the P&S forecasted a loss above the EFL Upper Loss Threshold of £83 million[3] and was, accordingly, forecasting a breach of the relevant Rules. The letter went on to say that the EFL/CFRU was required to refer the breach to the Club Financial Review Panel ("CFRP") and after citing the need to complete a Compliance Matter Report, observed that the matter "*should be considered an investigation for the purposes of the EFL Regulations.*" The letter informed LCFC that the CRFU was now considering implementing various of the measures triggered by the forecast of a loss exceeding the Upper Loss Threshold and that LCFC was now under a Player registration embargo.

96. On 7 March 2024, Centrefield replied to the EFL's letter on behalf of LCFC pointing out that the calculation submitted on 1 March pursuant to Rule 2 of the P&S Rules was a draft calculation only and that the PSR Calculation as defined in the EFL Regulations would involve a calculation of Adjusted Earnings Before Tax for T, which could only be undertaken by reference to the Annual Accounts prepared to 30 June 2024. Centrefield went on to submit that a breach of P&S Rule 2.10.3 could only be demonstrated by reference to a final PSR Calculation performed on the basis of the Annual Accounts for T. Accordingly, any allegation of breach of the P&S Rules was premature and currently it was neither right nor proper for a Player registration embargo or other measures to be imposed on LCFC.

97. On 14 March 2024, Freshfields Bruckhaus Deringer LLP ("Freshfields") responded to Centerfield's letter on behalf of the EFL. In response to Centrefield's contention that allegations of breach were premature Freshfields said this

> "*6. Contrary to the allegations set out in your letter dated 7 March 2024, the CFRU's actions pursuant to P&S Rule 2.10 are not premature. This contention appears to be based on the mistaken understanding that (i) P&S Rule 2.10 can only be triggered where "LCFC's final P&S Calculation", after the finalisation of its Annual Accounts on 30 June 2024, results in a loss exceeding the Upper Loss*

[3] The figure for the EFL Upper Loss Threshold is substantially lower than that for the PL. Hence Rule E.50 of the PL Rules.

Threshold; and (ii) until then, the P&S Calculation submitted by LCFC on 1 March 2024 is merely a "draft".

7. The P&S Rules do not in any way support the distinction between "draft" and "final" P&S Calculations that you seek to draw. P&S Rule 2.1.3(c) provides for the submission of a single P&S Calculation for Clubs caught by P&S Rule 2.5 by 1 March in the form set out at Annex 1. This P&S Calculation necessarily contains a forecast of a Club's Adjusted Earnings Before Tax in respect of T (as defined in P&S Rules 1.1.4 and 1.1.20) since all Clubs' Annual Accounts must be prepared to an accounting reference date falling between 31 May and 31 July (as per P&S Rule 1.1.5).

8. P&S Rules 2.6 through 2.10 go on to set out the consequences for a Club reporting a loss in its P&S Calculation, depending on whether such loss goes up to the Lower Loss Threshold, exceeds the Lower Loss Threshold or exceeds the Upper Loss Threshold. Read in context, it is very clear that these consequences flow from the P&S Calculation submitted by 1 March, rather than any "final" P&S Calculation submitted after the finalisation of the Club's Annual Accounts after the end of the season (to which there is no reference in the Rules). In particular:
(a) P&S Rule 2.8, which applies where a Club's P&S Calculation shows a loss exceeding the Lower Loss Threshold, specifically envisages further action being taken during the season and before the finalisation of the Club's Annual Accounts (namely, the provision of Future Financial Information by the Club "by 31 March in the relevant Season"). Further, P&S Rule 2.9 provides that the CFRU may exercise its powers under Regulation 16.21 in light of such information:
(b) P&S Rule 2.10.3, which applies where a Club's P&S Calculation shows a loss exceeding the Upper Loss Threshold, confirms that the Club must (from then on) be "<u>treated</u> as being in breach of these Rules" (emphasis added). This is notwithstanding the fact that the position may ultimately change by the time of the Club's financial year-end after the end of the season;"

98. Accordingly, Freshfields were alleging that on a true construction of Rule 2 of the P&S Rules, a P&S Calculation provided pursuant to Rule 2.5 that predicted a loss exceeding the Upper Loss Threshold triggered Rule 2.10.3. In that event Rule 2.10.3 provides that "*the Club shall be treated as being in breach of these Rules*". This was undoubtedly an allegation of an existing breach.

99. The Tribunal accepts LCFC's submission that for the transfer jurisdiction under E.77 of the PL's 2024/25 Rules to be engaged there must be an allegation of an existing breach, namely a breach that has occurred rather than one that is merely forecast to occur. It is not necessary to determine that an allegation of existing breach is made out or proven in order to engage jurisdiction under E.77, but the Tribunal accepts that the allegation of an accrued or existing breach must be arguable in the sense of being conceptually sustainable.

100. In the Tribunal's judgment a P&S Calculation provided under Rule 2.5 of the P&S Rules is to be treated as giving rise to a breach of Rule 2.10.3 if the calculation discloses a loss exceeding the Upper Loss Threshold, even though a final P&S Calculation cannot be performed before the Annual Accounts for T are available and the figures may be subject to adjustment.

101. Although the final figure for Earnings Before Tax in the Annual Accounts may bring a Club that had previously predicted a loss above the Upper Loss Threshold back within those limits, there is some utility in Rule 2.10.3 being triggered by estimated figures for T pending provision of the Annual Accounts. An estimated loss that exceeds the Upper Loss Threshold triggers an embargo on Player registration under Rule 2.10.1 and the fact that the Club is treated as being in breach of 2.10.3 makes it mandatory to refer the breach to the CFRP. Accordingly, the concept of a deemed breach pending the provision of Annual Accounts would appear to have real utility in triggering a referral to, and investigation by, the CFRP in advance of Annual Accounts for T being made available. Where a loss exceeding the Upper Loss Threshold is predicted, it makes sense that the referral to the CFRP should occur before Annual Accounts are available. Finally, the language of Rules 2.1 to 2.10 with its multiple references to "the P&S Calculation" affords no textual support for the proposition that while references to a P&S Calculation in Rules 2.1.3 (c), 2.5. 2.6 and 2.8 are, necessarily, to a calculation based on estimated figures for T, the reference to the P&S Calculation in 2.10 can only be to a calculation based on Annual Accounts for T.

102. Accordingly, the Tribunal concludes that at the point at which LCFC became a member of the PL on or about 5 June 2024 it was subject to an investigation by the EFL into an alleged breach of the EFL's aligned P&S Rules. Jurisdiction to investigate the alleged breach under E.77 of the PL's Rules for the 2024/25 Season is, therefore, established.

103. Having regard to the Tribunal's conclusion that the Appeal Board's construction of the PSR was wrong (albeit not the result of a perverse interpretation of the law) the hypothesis upon which the Tribunal was invited to find that the PL had direct jurisdiction to investigate a breach of the P&S Rules in Season 2023/24, does not arise. By analogy with the Tribunal's interpretation of the PSR in connection with the FY 23 dispute, the P&S Rules would apply to all clubs that competed in the Championship for the Season in respect of which the P&S Calculation was to be performed irrespective of whether any such club happened to be

promoted to the PL at the end of that Season and ceased to be a member of the EFL by the date to which its annual accounts were prepared.

For the above reasons the Tribunal awards and declares as follows:

(i) The Premier League's application to set aside the Appeal Board's decision of 30 August 2024 under X.4.4 and X.4.5 of the Rules of the Premier League for the 2022/23 Season is dismissed; and

(ii) the Commission has jurisdiction under E.77 of the 2024/25 Premier League Rules to investigate an alleged breach by LCFC of the EFL's P&S Rules in force for the 2023/24 Season

Dated: London 19 May 2025

Signed: 

Lord Mance

Signed: 

Lord Neuberger

Signed: 

Michael Crane KC