

**IN THE MATTER OF A PREMIER LEAGUE COMMISSION**

**PLJP 2024/1**

Mr Mark A. Hovell  
Mr Robert Glancy KC  
Mr Steve Holt FCA

7 & 8 March 2024

**BETWEEN**

**THE PREMIER LEAGUE**

**Claimant**

**AND**

**NOTTINGHAM FOREST FOOTBALL CLUB  
LIMITED**

**Respondent**

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**DECISION**

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## **1     INTRODUCTION**

- 1.1 By a complaint dated 15 January 2024, the Premier League Board (the “**Premier League**” or the “**PL**”) alleges that Nottingham Forest Football Club Limited (“**Forest**” or the “**Club**”) has acted in breach of the Premier League’s Profitability & Sustainability Rules (the “**PSR**”).
- 1.2 The Premier League’s case is that Forest’s PSR Calculation, dated 31 December 2023, demonstrates losses in excess of the £61m threshold applicable to Forest, as a newly promoted club. The Premier League considers that Forest’s PSR Calculation results in a loss of £95,536,000, breaching the £61m threshold by £34,536,000.
- 1.3 Forest accepts that it is in breach of the PSR but asserts that this ought to be considered in light of certain exceptional circumstances which the Commission has considered below.
- 1.4 The parties’ cases were pleaded in the Complaint dated 15 January 2024, the Answer dated 30 January 2024 and the Amended Answer dated 26 February 2024. The Hearing took place on 7 and 8 March 2024. The Premier League was represented by Jane Mulcahy KC and Mark Vinall, instructed by Linklaters LLP. Forest was represented by Nick De Marco KC and Tom Leary, instructed by Squire Patton Boggs (UK) LLP.
- 1.5 The parties relied on a significant quantity of documents to support their respective cases. The Premier League called one expert witness, and Forest, one expert witness and two employee witnesses. Proceedings were conducted expeditiously, in line with the PSR Standard Directions (the “**Standard Directions**”), and that has largely been possible due to the level of co-operation between the parties and the diligence of their respective representatives. The Commission commends them for this approach.
- 1.6 The Commission has made its Decision having considered all of the legal and factual evidence presented to it. The Commission has addressed in this Decision only those issues which remained unresolved at the close of the Hearing. However, the Commission has considered all of the issues raised in these proceedings, even if they have not been specifically or expressly addressed in this Decision.

## **2     WHO’S WHO**

- 2.1 Set out below are some individuals and organisations referred to in this Decision or in documents included in the Hearing Bundle:

- Evangelos Marinakis      Majority shareholder of Forest since May 2017.
- Ioannis Vrentzos          Forest's former Chief Executive Officer and a member of Forest's Board of Directors throughout the relevant PSR assessment period (May 2022 – June 2023). Witness for Forest.
- Jonathan Brown          Expert witness for the Premier League.
- Ross Wilson              Forest's Sporting Director.
- Jonathan Pryor          Expert witness for Forest.
- Thomas Bonser          Forest's current Finance Director since January 2022. Witness for Forest.
- Player A                  Forest player. Transferred to Tottenham Hotspur FC on 1 September 2023 for £47.5m.

### **3      THE PROFITABILITY & SUSTAINABILITY RULES**

- 3.1      The Commission notes that financial controls – i.e., controls over the amounts football clubs are permitted to spend and/or lose – have become a feature of European football regulation over the last decade and a half. These regulations are named differently by different regulators and competition organisers, although their objectives are largely the same – to promote financial self-sufficiency, sustainability and solvency amongst football clubs. At the UEFA level, these regulations were originally called the 'Financial Fair Play' regulations and now take the form of the Financial Sustainability Regulations. Similarly, other 'Big 5' leagues have their own forms of financial regulations, as does the English Football League (the "**EFL**"), for clubs playing in the Championship, League One and League Two.
- 3.2      The PSR are the Premier League's version of financial controls – a regime applicable to all clubs within its membership, first introduced in the 2013/14 football season.
- 3.3      In summary, the PSR regulates the level of losses clubs are allowed to incur over a period of three years. The Premier League monitors this by requiring every club within its membership to submit audited accounts for T-1 and T-2 (i.e. the two preceding years) together with its estimated profit and loss account and balance sheet for T (the current year). During the relevant period of this case, to reflect the circumstances of Covid, the PSR calculation used a two-year mean of T-2 and T-3 (instead of T-2 only).

- 3.4 If the aggregation of a club's earnings before tax in T-1, T-2 and T-3 results in a loss, the club must also submit its 'Adjusted Earnings Before Tax' for each of T, T-1, T-2 and T-3. The 'Adjusted Earnings Before Tax' means the earnings before tax excluding certain allowable costs that it has incurred in those periods. The Premier League (like UEFA before it) recognises that certain types of expenditure are in the general interest of developing football. These include, inter alia, depreciation of tangible fixed assets, expenditure on Women's Football, expenditure on Community Development and expenditure on Youth Development. Further, in relation to years 2019/2020, 2020/2021 and 2021/2022 certain COVID-19 costs were also permitted to be excluded, only if separately disclosed either by way of notes to the Annual Accounts or by way of supplementary information which reconciles to the Annual Accounts and which has been subject to independent audit.
- 3.5 The aggregation of a club's 'Adjusted Earnings Before Tax' for each of these four seasons (from T to T-3, T2 and T3 being averaged) is termed as its "**PSR Calculation**". The PSR Calculation is the basis upon which the Premier League determines whether a club has acted in breach of the PSR. This depends on the extent to which the PSR Calculation reveals a loss. If the PSR Calculation reveals a loss:
- (a) Up to £15m: the Premier League will assess whether the club is in a position to pay its liabilities until the end of the following year (i.e., T+1).
  - (b) Greater than £15m, but less than £105m: the Premier League will ask the club for (i) financial forecasts for the next two years (i.e., T+1 and T+2); and (ii) evidence of 'Secure Funding', or in other words equity funding (an injection for funds in return for shares) as opposed to any form of debt (such as introducing the funding by way of loans), to cover this maximum permitted shortfall of £90m.
  - (c) Greater than £105m: the Premier League will treat the club as being in breach of the PSR and is required to refer the matter to a Commission by way of a Rule W complaint.
- 3.6 The Commission notes that the PSR effectively allow for a club's owner(s) to invest £90m over a three-year period to cover these permitted losses, which is significantly more than is allowed in other competitions, such as at UEFA level or in the EFL.
- 3.7 However, where a club subject to the PSR was a member of the EFL during any/all of T-1, T-2 or T-3, the permissible loss of £105m is reduced by £22m for each relevant season that the club was a member of the EFL.

- 3.8 In this case, Forest was promoted to the Premier League at the end of the 2021/22 season (T-1), having also spent T-2 (FY21) in the EFL. The £105m threshold is therefore reduced by £44m to £61m, in that first season in the Premier League.
- 3.9 The Commission notes and agrees with the view of the Appeal Board in Everton FC Co Ltd v FAPL (26/2/24) (the “**Everton Appeal**”) at [5]-[6]: *“The PL Rules are aimed at ensuring fair sporting competition, and fair revenue sharing, what is “fair” in each case being determined by the clubs themselves. They are also designed to ensure a dynamic and robust competition...The PL Rules and their enforcement are therefore not imposed on the clubs by an external regulatory body. They are agreed by the PL clubs to ensure (among other things) fairness and sustainability of the competition as [a] whole. When the Board of the PL enforces the PL Rules against a club in breach it is, in effect, doing so on the mandate given to it by the clubs in the PL Rules, and in the interests of all (and, certainly, all other) member clubs and, given the enduring nature of the PL, prospective member clubs to some indirect extent.”*
- 3.10 Forest noted that the PSR give effect to the Financial Fair Play (“**FFP**”) principles adopted by UEFA in 2012. On 21 March 2012, the European Commission and UEFA issued a Joint Statement identifying the objectives of the FFP regime as being to:
- “- *Improve the economic and financial capability of clubs;*
  - *Increase transparency and credibility;*
  - *Improve governance standards in football;*
  - *Encourage clubs to operate on the basis of their own revenues;*
  - *Introduce more discipline and rationality in club finances;*
  - *Protect the integrity and smooth running of UEFA club competitions;*
  - *Encourage responsible spending for the long term benefit of football;*
  - *Protect the long-term viability and sustainability of European club football.”*
- 3.11 Forest’s FY23 PSR Calculation showed that its Adjusted Earnings Before Tax in FY20 and FY21 was an average of c. £3m. It then made a loss of c. £40m in FY22 (when it was in the Championship) and a loss of c. £52m in FY23 (its first season in the Premier League). This resulted in an aggregate Adjusted Earnings Before Tax loss of £95,536,000, which exceeded

the applicable PSR Threshold (£61m, see above) by £34,536,000, which Forest has now admitted in full.

- 3.12 Forest's original PSR submissions claimed to be entitled to add back the amount of £11,211,000 in Covid-19 Costs for FY22. The Premier League considered, and Forest now accepts, that it is only entitled to add back £2.5m of Covid-19 Costs for FY22.
- 3.13 The loss has triggered a complaint under Rule W of the Premier League Rules (the "**Rules**"), and the appropriate sanction for this breach in all the circumstances is what the Commission is tasked with determining in this instance.

#### **4 COVID-19**

- 4.1 The impact of Covid began to be felt in early 2020. On 13 March 2020, the Premier League suspended the 2019/2020 season, until 7 June 2020, with clubs then playing behind closed doors. The 2020/2021 season commenced with clubs still playing behind closed doors. From 14 August 2021, games were once again played in front of crowds.
- 4.2 On 6 August 2020, the Premier League clubs approved amendments to the Rules to implement changes to the PSR regime to reflect the impact of Covid. Those changes resulted in the Premier League issuing guidance to the clubs (the "**Covid Guidance**"). The EFL followed suit and issued its own guidance to its clubs.
- 4.3 For the matter at hand, the important sections of the Covid Guidance stated:

***"B. Process and Review***

4. *In accordance with the Premier League Rules, COVID-19 Costs may only be excluded from a Club's Adjusted Earnings Before Tax if they are disclosed to the League:*
- 4.1 *by way of notes to the Annual Accounts; or*
- 4.2 *by way of supplementary information which reconciles to the Annual Accounts and which has been subject to independent audit.*
5. *Further, COVID-19 Costs must be:*
- 5.1 *non-speculative;*
- 5.2 *quantifiable by reference to historical precedent or firm expectation; and*
- 5.3 *certified by an Authorised Signatory of the Club as accurate and calculated in compliance with the provisions of this guidance."*
- 4.4 The EFL's guidance was identical, aside from the reference to the "Premier League" in the first line of the above.

## **5      FACTS**

5.1      Set out below is a summary of the relevant facts based on the parties' written submissions, pleadings and evidence adduced in these proceedings. The Commission considers that the issues presented by this case (see section 7 below), although distinct, are based on matters of fact that occurred simultaneously, over a period of time. For ease, the Commission has sought to broadly summarise matters of fact as those relating to (A) Forest's promotion from the EFL Championship to the Premier League in May 2022 and its first season in the Premier League; (B) Forest's PSR Calculation; (C) Forest's transfer activity in the Premier League and the permanent transfer of Player A; and (D) Forest's PSR filing with the Premier League.

### **(A)      Forest's promotion from the EFL Championship to the Premier League in May 2022**

5.2      On 29 May 2022, Forest beat Huddersfield Town FC in the EFL Championship Play-off Final, thereby achieving promotion to the Premier League for the 2022/23 season. This was the first time it would be competing in the Premier League since the 1998/99 season.

5.3      Fulham FC ("**Fulham**") and AFC Bournemouth ("**Bournemouth**") were the other two clubs along with Forest to achieve promotion to the Premier League for the 2022/23 season. The last time Fulham and Bournemouth competed in the Premier League was in seasons 2020/21 and 2019/20 respectively.

### **(B)      Forest's PSR Calculation**

5.4      Before being promoted to the Premier League, Forest was subject to the EFL Championship's Profitability and Sustainability Regulations (the "**CPSR**"). The CPSR, like the PSR, required clubs within the membership of the Championship to make periodic financial filings, with a permitted loss of up to £13m per season over a 3-year period (i.e. a total permitted loss of £39m).

5.5      To that end, on 1 March 2022, Forest made its filing with the EFL in fulfilment of the CPSR requirements; its last one before being promoted to the Premier League approximately three months later. In this filing, Forest claimed a Covid Add-Back allowance of £12,178,000.

5.6      On 4 July 2022, some two months after achieving promotion to the Premier League, Forest sent the same information previously provided to the EFL on 1 March 2022 (see paragraph 5.5 above), to the Premier League.

5.7      On 31 March 2023, Forest sent the Premier League interim accounts for the six months ended



31 December 2022, comprising its balance sheet, profit and loss account, cash flow statement and related explanatory notes. These statements showed an unaudited loss of £26,845,000 for the six-month period to 31 December 2022, as against an unaudited loss of £12,613,000 for the six-month period to 31 December 2021.

- 5.8 On 31 March 2023, Forest provided the Premier League with its PSR Calculation based on a projected league position of 12<sup>th</sup> at the end of the 2022/23 season. This PSR Calculation also included the Covid Add-Back of £12,178,000 for FY22. Forest was also looking to add-back the promotion costs of c. £20m that it had incurred (largely in the form of contractual bonuses to its playing squad and the coaches) when it secured promotion to the Premier League.
- 5.9 On 2 June 2023, the Premier League informed Forest, in relation to its PSR Calculation for the 2022/23 season, inter alia that: it would only allow a Covid Add-Back of £2.5m for FY22, not the entire £12,178,000 claimed and it would not allow Forest to claim any allowances for costs linked to promotion from the EFL Championship.
- 5.10 On 1 December 2023, Forest raised, and on 7 December 2023 the Premier League responded to, queries in relation to Forest's FY23 PSR Calculation, again dealing with the Covid Add-Back and the promotion costs.

**(C) Forest's transfer activity in the Premier League and the permanent transfer of Player A**

- 5.11 Having secured promotion to the Premier League, Forest invested in a number of players in the summer 2022 transfer window. Forest signed 19 new players permanently; signed three new players on loan; elected to extend the contract of one player; sold two players for a fee; loaned out nine players; and released two players.
- 5.12 During the January 2023 transfer window, Forest signed three new players permanently, completed a transaction in respect of one player signed on a pre-contract basis and signed two players on loan.
- 5.13 Forest's net transfer spending over the 2022/23 season was £142.8m.
- 5.14 On 30 June 2023, Forest received an offer from Atlético Madrid ("**Atlético**") of EUR 50m for the transfer of Player A's registration on a permanent basis, to which it counter offered with EUR 65m the same day. Discussions with Atlético did not progress further.
- 5.15 On 21 July 2023, Forest received another offer for the transfer of Player A's registration on a permanent basis, this time from Brentford FC ("**Brentford**"). The offer included a guaranteed

transfer fee of £32.5m but it was also declined by Forest following consultation with Mr Marinakis.

- 5.16 Brentford made a second, improved offer of £35m for Player A on 24 July 2023. Forest declined this offer once again that same day.
- 5.17 On 28 August 2023, Brentford made a third offer of £40m for Player A. This was also declined by Forest. On the same day, Mr Vrentzos was instructed by Mr Marinakis to sell Player A before the window closed.
- 5.18 On 1 September 2023, the last day of the summer transfer window, Forest agreed to transfer Player A's registration on a permanent basis to Tottenham Hotspur FC ("**Spurs**"). Pursuant to a transfer agreement between the two clubs, Player A's registration was transferred to Spurs for a guaranteed transfer fee of £47.5m, payable to Forest in instalments.

**(D) Forest's PSR filing with the Premier League**

- 5.19 On 31 December 2023, Forest submitted its FY23 annual accounts and FY23 PSR Calculation to the Premier League. As noted above, Forest's FY23 PSR Calculation showed total losses of £86,825,000, exceeding the PSR Threshold of £61m by £25,825,000. In this email, Forest stated that it "*[...] admit[ed] a breach of the PSR and that [it] wishe[d] to enter into early discussion with the Premier League concerning the extent of the breach and the possible sanction*". Forest further submitted that its case differed from that involving Everton FC, "*not only due to [its] immediate admission of breach and full cooperation but also as to the substantial mitigation that exists*". Forest also placed on record that it was "*taking steps to improve its PSR position, by already agreeing the sale of one player for a significant profit in the forthcoming [transfer] window*".
- 5.20 On 3 January 2024, the Premier League, following a preliminary review of Forest's 31 December 2023 email and its enclosures, requested Forest to provide the following further information in support of its PSR Calculation:
- (a) A full breakdown, together with evidence, of the £11.211m claimed as the FY22 Covid Add-Back, and analysis of how it complies with the Covid Guidance; and
  - (b) Mitigating factors upon which Forest intends to rely, along with reasons and documents in support.
- 5.21 On 5 January 2024, Forest sent the Premier League a presentation by Twenty First Group, titled

*“Covid Impact Review – 2021/22 Season”*, which it believed addressed the Premier League’s request for further information summarised at paragraph 5.20(a) above (the **“TFG Report”**).

- 5.22 The Premier League responded to Forest on 10 January 2024, highlighting various flaws in its assessment of the FY22 Covid Add-Back. The Premier League concluded that of the £11.211m being claimed, Forest would be entitled to claim £2.5m. Thus, Forest’s FY23 PSR Calculation resulted in a loss of £95,536,000, which breached the PSR Threshold by £34,536,000. The Premier League invited Forest to comment on whether it agreed with this assessment of the PSR Calculation which revealed a breach that was greater than Forest’s own assessment, before submitting a complaint on 15 January 2024 in accordance with Rule W of the Rules.

## **6 PROCEDURAL HISTORY**

- 6.1 On 15 January 2024, the Premier League served a PSR Complaint on Forest in Form 21, and in accordance with Rule W.24 of the Rules (the **“Complaint”**). It is the Premier League’s case that Forest’s FY23 PSR Calculation demonstrates a loss of £95,536,000, resulting in a £34,536,000 breach of the PSR Threshold.
- 6.2 On 17 January 2024, the Chair of the Premier League Judicial Panel appointed the Commission in accordance with Rule W.26, as follows: Mr Mark A. Hovell (Chair); Mr Robert Glancy KC and Mr Steve Holt FCA.
- 6.3 On 17 January 2024, the Premier League filed a copy of the Complaint with the Commission, which was followed by Forest’s Answer in accordance with Rule W.29 of the Rules, on 30 January 2024. The Answer admitted the alleged breach in full (including the amount) and presented various grounds of mitigation.
- 6.4 On 6 February 2024, a directions hearing had been arranged but was vacated on the day of the hearing after the parties agreed directions following the Standard Directions, which the Commission duly made.
- 6.5 On 13, 15 and 19 February 2024, Forest produced three tranches of disclosure in response to requests from the Premier League.
- 6.6 On 22 February 2024, Forest attended a fact-finding meeting with the Premier League.
- 6.7 On 23 February 2024, the Premier League made further requests for documents arising out of the fact-finding meeting and Forest’s previous disclosure. Forest responded to these requests with explanations and documents on 28 February 2024.

- 6.8 On 26 February 2024, the parties exchanged evidence: the Premier League served the expert report of Jonathan Brown of Ankura Consulting (Europe) Limited. Forest served witness statements from Ioannis Vrentzos and Thomas Bonser. On the same day, Forest put forward a draft Amended Answer, which was accepted by the Premier League.
- 6.9 On 1 March 2024, Forest served two further witness statements (being further statements from Mr Vrentzos and Mr Bonser) and an expert report from Jonathan Pryor of Evelyn Partners LLP. Again, these were accepted by the Premier League.
- 6.10 On 5 March 2024, the parties exchanged their written skeleton arguments, and a draft timetable for the Hearing was presented to the Commission.
- 6.11 On 6 March 2024, the parties submitted an agreed List of Issues.
- 6.12 On 7 and 8 March 2024, the Hearing took place in London.
- 6.13 At the Hearing, the Commission looked to adopt a flexible approach, allowing Forest's Annex to its Skeleton (as it claimed submissions by the Premier League that Player A could have been transferred in the January 2023 window and its proposal regarding Forest's early plea/level of cooperation had taken it by surprise); additionally allowing submissions made by Forest on Wolves' PSR position and its sale of a player in June 2023; and allowing a number of last minute authorities.
- 6.14 The Decision was made publicly available on 18 March 2024.

## **7 ISSUES**

- 7.1 The parties produced the agreed List of Issues, as follows:

“

- 1) *The overriding issue for the Commission is as follows: The Club having admitted a breach of the PSRs, and the amount of the breach (£34,536,000), what is the appropriate sanction, having regard to any mitigating factors? This issue is broken down into the following key questions:*
- 2) *Is the PL's approach of adopting a sanction “starting point”, without considering the actual circumstances of the Club itself, and prior to considering mitigation, appropriate?*
- 3) *What should any “starting point” be?*

- 4) *Was the Club in a unique or exceptional position as a recently promoted Club on the basis that: (i) it was subject to a lower threshold having spent the preceding two years in the EFL; and/or (ii) it had not benefited from Parachute Payments? If so, does that constitute mitigation?*
- 5) *Did the Club have a reasonable and viable business plan for FY23, which included the sale of Player A during FY23? Did the timing and circumstances of the Club's sale of Player A after the year end constitute a mitigating factor?*
- 6) *What were the costs incurred by the Club as a result of promotion and did they constitute a mitigating factor?*
- 7) *Was the Club's genuine and honest belief that it was entitled to a Covid Add-Back of £12,178 million in FY22 reasonable? In any event, does that belief constitute mitigation?*
- 8) *Did the Club's inaccurate estimate as to the Merit Award constitute mitigation?*
- 9) *Did the Club enjoy any sporting advantage from the breach? If not, does that constitute mitigation and/or is it otherwise relevant to the form of sanction?*
- 10) *Does the Club's prior disciplinary record constitute mitigation?*
- 11) *Does the Club's financial position in FY24 show a future "positive trend"? If so, does that constitute mitigation?*
- 12) *In relation to the Club's admission of the Complaint, and its agreed exceptional co-operation, what impact does that have on sanction?*
- 13) *If any of the above items constitute mitigation, what weight should be afforded to such item(s)?*
- 14) *In the light of all of the above, what is the appropriate sanction?*
- 15) *Should any sanction be suspended? If so, on what terms?"*

7.2 Determination of these issues involves consideration of a number of factual and expert issues that have been developed during the course of the Hearing. In this Decision, the Commission confines itself to consideration of matters that are necessary for the proper determination of the Complaint. The Commission has considered all the matters that have been raised, but determine

only those that are required to be determined and then, not in the same order as the parties have set out above, rather as follows:

- 7.2.1 Issues 1 and 14 are dealt with in Section 14 of this Decision;
- 7.2.2 Issues 2 and 3 are dealt with in Sections 9, 10 and 13 of this Decision;
- 7.2.3 Issue 4 is dealt with in Sections 12, 13 and 14 of this Decision;
- 7.2.4 Issue 5 is dealt with in Sections 12 and 14 of this Decision;
- 7.2.5 Issues 6, 7, 8, 9, 10 and 11 are dealt with in Section 12 of this Decision;
- 7.2.6 Issues 12 and 13 are dealt with in Sections 12 and 14 of this Decision; and
- 7.2.7 Issue 15 is dealt with in Section 14 of this Decision.

## **8 THE BREACH**

- 8.1 As noted above, Forest has admitted that it breached the PSR and that the quantification of such breach for Forest's FY23 PSR Calculation is a loss of £95,536,000, resulting in a £34,536,000 breach of the PSR Threshold. The Commission accepts this quantification of the breach.

## **9 SANCTION PRINCIPLES – APPROACH TO SANCTION**

- 9.1 The Commission's powers in relation to sanction are contained in Rules W.50 and W.51. Rule W.50 states: "*Upon finding a complaint to have been proved the Commission shall invite the Respondent to place any mitigating factors before the Commission.*" Rule W.51 lists a number of sanctions that a Commission may impose, ranging from a warning through to expulsion from the Premier League, concluding with the power to make any such other order as the Commission thinks fit. The appropriate sanction is to be determined by the Commission having heard and considered all aggravating and mitigating factors.
- 9.2 The Commission notes that the Premier League sought to argue at the first instance hearing in Everton FC Co Ltd v FAPL (17/11/23) (the "**Everton First Instance**") that on 10 August 2023 the Premier League Board had formed a view as to what it considered to be appropriate to breaches of the PSR. Ultimately, the Commission in the **Everton First Instance** determined not to follow that approach. The Premier League has not asked this Commission to follow it either.
- 9.3 However, the Premier League made a number of submissions as to the principles that should

be applied by the Commission when determining the appropriate sanction, having been able to see the approach taken by the Appeal Board in the Everton Appeal. The Commission notes that the Everton Appeal is the first appealed decision that the Premier League (and indeed itself) can refer to regarding PSR breaches.

- 9.4 Firstly, the Premier League considered the purpose to be achieved. A sanction should be proportionate: it “*must achieve the aims of the PSR but not exceed that which is reasonably required to achieve those aims*” (the Everton Appeal at [194]).
- 9.5 The aims of sanctions for a breach of the PSR, as approved in the Everton Appeal at [197], are fourfold, citing EFL v Derby County Football Club Ltd (30 June 2021): “(i) *to punish the club for the breach, (ii) to vindicate other clubs which had not engaged in conduct that breached the P&S Rules, (iii) to deter future breaches of the P&S Rules, whether by the relevant club or other clubs and (iv) to restore/preserve public confidence in the fairness of the EFL competition [which] necessarily incorporates the aim of ensuring that the competition is in fact fair.*”
- 9.6 According to the Appeal Board at [199]-[200], the “*primary purpose is to protect the integrity of the relevant competition by restricting the level of financial risk a club might take*”. Deterrence is “*an important overlapping aim*”. Further, vindication of compliant clubs is “*also important*” while punishment is “*far less important*”.
- 9.7 Secondly, the Premier League submitted that a points deduction is the appropriate sanction for a PSR breach. The Premier League submitted that while the Commission has a wide discretion and a broad range of sanctions available, “*leaving any mitigation aside, only a points deduction is appropriate for a breach of rule E.51 ... any breach of rule E.51 is [a] serious matter. It likely gives the club in breach an unfair sporting advantage and a correspondent revenue advantage. In our view, only a points deduction, with its immediate and overt effect, has the appropriate power of disincentive for clubs to remain within the upper loss threshold required to maintain the aim of an FFP regime. It also, in our view, addresses both the financial and sporting aspects in the most appropriate way*” (the Everton Appeal at [202]).
- 9.8 Further:
- 9.8.1 “[A]ny PL club could properly predict that, leaving aside any particular powerful mitigation, any breach of the PSR would result in a significant points deduction” (the Everton Appeal at [206]).

- 9.8.2 A fine or a player registration embargo will not be appropriate for the reasons described in the Everton Appeal [203]-[204].
- 9.9 The Premier League then considered the minimum points deduction reasonably required to achieve those aims. Again, referring to the Everton Appeal, the Premier League noted that the Appeal Board took into account the following “benchmarks”:
- 9.9.1 The guidelines adopted by the EFL. These provide for sanctions to reflect the extent of a breach in monetary terms, with a maximum sanction of 12 points (leaving aside any particular aggravation) and a minimum of three points (absent any particular mitigation), albeit the structured approach of the EFL Guidelines cannot automatically be translated across to the Premier League in a linear way, and “*the temptation to take financial risks to enhance sporting achievement in the PL is particularly high*” (at [213] of the Everton Appeal);
- 9.9.2 The Premier League penalty for insolvency. Under Rule E.35, a Premier League club suffers an automatic deduction of nine points on an “Event of Insolvency” (although that automatic sanction may be accompanied by other disciplinary sanctions for breaches of other rules which the Event of Insolvency (or the underlying circumstances) may trigger) (at [217] of the Everton Appeal);
- 9.9.3 The Premier League refer to the following facts as stated in the Everton Appeal at [218]:
- (i) 114 points are available over the course of a season. (Although the Appeal Board gave a figure of 108 at [218], which the Premier League noted was slightly wrong. There are 38 games for each club in a season with three points available for a win in each game, totalling 114);
  - (ii) A three-point deduction is equivalent to erasing one match win whereas one point is equivalent to erasing one draw;
  - (iii) The median points earned per season is 49 and the mean is 52;
  - (iv) The broad view of the Premier League Board that breaches of Rule E.51 are a serious matter requiring a substantial points deduction sanction was found to be “*worthy of some respect*” by the Appeal Board in the Everton Appeal.



- 9.10 The Premier League submitted that, on the facts of Everton, where that club had exceeded the PSR Threshold by £19.5m, the Appeal Board described the breach as significant “*both in percentage and monetary terms*” (at [226]) which conferred “*a significant sporting advantage which, although impossible precisely to quantify, requires a deduction of some points in order simply to eradicate that advantage and to be fair to other PL clubs*”. After considering “modest” further aggravation and “modest” mitigation, which might be seen as having cancelled each other out, the Appeal Board imposed a deduction of six points.
- 9.11 Finally, the Premier League argued that it would not be appropriate to suspend any points deduction. An immediate deduction is appropriate in PSR cases, and a suspended deduction will generally be inappropriate, for the reasons given in the Everton Appeal at [228]. In particular, suspension “*would not address the position in the league itself, nor would it address the potential profit share advantage that not having any deduction in points would have*”.
- 9.12 Forest submitted that the Commission’s discretion as to sanctions for breach of the PSR is “*very wide*” and no applicable guidelines have been developed by the Premier League to guide that discretion: see the Everton Appeal at [188] and paragraph 9.2 above. The Complaint acknowledges at its paragraph 4.1 that “*the Commission may select from a wide range of powers*” and has “*a wide discretion*”. Forest argued that a points deduction is not the only (or even always the appropriate) option.
- 9.13 Forest argued that the Commission’s broad discretion is, however, limited by the purposes of the PSR regime and of the sanctioning powers:
- 9.13.1 Paragraph 4.1 of the Complaint notes that a sanction “*must achieve, but also go no further than is reasonably necessary and proportionate to achieve, the legitimate purposes of . . . [i] punishment of the Club in breach . . . [ii] vindication of compliant Clubs and the encouragement of future compliance . . . [iii] deterrence of similar conduct by any and all Clubs in the future . . . [and] [iv] restoration of the public’s confidence in the integrity of the competition*”: see also EFL v Derby County Football Club Ltd (30 June 2021) at [20-23].
- 9.13.2 Whilst Forest agrees with that analysis in the broadest terms, it warned that the proposition needs to be treated with caution. It is important to keep the underlying purposes of the PSR as an FFP scheme at the forefront. Punishment is not the overriding or even primary aim of a sanction in this area of football regulation. Indeed, the sanction need not be punitive at all. The primary purpose of the regime (and of any sanction) is to address any unfairness, i.e. “*to protect the integrity of*

*the relevant competition by restricting the level of financial risk a club might take, in the case of the PL, to a level and in the manner in which the PL clubs agree”*: see Everton Appeal at [199]. That means avoiding unfairness for compliant clubs and ensuring that lasting benefits (if any) are not conferred by the breach: see Everton Appeal at [200]. But it also needs to consider fairness in relation to the club in breach, and to ensure that it is not sanctioned in a manner that is unfair, arbitrary, or disproportionate in all the circumstances.

- 9.14 Forest concluded that any sanction must go no further than is reasonably necessary and proportionate to achieve the legitimate purposes of the PSR regime, i.e., to protect the integrity of the Premier League, ensure fairness for all clubs, and (albeit to a lesser extent) to deter similar conduct in the future. The goal is not to punish for punishment’s sake.
- 9.15 Overall, the Commission notes the above approaches of the parties are broadly similar, both draw from the Everton Appeal. Both agree that the primary aims of any sanction are not so much as to punish Forest, but to protect the integrity of the competition, people’s confidence in the competition and to ensure fairness between the clubs in a proportionate manner.
- 9.16 The Commission took note of the Premier League’s request for consistency and it does itself draw from much that is in the Everton Appeal. Whilst the Rules provide the Commission with a wide discretion of sanctioning powers, it can see that having a starting point (as the EFL have in its Guidelines and as the Appeal Board used) assists clubs and the regulator.
- 9.17 However, the Commission can see that there is a risk in focusing completely on the amount of any breach in isolation: the context behind a breach should be understood too. In the case at hand, matters like the reason for the excess and the “uniqueness” of Forest (together, the particular circumstances of the club) seem to fit better in this initial starting point analysis than in mitigation.
- 9.18 The Commission considers that it would assist to band breaches into “minor”, “significant” or “major” breaches, to remove the focus on the absolute number, especially when different PSR Thresholds can apply. However, that approach can be adopted/disregarded as other Commissions see fit - what is clear to the Commission here is, just like Everton, that Forest’s losses are “significant”, as are its excesses over its PSR Threshold, so that it should face a points sanction. As such, and as the Appeal Board in the Everton Appeal determined at [201 to 204], other available sanctions, such as warnings, fines, embargos and the like are not appropriate in the case at hand.

- 9.19 Where a PSR breach is “minor”, then it will be for other Commissions to determine if any points deduction is necessary, appropriate or proportionate but if the breach is properly described as “major” then it may be the case that even a very severe sanction such as expulsion is more appropriate.
- 9.20 The Commission agrees with the Appeal Board in the Everton Appeal that the entry point for a significant breach should be a deduction of 3 points and this will have the added advantage of achieving consistency with that decision. The Commission will then consider both Forest’s particular circumstances and the quantum of the breach, that might slide it up or down the points scale to find its starting point, before mitigation (and aggravation, if there was any) is considered; and finally dealing with such matters as suspension.

## **10 SANCTION PRINCIPLES – AGGRAVATING/MITIGATING FACTORS**

- 10.1 The Commission notes the helpful comments made by the Appeal Board in the Everton Appeal. The Premier League too noted at [80]-[82] that it “*is well-recognised in the context [of] breaches of the criminal law that circumstances in relation to the offence or the offender may warrant a higher or lower sentence/sanction, because they indicate higher or lower culpability and/or they reflect higher or lower consequential harm...as a matter of principle, the circumstances of a breach of rule E.51 may similarly aggravate and/or mitigate for sanctioning purposes under the PSR in the same ways...However, circumstances are only mitigating or aggravating when marked against the aims of the regime in which sanctions are being imposed... We have already considered the aims of FFP and the PSR...Mitigating and aggravating circumstances – like the assessment of proportionality...must be considered through the prism of those aims.*”
- 10.2 The Premier League supported the position of the Appeal Board that the fact that the consequences of imposing a sanction may seem harsh is a matter of little weight. In the Everton Appeal at [82]-[83], it held that consequences for the club and its supporters “*are likely to be of less significance in proceedings for breach of rule E.51 because the overarching concern there is the integrity of the PL competition*”. It referred to a “*sound and well-established*” line of authority that “*the actual, projected, probable or possible position of a football club at the end of a season has been disregarded in cases in which a points penalty has been considered and/or imposed...To approach the sanctioning exercise in any other way, in our view, would be a failure to treat the clubs in the PL equally and fairly*”.
- 10.3 Finally, the Premier League submitted that where Forest seeks to rely on a mitigating factor, the onus is on Forest to prove both the underlying facts and the principle that they should count

as mitigation, having regard to the aims of the PSR. In the Everton Appeal at [87], the Appeal Board stated that: *“In respect of a possible mitigating circumstance, if the respondent (in this case, the Club) does not satisfy that burden of proof on that issue [i.e., circumstances tending to decrease culpability or harm], then those circumstances are left entirely out of account. If the respondent satisfies the Commission as to that tendency, then the Commission must take that circumstance into account, giving it the weight that it (the Commission) considers appropriate.”*

- 10.4 Forest acknowledged that the Commission must consider all relevant aggravating and mitigating factors. It should take into account any relevant benchmarks and not exercise its discretion in a vacuum. Forest noted that the Commission could take some assistance from the Rules themselves, including the approach taken to an Event of Insolvency (for which a nine-point deduction is imposed). Regard may also be had to the non-binding EFL P&S Guidance, together with the EFL case-law: see the Everton Appeal [182-192]. However, imposing a sanction is not a *“mathematical exercise”* [207 of the Everton Appeal] and the approach taken in the EFL *“cannot automatically be translated across in a linear way”* (at [213]). The EFL Guidance therefore offers *“some useful assistance in assessing appropriate sanctions for breach of the PSR”* but cannot operate as a mathematical or definitive guide (at [213]). However, Forest concluded that in this case it was in such a unique position, and the circumstances are so exceptional, that reliable comparators from other cases are likely to be few and far between.
- 10.5 The principles are clear to the Commission from the above. The Everton Appeal offers guidance. The Commission notes that the party asserting an aggravating or mitigating factor bears the burden of proving that factor on the balance of probabilities.
- 10.6 As such, the Commission will next consider the specific aggravating and mitigating factors advanced by the parties.

## **11 AGGRAVATING FACTORS**

- 11.1 In the matter at hand, the Premier League does not rely on any points of aggravation save for the size of the breach itself. The Commission notes there were no aggravating factors raised at all in the Complaint.
- 11.2 Forest noted that the extent to which a club has exceeded the PSR Threshold could be a possible aggravating factor in some cases, as was put by the Appeal Board in the Everton Appeal [225]. However, Forest argued that caution is required in trying to apply that sort of approach to this

case for three reasons:

- 11.2.1 First, the reason why breaches of the normal £105m PSR Threshold are generally treated seriously is that the threshold itself is recognised to be “*generous*” (the Everton Appeal [226]). However, for Forest, as a newly promoted club, the threshold was substantially lower at £61m;
  - 11.2.2 Secondly, Forest was unable, when investing sums in its first year in the Premier League, to spread the costs of player investment over a three-year reporting cycle in the way other Premier League clubs do; and
  - 11.2.3 Thirdly, the Complaint acknowledges at paragraph 7.1 that “*the Premier League has not identified any aggravating factors at the present stage*”.
- 11.3 The Commission notes all Forest says and determines to consider the quantum of its breach over the PSR Threshold as part of its consideration when calculating the starting point of the sanction, rather than to consider this as aggravation, else there would double counting.

## **12 MITIGATING FACTORS**

- 12.1 The Commission notes Forest’s six broad heads of mitigation:
- 12.1.1 Firstly, its “unique position” as the only club in the Premier League in the 2022/23 season that was either not previously in the Premier League, and therefore able to take advantage of the higher PSR Thresholds, or not newly promoted with the benefit of Parachute Payments;
  - 12.1.2 Secondly, it breached the PSR Threshold because the sale of Player A occurred a short period later than was necessary, which Forest describes as a “*near miss*” or “*golden mitigation*”;
  - 12.1.3 Thirdly, the reason for the excess namely that most of the excess loss was incurred due to: (i) the price of promotion to the Premier League; (ii) a reasonable reliance on the FY22 Covid Add-Back; and (iii) a reasonable but ultimately inaccurate estimation as to the Merit Award Forest would receive;
  - 12.1.4 Fourthly, Forest obtained no sporting advantage as a result of the breach;
  - 12.1.5 Fifthly, Forest (i) had a good prior record with respect of FFP rules; (ii) admitted the breach at the first opportunity; and (iii) had made further profitable player sales

during the January 2024 transfer window, therefore demonstrating a “positive trend”;

12.1.6 Finally, Forest had cooperated with the Premier League.

12.2 The Commission notes that some of these issues cross over into where the Commission should set the starting point for any sanction. The main two being the “uniqueness” of Forest and, in part, the reason for its excess. These were considered by the Commission as both potential mitigating factors, but also as factors to consider when looking where to set the starting point.

12.3 The Premier League disputes these six areas in the main, as is set out below, however, it has accepted two points of mitigation: Forest (a) admitted the Complaint in full at the first opportunity, and (b) has cooperated extensively with the Premier League before and during the disciplinary process. The Premier League submitted that each of these matters constitutes “*substantial mitigation which together justify a material reduction in sanction.*”

12.4 That noted, the Commission will now consider these broad heads of mitigation, the parties’ respective positions on each head and provide its determination:

#### “Unique” position of Forest

12.5 Forest first considered the Rules to explain why it was of the view that it was in a “unique” position. The purpose of the reduction in the PSR Threshold for promoted clubs at Rule E.50, on account of membership of the EFL previous years, is to ensure that clubs cannot unfairly compete in the EFL, effectively buying promotion, and then escape sanction in the Premier League. That is the mischief the rule is aimed at. It is not aimed at those, like itself, who comply with the EFL P&S Rules during the EFL season but then overspend the reduced PSR Threshold applicable in the Premier League as a result of preparing for their first season in that league during the summer transfer window.

12.6 Forest additionally made the comparison with all other 19 Premier League clubs competing in the 2022/23 season. It was recently promoted but without the benefit of previous Parachute Payments. It was therefore in a particularly disadvantageous financial position relative to all the other clubs, and at a concomitant sporting and financial disadvantage. That basic unfairness is a fact, not a criticism of the PSR regime, but one that can and should be taken into account when assessing what fairness requires in terms of a sanction. In that season every other club had either retained Premier League status (and benefited from the higher PSR Threshold than Forest) or, in the case of Fulham and Bournemouth, had only recently been in the Premier

League (Fulham in the 2020/21 season and Bournemouth in the 2019/20 season). Both were in receipt of substantial Parachute Payments which allowed them to continue to retain and/or otherwise invest in a playing squad closer to that of an established Premier League club. Fulham had received £44.41m in Parachute Payments in the 2021/22 season and Bournemouth had received £79.77m in Parachute Payments for the 2020/21 and 2021/22 seasons. They were also, of course, carrying squads of considerably greater value and Premier League experience than Forest.

- 12.7 Forest argued that it had none of these benefits to smooth its transition from the Championship to the Premier League. The critical expenses and losses that Forest claimed took it over its PSR Threshold were incurred after promotion was secured, and in preparation for the Premier League.
- 12.8 Forest submitted that it was in the rare position of obtaining promotion in compliance with the EFL P&S Rules: (i) for the first time in many years; (ii) without the benefit of Parachute Payments; and (iii) without having breached the EFL P&S Rules and the EFL Annual Upper Loss Threshold. Clubs in such a position will be competing in the Premier League at a significant financial and sporting disadvantage to all other clubs, and with much greater vulnerability to a single transaction creating a significant effect or distortion on its financial position, because they cannot benefit from the significantly higher thresholds in the three-year reporting period to “smooth any peaks or troughs”, nor benefit from Parachute Payments that soften the financial blow on a club relegated from the Premier League and/or allow it to be able to invest in and/or retain a playing squad closer to that of a Premier League club without risking breaching the applicable PSR Threshold.
- 12.9 Additionally, Forest argued that it should not be treated as if it were in the same position as other Premier League clubs in the 2022/23 season, nor should it be treated as if it had exceeded the “generous” £105m threshold. That will be highly relevant to any assessment of how far, if at all, the breach has: (i) conferred any sporting or financial advantage on Forest; and/or (ii) impacted the integrity or fairness of the Premier League competition. Forest acknowledged that Mr Brown’s report suggests that Forest spent significantly more on players than other newly promoted clubs and clubs promoted without Parachute Payments since the PSR regime was first introduced in 2013/14. However, this report fails to consider the unique circumstances of Forest. Mr Brown’s report overlooks the fact that Forest’s business model was and is “sustainable and sound”.

- 12.10 Finally, Forest considered the position of an established Premier League club, such as Everton, spending above a far higher PSR Threshold, over a number of years in the Premier League, and compared it with itself, that is assessed against a significantly lower (by £44m) PSR Threshold in circumstances where its promotion year was inevitably more vulnerable to distortions affecting its financial position. It also looked to differentiate between its position (spent in preparation for the Premier League season after the close of the Championship) and a Championship club which spent a similar amount before the close of the Championship season to secure promotion. This is important because Rule E.50 has been designed to ensure the integrity of both the Championship and the Premier League competitions.
- 12.11 The Premier League acknowledged that (a) non-recently promoted clubs had the benefit of a higher PSR threshold, and (b) the other two clubs promoted alongside Forest had the benefit of substantial sums in Parachute Payments. The Premier League relied upon the evidence of its expert, Mr Brown, who explained how Parachute Payments work and has produced a schedule setting out the amounts of those payments. However, in both cases, that is what the Rules provide. The effect of the lower threshold for seasons spent in the EFL is to replicate the threshold applicable in the EFL P&S Rules. It is obviously legitimate to hold clubs to the EFL threshold in respect of seasons spent in the EFL. Applying the ordinary £105m threshold to a newly promoted club would allow it to incur losses of £79m in its first financial year in the Premier League, which would not further the objective of sustainability.
- 12.12 The Premier League noted that Forest had to take the PSR as it found them. It cannot say that the PSR operate in a way which is detrimental to its interests, and thereby ask the Commission to redress the balance by treating its breach of the PSR more leniently than it otherwise would. That would be to subvert the PSR, as agreed by the Premier League clubs.
- 12.13 Furthermore, the Premier League noted the “*very substantial*” (as Mr Bonser referred to it) player acquisition activity that Forest engaged in during the summer 2022 transfer window. It then undertook further signings in January 2023. Mr Brown pointed out that Forest’s net transfer spending in 2022/23 was £78.7m (123%) higher than the average net transfer spending of all Premier League clubs (excluding Chelsea) and its incoming transfer volume was not only the highest in the Premier League but nearly double the next-highest club.
- 12.14 Whilst Forest submitted that winning promotion through the play-offs meant that it had significantly less time to plan for its time in the Premier League than other clubs, it does not constitute mitigation: it is simply how the promotion system works. Clubs are expected to comply with the PSR however and whenever they secure promotion.



- 12.15 The Commission does question the use of “unique” in Forest’s submissions. It was clear from Mr Brown’s report that 12 other clubs over the last 10 years of the Premier League (so 13 including Forest) had been promoted without the benefit of a Parachute Payment the year before. They then joined a league where the other 17 teams all had a Premier League squad and, in the main, would have the benefit of the full £105m PSR Threshold. This is not a unique occurrence, rather it is something that has happened every season in the previous 10 seasons, on average.
- 12.16 There is an overlap between the EFL and Premier League and how they manage clubs that come up and go down. The Premier League clubs are all in the joint venture (i.e. they are all shareholders in the Premier League, along with The FA) and are able to shape its Rules, including the PSR. Over the years the clubs have determined to deal with the overlap, how to treat clubs coming up and going down and what PSR Thresholds should apply to them. If the clubs, including a number who would have shared Forest’s “uniqueness”, had wanted to amend the PSR and changed the thresholds, they could have done so. Ultimately, Forest should have been well aware of what threshold it would be working to and how much additional income it would receive as a new Premier League club. It made the commercial/ business decision of how much of that income to invest in its squad.
- 12.17 There was a fair bit of expert evidence from Mr Brown and Mr Pryor at the Hearing. Their opinions did not differ dramatically. There was an acknowledgement that their reports were not perfect (the use of Transfermarkt data was the best source they could find for publicly available information and they had a different approach on how to adjust for inflation over the 10 years that were reviewed – by using CPI or the level of wage inflation in the Premier League) but, taking the most favourable position for Forest, its spending was not hugely out of kilter with some other comparator clubs that also decided to invest to compete in the Premier League (the Premier League noted that some clubs came up, expected to go back down, but with the Parachute Payments, so spent little to compete in the league).
- 12.18 The Commission noted Forest’s argument that it was in a different position to both Bournemouth and Fulham who also came up in the same season as Forest, as they had enjoyed Parachute Payments in the one or two seasons before. However, there was no evidence to show that the Parachute Payments had been used to enable those clubs to invest, rather the Commission’s understanding was that these payments were able to soften the income losses for the clubs when they went down (when their expenditure may not be reduced as quickly). The Commission noted that both Fulham and Bournemouth initially spent less when they were promoted, but there was no real evidence as to why this was the case. The Commission was not

able to draw any conclusions other than that different clubs take different decisions. To the Commission this is not a mitigating factor, it is simply the reality of comparing a club that had a Parachute Payment the year before with one that did not and that they might act differently from one another. Indeed, Fulham and Bournemouth may have made different business decisions from each other. It is the decisions that Forest made that are of most relevance in the case at hand.

- 12.19 It is obvious that such a club might need to spend more to compete in the Premier League, but it receives a significant income boost (the accounts for FY23 show that its revenues increased from £29.7m to £154.8m following promotion to the Premier League) and would be aware of how much it could spend and how much could be covered by its owners over a three-year period. We therefore take the view that the comparison with other clubs takes Forest nowhere. The PSR are to promote sustainability.
- 12.20 Forest could control what it spent, how it was amortised (by the length of contracts they gave the players) and how much it invested. These were a series of commercial decisions it took, working within a framework it was fully aware of.
- 12.21 It would have been clear to Forest that to comply with PSR it would need to sell players as well as buy, if it intended to bring a high number of players in during the summer 2022 window (see paragraph 5.11 above). By the end of September 2022, it was clear that PSR was a real issue to Forest, yet it continued to acquire players in the January 2023 window.
- 12.22 The Commission noted that there were few documents that demonstrated what Forest was doing about its PSR issue. There were no board meeting minutes and only a few emails or messages included within disclosure. Most communications were apparently oral. Mr Bonser, the Finance Director at Forest, did produce some forecasts of its PSR position. The first was on 22 August 2022, the next was a week later and the next was on 29 September 2022. During this period, Forest was investing in players, so the PSR forecast was changing, but the last of these communications from Mr Bonser was forecasting a significant breach, absent intervention from the Club. These communications did not deter the Club from bringing further players in over the January 2023 transfer window (see paragraph 5.12 above).
- 12.23 Forest's business model is to acquire players, showcase them on the pitch and then sell them later at a profit. However, it would take some time to promote some players in the Premier League shop-window, before they could be sold at a profit. It was accepted by Forest that selling Player A was its only solution to the PSR breach it was forecasting. In the Commission's view, rather than this demonstrating Forest's alleged "uniqueness", the evidence shows that Forest

were “sailing close to the wind” and were “leaving all its eggs in one basket” because it had to sell Player A in the first two weeks of a summer transfer window.

- 12.24 The Commission did not see the comparisons with other clubs as evidencing a mitigating factor, nor one that would help with the setting of the starting point for the sanction. Rather, the Commission concluded that Forest knew the Rules, including the PSR, and took informed business decisions aware of the risk of a PSR breach that it must bear the responsibility for.
- 12.25 The Commission therefore concluded that this is neither a mitigating factor, nor does it help it when providing context to the Commission as it sets the starting point for any sanction.

Player A: the “near miss” or “golden mitigation”

- 12.26 Forest submitted that it breached the PSR Threshold because of a “*near miss*” as to the timing of selling Player A, and not as a result of reckless or unsustainable spending. It had a reasonable and viable business plan that involved up-front costs to compete in the Premier League but would substantially reduce losses to comply with the PSR through the sale of the key “homegrown” Player A (in addition to other sales). This is not a case of irresponsible financial management, instead, Forest adopted a legitimate and accepted business model of player trading, just failing to achieve PSR compliance because Player A was sold on 1 September 2023 rather than by the end of June 2023.
- 12.27 From around the end of January 2023, Forest decided that it would need to sell one of its most important players to ensure PSR compliance. Player A was the obvious and only single player whose sale could achieve compliance and it was always planned to sell him. The majority of the discussions about sounding out other clubs and sporting directors in respect of Player A took place around May and June, after the appointment of Mr Ross Wilson (Forest’s Sporting Director) on 12 April 2023. As at June 2023, Forest had valued Player A at £50m. Because Player A was a “*homegrown*” player practically the whole of that sum, less any capitalised agent fees, would be treated as profit for the purposes of the PSR calculation.
- 12.28 Forest was aware that Player A was in the process of changing agents (which was completed only on 4 July 2023), which made an early deal more difficult. However, Forest continued to seek out buyers for Player A in June 2023, engaging with Unique Sports Management (Player A’s new agents), Brentford, Spurs, Manchester United, Aston Villa, Manchester City, and Atlético. Forest submitted that by 30 June 2023, it had made every effort to generate a formal offer for Player A but none had been received at that stage that were capable of being completed in time.

- 12.29 Efforts continued and Player A's registration was sold for very close to the valuation placed on him. On 1 September 2023 Spurs agreed a guaranteed up-front fee of £47.5m for the transfer of Player A – i.e. only £2.5m less than Forest's valuation, confirming that it was a reasonable valuation.
- 12.30 Forest submitted that the sale was not possible before the FY23 end. The timing of the transfer was dependent on the timing of offers from prospective purchasers and the wishes and aspirations of Player A. The first formal offer for him was at Euro 50m from Atlético on 30 June 2023, but that offer was contingent on a player being sold and was rejected. In any event, because of its contingency, it would have been impossible for the transfer to have been completed that day. The first formal offer from a Premier League club was from Brentford on 21 July 2023 at £32.5m, which then increased on 24 July 2023 to £35m. A third offer was received by Brentford on 28 August 2023 for £40m. Each of those offers from Brentford were well below the value placed on Player A and were, in any event, after the financial year end.
- 12.31 In Sheffield Wednesday Football Club v Football League Limited (SR/196/2020) (4 November 2020), the club had exceeded the EFL upper loss threshold by 46.7% (equivalent to exceeding the normal PSR Threshold by £49m) and had a worsening trend of losses than Forest. Further, there were no Heads of Terms signed by the time Sheffield's deadline passed, only discussions around the possibility of its owner acquiring the stadium. Nevertheless, the starting point penalty of 12 points according to the EFL Sanctioning Guidelines (and as applied by the first instance Commission) was reduced by 50% to six points on appeal because the original Commission had failed to take into account as a substantial mitigating factor that if the club had sold its ground less than three weeks earlier the EFL P&S Rules would not have been breached at all. That was described as "*a significant mitigating factor*". In the Everton Appeal [214], it was described as "*golden mitigation*".
- 12.32 Forest argued that the same approach should be applied to it, as it narrowly missed PSR compliance because of the timing of the sale of Player A. Whatever starting point the Commission thinks would be appropriate in this type of case, a similar 50% deduction should be made.
- 12.33 At the Hearing, Forest's position was that a sale of Player A at any time during the summer 2023 transfer window would constitute a "near miss". Players can only be sold during the two transfer windows (summer and winter). Further, a sale in the next window (January 2024) could also be a near miss, but if it was the following summer 2024 window, then Mr De Marco conceded it would no longer be a "near miss".

- 12.34 The Premier League challenged Forest’s “reasonable and viable business plan”. It had spent heavily in FY22 and incurred a loss of £40m in its Adjusted Earnings Before Tax. Together with the loss in the previous years, it would have been clear to Forest early in the season (and well before “April/May 2023” as it claimed) that its loss for FY23 needed to be materially lower, rather than higher, than that in FY22, if it was not to exceed the £61m PSR Threshold. By 29 September 2022 (following the end of the summer transfer window), Mr Bonser prepared a forecast showing a PSR breach of £6.9m. Further forecasts prepared in December 2022 also showed a breach. It is not therefore clear why Forest did not take steps to address the looming PSR problem during the January 2023 transfer window (instead making further signings).
- 12.35 This left Forest having to sell Player A in the first two weeks of the summer transfer window (which opened on 14 June 2023). Indeed, Mr Vrentzos says that *“From around February 2023, I knew that the Club would have to sell a valuable...player for significant profit in order to ensure compliance with the PSR. Due to my understanding of football finance and accounting I knew that the player would have to be Player A...This was obvious...”*. Mr Bonser says that *“in April and May 2023... there was regular discussion about the fact that, in order to comply with the PSR, the Club needed to realise circa £30m profit on player sales by 30 June 2023... Further, there was a common understanding within the SMT that Player A... was the player that needed to be sold”*.
- 12.36 The Premier League submitted that although an early sale might have been incompatible with obtaining the target valuation, or the fee that could have been obtained later in the window, Forest should have had no choice: the sale had to happen before the end of June 2023, or it would breach the PSR Threshold. Further, it was expressly warned by the Premier League on 6 June 2023 about this.
- 12.37 The Premier League criticises the actions Forest took. It did little to market Player A proactively during FY23; and the account given by Mr Vrentzos as to what Forest did is relatively thin, given the number of clubs who might have been in a position to buy Player A’s registration and who would be likely to be interested in acquiring his services. Forest’s view of Player A, as expressed in one email, was that he is “extremely talented”.
- 12.38 On 30 June 2023, the last day of FY23, Forest received an email from Atlético with the subject line “Offer” and a set of proposed commercial terms listed under the heading “OFFER”, including a transfer fee of €50m (£42.9m). The email stated that *“Any agreement is expressly subject to the following Conditions: reaching an agreement with the Player, Player passing medical... and the previous authorization by the Spanish League to register the player”*.

Forest's response was to make a counter-proposal of €65m (£55.8m) (and increases to some of the proposed contingent bonuses). No documents relating to the internal discussion leading to this response were disclosed by Forest.

- 12.39 Mr Vrentzos says that *“This was not an offer that was capable of acceptance as we knew that Atlético de Madrid had to sell a player before it could sign Player A”*. The Premier League submitted that the offer could have been accepted on the conditional basis on which it was made. Entering into a conditional agreement during FY23 which would hopefully become unconditional very shortly after the year end would have been a “true near miss” and would have constituted “very powerful” mitigation.
- 12.40 In any event, the situation in which Forest found itself in June 2023 is precisely the situation described by the Appeal Board in the Everton Appeal [95]: it was *“sail[ing] so close to the upper loss threshold ... that, as a result of circumstances arising in the ordinary course of conducting the business of professional football, that threshold is breached”*.
- 12.41 The Premier League submitted that a period of two months cannot be described as a “near miss”. Further, the timing of the sale had consequences, some of them positive for Forest. As well as the obvious benefit of the cash it has received from Spurs under the transfer agreement - for the next three financial years Forest's PSR calculation will benefit from the c. £48m of profit which it booked in FY24 on the sale of Player A - Player A also played three league games in the 23/24 Season. Evidently, Forest must take the rough with the smooth.
- 12.42 The Premier League contends that the sale of a player outside the relevant financial year cannot constitute mitigation unless the facts are exceptional. Forest relies on the Sheffield Wednesday decision as indicating that a “near miss” can constitute mitigation, but the Premier League points out the Sheffield Wednesday case did not concern the sale of a player and is distinguishable. It also involved a related-party transaction with an entity associated with the club's owner, and there is no reason to believe that its timing had any effect on its value. Here Forest chose to wait in order to maximise the transfer fee.
- 12.43 The other point of distinction with Sheffield Wednesday is that, in that case, there was at least a clear plan from an earlier stage in the season: *“the EFL was on notice from April 2018 that the Club intended to sell the Stadium in order to comply with the P&S Rules. The Club lawfully extended its accounting period to 31 July 2018 in an attempt to comply with the P&S Rules”* (at [112]). The club did what it said it was going to do, albeit late. In the present case, Forest did very little to sell Player A until after the end of FY23 (waiting until the very end of the

transfer window to conclude a deal). It can be inferred that if Spurs' offer had not been forthcoming when it did Player A would not have been sold.

- 12.44 The Commission notes how this type of potential mitigation has been categorised. The Appeal Board in the Everton Appeal call it “*golden mitigation*”, the Premier League refer to it as “*very powerful mitigation*” and Forest noted it was termed “*a significant mitigating factor*”. This is doubtless because the Panel in the Sheffield Wednesday appeal case replaced the original 12-point deduction with a 6-point deduction, so the effect on that club was significant or perhaps golden. However, like all mitigation, it has to be earned and this Commission puts the labels to one side and considers the actions and omissions of Forest.
- 12.45 The Commission noted that looking to sell Player A earlier (in the January 2023 window) would have given Forest a far better chance of not missing the PSR Threshold at all. However, the only evidence Forest could produce that this had been considered was that Mr Vrentzos said he spoke to Player A's then agent about the possibility before the January 2023 window and that Forest's then sporting director, Mr Giraldi, knew to listen to any offers made.
- 12.46 The Commission could see that some efforts were made in May and June 2023 to sell Player A, but no acceptable offers were made in time. Mr Vrentzos' evidence was that there were some discussions with clubs such as Manchester City, Crystal Palace and Player A's new agent from USM.
- 12.47 Finally, there was the Atlético offer that came in on 30 June 2023, the deadline for PSR purposes. However, Mr Vrentzos stated that it was not one they could accept (albeit Forest did propose a counter offer that same day) as he was aware that Atlético had to sell before it could buy. If Forest had accepted to sell Player A conditional on Atlético then having to sell some other player at some future stage, Forest could then have had to wait to see if that ever happened and could have missed out on selling Player A elsewhere.
- 12.48 Once the 30 June 2023 deadline had gone by, the Commission notes that it appeared to be Forest's position that it would have the entire summer 2023 window to sell Player A. Indeed, the Commission notes that only on 28 August 2023 did Mr Vrentzos get the instruction from Mr Marinakis to sell Player A. At that stage there was the Brentford third offer in hand and Spurs came in soon after, before the deal was done with Spurs on 1 September 2023.
- 12.49 The Commission notes the actual “near miss” could be that Forest nearly missed selling Player A in the summer window altogether – it was cut extremely fine; however, it is whether Forest's missing the PSR deadline of 30 June 2023 was near or not that is the issue.

- 12.50 The Commission noted the EFL v Sheffield Wednesday appeal case that Forest relies upon for “golden mitigation”. The panel stated that one of the lessons to be learned from this case was [at 135]:

*“... Club owners, in particular, need to understand that timetables set by the EFL for compliance with the P&S Rules are not simply broad targets in a negotiating process: they are set with the interests of all Clubs in mind and it is unfair on other Clubs for clearly established deadlines to expire and then for ex post facto efforts (to be) made to rescue the position. If ever there was a case which demonstrates that hastily considered “rescue attempts” can lead to misunderstandings, misconceptions and mistakes, this case does.”*

- 12.51 The situation was different for Forest when compared to Sheffield Wednesday’s. The latter could control the timing of the stadium sale that would have cured its financial breaches, as it was the club’s owner that was buying the stadium. Further, the stadium sale was concluded within two weeks of the PSR deadline. Forest identified that its “miss” was selling Player A in time, however, it also identified how difficult it is to transfer a player. At least three parties are involved – the selling club, the buying club and the player. When the player is in the process of ending relations with one agent on 30 June and then signing a representation agreement with a new agent straight after, two more parties are added to the mix.
- 12.52 The Commission notes that Forest took a huge risk leaving itself with only one way to avoid a PSR breach, selling Player A in a two-week window between the summer 2023 transfer window opening and 30 June 2023, when it would be assessed for PSR. The Commission did note Forest’s submission that Wolves had managed to sell a player in the same two-week period to avoid a PSR breach (although no evidence of these facts was put before the Commission at the Hearing or in the documents), but it also noted Mr Bonser’s admission at the Hearing that “*not many*” players are sold in that part of the summer transfer window. It is not disputed that Forest missed the deadline by about two months.
- 12.53 In his closing submissions, Mr De Marco submitted that the Commission should draw an adverse inference against the Premier League in relation to the suggestion that it would have been impossible (or at least very difficult) to sell Player A in the early weeks of the summer transfer window. He pointed out, correctly, that there had been no evidence from the Premier League, to that effect as, he submitted, one would expect if that was the Premier League’s case. He relied on the case of R v IRC (ex parte TC Coombs & Co) [1991] 2 AC 283 at 300 (and in their Annex to their Skeleton Argument, Forest also cited the case of Wisniewski v Central Manchester Health Authority [1998] PIQR P324 at 340). However, the Commission, having



considered this submission, takes the view that it can rely on Mr Bonser's admission, as mentioned in paragraph 12.52 above, that "not many" players are sold in the early part of the summer transfer window as well as its own knowledge and experience of how that transfer window operates and therefore declined to make the adverse inference that Mr De Marco invited the Commission to make.

12.54 The Commission has to assess whether this "miss" could be classed as a mitigating factor and, if so, then by how much. An issue the Commission has is whether Forest could (and should) have sold Player A earlier in the summer transfer window in order to make the "miss" a lot nearer to 30 June 2023 (see the matters set out in paragraph 12.55 below). To Forest, that did not seem to matter, even though Player A played in the Premier League three more times in the 2023/24 season before he was eventually sold. Selling him when Forest did, not only could be inferred to have provided it with a sporting advantage in those games (see below), but it enabled Forest to get a better price for him. Money was not apparently Forest's driver, Mr Vrentzos explained at the Hearing that a few million pounds would not matter to a business that is turning over many millions, but, ultimately, it boils down to this for the Commission – what really matters is the integrity of the competition and how the public and other clubs saw Forest behaving; along with the fairness to the other clubs playing in the competition and abiding by the PSR. In the eyes of the other clubs, had Forest sold Player A within the first few weeks following the PSR deadline, this would demonstrate a willingness to comply, so why not make the "miss" as near as it could? It may have cost Forest some money, but it would have demonstrated that Forest showed some respect for the Rules, its fellow clubs and the competition and reacted as soon as it could.

12.55 The Commission examined what evidence there was before it, to consider the actions and omissions of Forest over that period. There was the offer from Atlético. The Commission understood from Mr Vrentzos that this was incapable of being accepted, as Atlético would only have the funds if it managed to sell another player first. That is accepted, however, the Commission notes that a counter-offer was made and there was no evidence at all as what happened after that. It does not appear that Forest followed it up. However, it is the negotiations with Brentford which stand out to the Commission. There was a first offer on 21 July 2023, so three weeks after the PSR deadline had passed. It appears that this was sent to Mr Marinakis and was then rejected. On 24 July 2023, Brentford's second offer came in and this was "swiftly" rejected too. It is not clear if that went to Mr Marinakis or whether he was spoken to about it, but within a few hours it was rejected as being "significantly below" his valuation of Player A. It was for £35m and would have practically taken care of the PSR breach.

- 12.56 Even if it might not have totally cleared the breach, the Commission wonders why Forest did not look to counter-offer and see if it could have nudged Brentford's offer up by a couple of million pounds, to ensure it would have cleared the PSR breach, as it could then claim a "nearer miss", one that in terms of time more closely reflected the Sheffield Wednesday "miss". Mr Vrentzos, at the Hearing, confirmed that Player A could have been prepared to go to Brentford in the right circumstances. His new agent was in place by then too, the representation agreement between the player and USM being entered into on 4 July 2023. However, there was simply no evidence of Forest making any of these types of attempts.
- 12.57 The Commission understands all clubs' desire to sell their players for the most they can achieve. That is a sensible commercial decision to take for any business. However, the Commission here concluded that for Forest respecting the PSR regime and looking to make the miss as near as possible was a less important factor, when compared to maximising value/profit.
- 12.58 The Commission would not see a sale in the January transfer window in 2024 as being a "near miss" at all. It could categorise a sale in the summer 2023 as a "near miss", if it was truly near to the PSR deadline or at the first available reasonable opportunity proximate to the deadline. Forest here waited until Mr Marinakis gave the sale instruction on 28 August 2023 and managed to sell Player A on the very last day of the summer window.
- 12.59 This business decision flies in the face of mitigation. In all these circumstances the Commission determines that it cannot be rewarded as a mitigating factor.

#### Reasons for the excess

- 12.60 Forest submitted that it had to bear very considerable costs as a result of its somewhat unexpected promotion to the Premier League, amounting to £20.92m. These costs were not anticipated in its March 2022 EFL P&S submission and, in effect, penalised it for securing promotion by reducing its £35m allowable losses by £20.92m.
- 12.61 Secondly, those losses were increased by approximately £9.678m due to Forest being unable to claim Covid-19 Add-Backs that it reasonably and/or genuinely and honestly believed would be allowable (and which were notified to the EFL but not subsequently accepted by the Premier League). Forest accepts that its belief was incorrect. The following is common ground between the parties:

12.61.1 Forest acted in good faith when originally claiming the add back whilst in the EFL;

12.61.2 It was not notified it was disallowed as an Add-Back by the EFL;

- 12.61.3 It had a genuine belief that it was permitted to maintain the Add-Back up to 2 June 2023;
- 12.61.4 It was, however, mistaken in that belief.
- 12.62 Forest maintains that it operated reasonably throughout: (i) it is common ground that there had been no notification by the EFL that the add-back would be disallowed before June 2023; (ii) it appears that the Premier League and the EFL were in discussions as to the appropriate approach to take to Covid-19 Add-Backs from around mid-June 2022 and it took time for a clear picture to emerge; (iii) the Premier League's position on Covid-19 Add-Backs was only properly explained and understood on 2 June 2023. Indeed, in May 2023 the Premier League remained in discussions with the EFL about at least some aspects of the Covid-19 Add-Backs that the EFL had previously allowed.
- 12.63 Forest submits that it ought to be treated as genuinely and/or reasonably believing, during the relevant time, that it would be able to claim Covid Add-Backs in the sums it had assumed. It therefore reasonably believed its losses were approximately £10m less than they have now been found to be. That goes to the seriousness of the breach and is an important mitigating factor, very different from a club that knows it is over-spending but continues regardless, or which acts in bad faith with respect to its accounting practices and PSR calculation.
- 12.64 Thirdly, Forest made a reasonable but ultimately inaccurate estimation as to the Merit Award. It filed its PSR Submission at the end of March 2023. This was based on a projected final league position in the 2022/23 season of 12th. The level of its losses increased due to it finishing the season in 16th position, and so receiving approximately £12.5m less. At the end of March 2023, Forest considered carefully its likely final league position taking account in particular: (i) the form of the bottom nine clubs over the previous 10 Premier League games; (ii) the points taken by each of the clubs from the games against the teams they were due to play in their remaining fixtures in the equivalent games in the first half of the season; and (iii) the league table as it then stood. Forest maintains that the projection was reasonable at the time.
- 12.65 The point being taken, by way of mitigation, is that Forest was new to the Premier League and (having only the benefit of one Merit Award to ease its losses) it was particularly susceptible to the impact of a reasonable but ultimately mistaken projection as compared with most other clubs.
- 12.66 As regards the promotion costs, the Premier League argued that this does not constitute mitigation as a matter of principle. Various situations will cause clubs to incur costs of various

types, as a necessary incident of running a football club. That promoted clubs will incur promotion costs is not an excuse for breaching the PSR. Further, the vast majority of the £20.92m relied on consists of “player and staff bonuses” (£18.6m), but there is nothing unique about this: all of Forest’s closest competitors are likely to have paid large promotion bonuses. Moreover, Forest’s calculation does not take any account of the countervailing benefits of promotion which are far greater. The accounts for FY23 show that its revenues increased from £29.7m to £154.8m as a result of promotion.

- 12.67 As regards the Covid Add-Back, the Premier League acknowledged that the parties had agreed that the Commission should proceed on the basis (in order to save time and costs) set out at paragraph 12.61 above.
- 12.68 The Premier League submitted that the issue therefore for the Commission is the reasonableness of Forest’s belief. To that end, the Premier League noted that the Covid-19 Add-Backs which are permissible under the PSR are described in Covid Guidance. This stated that Covid-19 Costs may be excluded from a Club’s Adjusted Earnings Before Tax only if they are in the notes to or in supplementary information used to reconcile the Annual Accounts, and those had been subject to an independent audit. They should also fall into one of three categories: (a) lost revenues; (b) exceptional costs, and/or (c) impairment of value. Having included neither impairments nor a Covid note in the filed accounts for FY22, Forest could not reasonably have continued to believe that it was entitled to the claimed Add-Back.
- 12.69 The Premier League argued that it should have been clear to a reasonable reader of both the Premier League’s Covid Guidance and its EFL equivalent that the claimed FY22 Covid Add-Back was not permissible. Both sets of guidance require costs to be disclosed by way of notes to the Annual Accounts or by way of supplementary information which reconciles to the Annual Accounts, and which has been subject to independent audit.
- 12.70 Finally, the Premier League addressed the Merit Award. Points of this nature cannot constitute mitigation as a matter of principle. In the Everton Appeal, the Appeal Board stated at [94]: “[I]t is not a mitigating circumstance if the aspirations and predicted success of a club prove, over the season, to have been (reasonably or unreasonably) unfounded. Such circumstances again fall within the ordinary course of conducting the business of professional football, and cannot of themselves reduce the culpability of the club for the breach. We also consider it would be unfortunate if determination of a level of sanction required a Commission to examine a club’s documents and other materials to determine (on the basis of possibly inadequate information)

*whether its historical projections for (e.g.) revenue and/or likely finishing position in a table were unduly over-optimistic. We do not consider that the PL Rules require such an approach”.*

- 12.71 The Commission notes that the PSR do not limit the expenditure that a club can incur, but rather limit the extent to which losses can be incurred. Clubs have under their control various levers to allow them to maximise income and control expenditure. The profit (or loss) recognised by any club during an accounting period is largely a reflection of an accumulation of commercial decisions made by that club. It is therefore unfair (and inaccurate) to attribute a loss solely to the failure to perform any singular transaction. In most cases, a loss is attributable to a series of commercial decisions made over an extended period.
- 12.72 The Commission notes that three reasons were given by Forest for the excess. It thought it would/should be able to add back the c. £20m of promotion costs it had incurred; it was reasonable for it to honestly believe that it would get to add-back the Covid losses of c. £12m; and it was reasonable for it to assume it would receive a Merit Award of £12.5m. When they all went the other way, the PSR position was such that Forest needed to sell Player A.
- 12.73 The Commission notes that the PSR relate to “profitability”. Forest, in its submissions, focused mainly on expenditure. It received a huge boost in its income by gaining promotion (see para 12.66 above, the revenues in that financial year increased by c. £125m), which cannot be ignored. Further, the PSR relate to “sustainability”. The Commission does not criticise Forest’s business model but does question whether it should have acquired all the players it did (particularly in the January 2023 window) when it knew it had to sell players to meet the PSR Threshold that it was facing.
- 12.74 Further, the Commission struggles to see why any of the three reasons should be treated as mitigation or would ultimately affect the starting point for the sanction. The promotion costs are what they are. Mr Bonser acknowledged that both Fulham and Bournemouth would have had similar costs and that many Premier League clubs would have comparable “survival bonuses” that they would have paid - indeed Forest had to pay a “survival bonus” to its players at the end of the 2022/23 season. These are standard across the industry and should have been anticipated.
- 12.75 The Commission has some sympathy with Forest as it seemed to take a long time before it was finally told that the Covid add-backs it had claimed would not be allowed at anything more than £2.5m. However, it seems clear to the Commission having reviewed the EFL and Premier League Covid Guidance that there were some conditions precedent that needed to be met in order to claim the add-back (these are identical - see paragraph 4.3 above). These were not

present here. The Commission notes that in Forest's 30 June 2021 accounts there was a note that forecast the FY2022 Covid add-back at c. £12m, however, there were no actual Covid add-backs reported in the 30 June 2022 accounts. The basic requirements of the Covid Guidance had not been met. Those accounts were signed off by Forest on 28 February 2023, i.e. before it made its PSR calculation for the Premier League. Whilst the parties have agreed that Forest's mistake was genuine and honest, it cannot be said that it was reasonable. Both Mr Vrentzos and Mr Bonser claimed that they were familiar with the EFL position on Covid Add-Backs. The Covid Guidance is identical in both leagues. The FY2022 audited accounts had been signed off before the PSR return was made. There were no actual Covid costs separately reported in those accounts. Ultimately, the situation that Forest found itself in was of its own making and does not therefore in the Commission's view count as a mitigating factor.

- 12.76 Finally, again the Commission has some sympathy with Forest regarding the forecasting of where it would finish in the final Premier League table for 2022/23. At the Hearing, Mr Bonser stated *"I'm looking at it from the point of view of an accountant and I am prudent, by nature, because I'm an accountant."* 12th could have been possible, as could relegation have been. Forest made an optimistic but not totally unreasonable prediction. It was wrong and it affected its PSR forecast, but not by enough to change the fact there was a significant PSR breach and again, how Forest chose to forecast was its own business decision. That is not a mitigating factor, nor does the context change the starting position for sanction.

#### No sporting advantage

- 12.77 Forest's position is that it did not enjoy any sporting advantage as a result of the breach. This is a key mitigating factor going to what is a necessary and proportionate penalty, because the core purpose of sanctions is to remedy any unfairness in the competition and not merely to punish those in breach for the sake of punishment.
- 12.78 Judged by that measure, the breach was inconsequential from a sporting perspective. In the vast majority of cases, a breach of the PSR will confer (and/or can sensibly be inferred to have conferred) a sporting advantage. Put simply, where two clubs are both limited to making losses of no more than £105m over three years, and one of them spends significantly over £105m, a sporting advantage can usually be inferred to accrue to the club that has breached the limits. However, the inference of sporting advantage, and therefore of unfairness, is not (as made clear in the Everton Appeal [159]) an irrebuttable presumption drawn from the mere fact of a PSR breach.

- 12.79 On the facts of this case, Forest submitted that there is no basis for that kind of inference and/or

any different case, in which the club in question had overspent over multiple seasons. By contrast, Forest has a track record of full compliance.

- 12.80 First, Forest was already operating at a significant sporting and financial disadvantage with the substantially lower PSR Threshold. Even taking into account the PSR overspend, it remained at a significant disadvantage relative to nearly every other club.
- 12.81 Secondly, the particular circumstances of the breach (which would have been avoided entirely by the slightly earlier sale of Player A) meant that the only conceivable sporting advantage that might have been enjoyed by it arose from its deployment of Player A between 30 June 2023 and 1 September 2023. The question is not whether Player A participated in any matches (or whether an inference of sporting advantage can be drawn from that fact alone), but rather whether his playing time should be categorised as a sporting advantage in all the circumstances. It is trite law that inferences must be reasonable in the circumstances and cannot be based on speculation or conjecture.
- 12.82 Forest submits that on the facts, there was no such sporting advantage nor a basis for properly inferring one. Forest's Head Coach selected Player A to participate in the team during only three Premier League matches played in August 2023 (which resulted in one win and two defeats), Player A did not play a full match, and did not score or provide an assist. Those three points cannot be attributed to his involvement without an impermissible level of conjecture or speculation.
- 12.83 Forest submits that this is clearly different from the situation arising in the vast majority of cases where inferences of sporting advantage may legitimately and reasonably be drawn – e.g. where a club buys additional players, or refuses to sell players, playing those players over a substantial part, or the whole, of the season (and often over a much longer period of their playing contract), spending more money on players than competing clubs in comparable positions, in order to, or at least with the likely effect of, obtaining a sporting advantage.
- 12.84 The absence of a sporting advantage for Forest is a powerful factor that calls into question whether any sporting sanction is appropriate or proportionate in the unique circumstances of this case. It is difficult to justify a points deduction by reference to upholding the sporting integrity of the Premier League or to undo a sporting unfairness in the absence of any clear advantage, and there is little need for a deterrent to prevent such conduct in the future: (i) Forest did not intentionally breach the PSR and needs no further motivation to ensure future compliance; (ii) other clubs are unlikely to place themselves in positions of breach where there is such little prospect of a sporting advantage for them.

- 12.85 The Premier League again relied on the Everton Appeal. At [14] the Appeal Board said that *“significant spending on players is likely to benefit a club in sporting terms which may then translate into financial success. The converse is that other clubs which, for whatever reason, do not make that investment may be relatively disadvantaged both in sporting and financial terms”*; at [20] that *“although difficult to quantify, spending money on players is likely to give a club a sporting advantage...and, consequently, a financial advantage”*, and at [144]-[145] *“there is an obvious correlation between a Club spending on players and improvements on the pitch and, hence, in league placing...Because PSR overspending is almost always on players, where a club breaches the FFP regime of a competition in which it competes, it obtains or may obtain a sporting advantage (with any financial advantage that that entails) over rival clubs which comply with the regime. To allow that would be unfair”*.
- 12.86 Should the Commission be assessing whether there was in fact a sporting advantage, the question for it is whether Forest derived a sporting advantage compared to what would have happened if it had complied with the rules, not compared to other clubs. In any event, as set out in the report of Mr Brown, in the 2022/23 season Forest’s transfer spending was very much higher than Bournemouth and Fulham who were promoted alongside it and the second-highest for any promoted club since the PSR were introduced in 2013, including 12 other clubs who were not in receipt of parachute payments. Indeed, its gross and net transfer spending were above average for the Premier League as a whole.
- 12.87 There was also an advantage for the three games Player A played in in this season. Forest’s arguments are misconceived because (a) the manager would no doubt not have played him if he did not see an advantage in doing so; (b) a player’s contribution (even in the case of a forward) cannot be measured in goals and assists alone, and (c) the increased price obtained for his registration by selling later in the window also conferred an advantage.
- 12.88 The Commission notes that Forest’s position is that if it had only sold Player A at the beginning of the summer window in 2023, everything would have been fine, so the only sporting advantage to look at is the use of the player after 30 June 2023, before he was sold to Spurs in September 2023, i.e. those three league games and the one cup game.
- 12.89 Another way to look at this is that Forest bought extensively in summer 2022 (to compete and to fuel its business model of showcasing those new players, with the view to selling them later at a profit), knew it was in trouble with PSR before the end of 2022 and rather than sell one of its best players (likely Player A) in the January 2023 window or indeed any other players, it bought more players in that window and its PSR position got worse. After that, its only plan to



comply with PSR was the sale of Player A in a two-week period in June 2023.

- 12.90 Forest effectively went through the entire 2022/23 season with a squad that it could not afford (if it wanted to comply with the PSR) and with Player A that it had not sold. The Commission has not been asked to consider this as an aggravating factor; the Premier League advanced none in the Complaint, but it cannot ignore this and give mitigation to Forest when it is right to infer that Forest would have enjoyed a sporting advantage over that season.
- 12.91 Further, the Commission did note Mr Vrentzos's statement that "*it would have been catastrophic not to play Player A*" in the four games in 2023/24, in that not playing him against the manager's wishes would have undermined the manager. In the light of the fact that the manager clearly saw a benefit in fielding him and the fact that Forest also took a huge risk by playing him (for example, he could have been seriously injured when playing in one of the four games that he played in in that season thus reducing or even removing the chance of selling him in that transfer window), the Commission can and does infer that Forest gained some sporting advantage in playing him in those games. Overall, Forest cannot claim that it had no sporting advantage and that there should be some mitigation in these circumstances.

#### Track record and positive trend

- 12.92 Forest claimed that it is taking active steps to improve its financial position to comply with the PSR in the current reporting period. This includes the sale of Gustavo Scarpa to Atlético Mineiro for EUR 5m and the loan of Orel Mangala to Olympique Lyonnais for a £10m loan fee (and an option to purchase for £15m). It has derived substantial profits, and wage savings, from its activities in the January 2024 transfer window. Currently, it is projecting to realise losses of approximately £12-17m for the year ending 30 June 2024.
- 12.93 Under the current ownership, it has a good record of complete compliance with the EFL P&S Rules. It has ensured that compliance by reasonable and responsible player trading to realise the necessary profit, often selling players of great significance. Forest argued that is a further significant mitigating factor. This is not a case of a recalcitrant club pushing the limits but of a responsible club caught out by its player trading strategy despite actively aiming for (and generally achieving) compliance.
- 12.94 Forest submits that this historical compliance and the significant positive trend demonstrates its commitment to compliance and amounts to powerful mitigation.
- 12.95 The Premier League submits that there is nothing unusual about a lack of previous PSR

breaches. As the Appeal Board pointed out in the Everton Appeal at [140]: “[T]he evidence before the Commission was that, in the seven years of the PSR regime to Season 2021-22, only one other club may have breached the £105m threshold on the basis of its PSR Calculation – that is the matter which is still proceeding before a Commission”. Everton was not given any credit for a clean disciplinary record. No doubt the presence of previous breaches could constitute aggravation in appropriate circumstances, but the absence of such breaches is no more than part of the standard of required conduct for a Premier League club. It is not something above what is reasonably expected; it does not justify additional credit.

12.96 The Premier League then addressed the positive trend submissions of Forest. Whether or not a “positive trend” over the PSR period may be relevant mitigation, it is not appropriate for the Commission to look at later financial years for this purpose, particularly where the financial year in question has not yet completed. The three-year period with which the Complaint is concerned certainly does not disclose a positive trend (the losses in FY23 being larger than the already substantial losses in FY22). The Premier League referred to the Everton First Instance [118]: “*The position in subsequent years is a matter for those years*”.

12.97 The Commission is concerned with the trend leading up to the PSR breach in June 2023. It notes that Forest was compliant in the EFL, but then invested heavily once in the Premier League and breached the PSR. That was a negative trend.

12.98 What happens for its second season in the Premier League is potentially a matter between the parties next year, when the PSR for FY24 is considered. The Commission agrees with the Appeal Board in the Everton Appeal in this regard.

12.99 Forest is also claiming that the fact that this is its first PSR breach should be treated as mitigation. The Commission does not agree. All clubs should comply with the PSR, however, if a club does not, on more than one occasion, then that maybe an aggravating factor or one that affects the starting point for sanction or an additional sanction.

#### Exceptional cooperation

12.100 Forest made it quite clear that it had no interest in becoming involved in a dispute with the Premier League. It supports the objectives of the PSR and seeks to assist the Premier League in determining these proceedings with the minimum of delay and expense, assisting the Premier League not only in these proceedings, but in its objective to encourage other clubs to co-operate constructively with proceedings brought by it to enforce its PSR.

- 12.101 Forest submits that it is a well-established principle of sentencing generally, applied in sports disciplinary cases, that a person who enters a plea at the earliest opportunity is entitled to a reduction of any applicable sanction by at least one third.
- 12.102 Forest respectfully notes in this regard that Everton appears to have avoided the prospect of relegation during the 2022/23 season by reason of initially denying the Complaint brought against it, and taking various points, including resisting the Premier League's application for expedition, such that the first instance proceedings against it could not be determined until November 2023. The need for swift decision making to assist the integrity of the Premier League means that clubs that co-operate should be significantly rewarded to incentivise others to do so and deter those who seek to delay or disrupt proceedings brought against them.
- 12.103 As set out above, the Premier League acknowledges the cooperation from Forest. However, it took issue with Forest's submission that "*well-established principle of sentencing generally, applied in sports disciplinary cases, that a person who enters a plea at the earliest opportunity is entitled to a reduction of any applicable sanction by at least one third*". The Premier League felt that is something of an overstatement and referred the Commission to Part D of the Sentencing Council's guideline "*Reduction in Sentence for a Guilty Plea*" which indicates that the maximum level of reduction in sentence for a guilty plea is one third, which is applicable where a guilty plea is indicated at the 'first stage of proceedings'.
- 12.104 The Premier League agreed with the Appeal Board in the Everton Appeal, in that there is a level of cooperation that is reasonably expected by all clubs in the Premier League. In this case, it considers that Forest has indeed displayed a level of cooperation which is above the level reasonably expected. Forest has consistently indicated it intended to cooperate and has been very receptive to indications from the Premier League as to what would be required in this regard. Its cooperation commenced prior to the submission of its Annual Accounts at the end of December 2023 and has continued thereafter. By doing so, it has significantly reduced the costs of enforcement and assisted this Commission. It is desirable that such cooperation be recognised and given credit, both because it is deserved, and in order to create appropriate incentives for respondent clubs in future PSR cases.
- 12.105 The Commission agrees with the Premier League and commends Forest for its early plea and for the cooperative way it has conducted itself throughout this matter. Without this approach, it would not have been possible to conclude the process, including a two-day hearing, in just eight weeks from the Complaint. It is crucially important to the Premier League, all its clubs and the fans around the world that these types of matters are dealt with expeditiously, so the

competition can be concluded on the pitch.

12.106 The Commission was expressly asked by the Premier League to record all the cooperation Forest had provided, to serve as a helpful reference point for other clubs seeking to understand what would qualify as exceptional cooperation for the purpose of obtaining mitigation in any future cases. The Commission is pleased to do so:

*“Helping to facilitate an efficient and cost-effective resolution of the proceedings, including by:*

- (i) Responding constructively and promptly to requests for information prior to the deadline for the filing of any Complaint;*
- (ii) Agreeing to the application of the standard directions in the PL handbook and agreeing with the PL a full procedural timetable to give effect to the standard directions without the need for a procedural hearing;*
- (iii) As part of that timetable, agreeing to a process of early and rapid disclosure, meeting that deadline, and then responding constructively and promptly to the PL’s queries regarding disclosure (including the provision of further relevant documents where identified and/or requested);*
- (iv) Constructive and open communication with the PL and its solicitors at all times on all aspects of procedure as well as more substantive issues (such that there have been no surprises during the proceedings).*

*Voluntarily attending a fact-finding meeting (which is not a step provided for in the standard directions) at very short notice, including arranging for individuals to fly internationally to attend the meeting, and engaging with all the questions raised in that meeting (without objecting to any such questions being asked).*

*Agreeing a wide range of agreed facts, materially reducing the need for witness and documentary evidence.*

*Constructive engagement with the PL regarding the issues in dispute, including abandoning aspects of the Club’s case upon appreciating that they were based on a flawed factual premise (which was unknown to the Club at the time it originally advanced such points) and accepting representations from the PL as to that flawed premise without requiring the same to be proven (which would likely have required a confidentiality ring), resulting in an amendment to remove parts of what is now §27.4 of the Amended Answer ...*

*Releasing a brief and neutral press release regarding the proceedings – stressing the Club's intention to cooperate with the PL.*

*Agreeing to the directions agreed in these proceedings being disclosed in other proceedings to assist the PL [to] achieve similar directions.”*

- 12.107 In summary, Forest will be given credit for one head of mitigation, the cooperation/early plea. All other heads put forward by it are rejected.

### **13 NATURE OF SANCTION**

- 13.1 The Premier League submitted that the only proper sanction is a sporting sanction in the form of a deduction of points. It acknowledges that the Commission has a wide discretion and a broad range of sanctions available but relies heavily on the Appeal Board's position in the Everton Appeal [202]: *“leaving any mitigation aside, only a points deduction is appropriate for a breach of rule E.51 ... any breach of rule E.51 is serious matter. It likely gives the club in breach an unfair sporting advantage and a correspondent revenue advantage. In our view, only a points deduction, with its immediate and overt effect, has the appropriate power of disincentive for clubs to remain within the upper loss threshold required to maintain the aim of an FFP regime. It also, in our view, addresses both the financial and sporting aspects in the most appropriate way.”*
- 13.2 The Commission has some doubts as to whether the blanket approach suggested by the Appeal Board in the Everton Appeal is always going to be appropriate. The Commission recognises that the overriding factor the public will take into account will be the amount of the PSR breach and that this will have a large bearing on the integrity of the competition. Put simply, the bigger the breach, the harsher the sanction that will be anticipated. However, the Commission has taken into account the context surrounding the breach and the mitigating factors too, as above.
- 13.3 Rather than solely focusing on the quantum of the breach, it may assist to consider those in categories or bands. The example of the £1 over breach must be a “minor” breach, for which a points deduction may not be appropriate. There will be “significant” breaches that will more than likely result in a starting point of a points deduction; these could be in the tens of millions. Then there may also be “major” breaches which will undoubtedly result in a starting point of points off and may even stray above the Event of Insolvency “cap” that has been advanced by Forest. The Commission notes that Sheffield Wednesday had gone over its EFL threshold by nearly £50m and it noted from Mr Brown's report that there are examples of one Premier League club's spending on player transfers of nearly £200m in a single season and another

club's at over £500m. Of course, spending is judged over a three-year period and amortisation plays a significant factor, but Forest's excess may not be the highest the Premier League will ever see.

- 13.4 This line of thinking can be left to one side for future Commissions to consider. The Commission, even taking into account the contextual background of Forest's breach, has no doubt that the starting point for the sanction in the case at hand is a points deduction. A breach in the tens of millions of pounds is a significant breach.

## **14 QUANTIFICATION OF SANCTION**

- 14.1 The Premier League pointed out that Forest was subject to a lower PSR Threshold than Everton (£61m rather than £105m) and exceeded it by a considerably greater margin (£34.5m rather than £19.5m). As a result:

14.1.1 the excess was 77% larger than Everton's; and

14.1.2 its excess was 57% of the applicable threshold, compared to Everton's which was 19% of its applicable (albeit larger) threshold.

- 14.2 The Premier League submitted that this comparison is fair: it is appropriate to measure the excess by reference to the (reduced) threshold applicable to Forest, and it is fair to compare it with Everton even though a higher threshold was applicable to Everton. To do otherwise would undermine the Rules which deliberately apply a reduced threshold in respect of seasons spent in the EFL. The extent to which the PSR Threshold has been exceeded in absolute terms, regardless of its level in a particular case, will always have a correlation with the (improper) sporting advantage that has been gained. The starting point when considering sanction, and before mitigation, must therefore be higher than the six points imposed on Everton. In the Everton Appeal at [210]-[213] one exercise undertaken by the Appeal Board was to start from a minimum of three points and work up to the six-point figure to reflect the magnitude of the breach.

- 14.3 The Premier League compared the relevant quanta of the breach in Everton and in respect of Forest. In the present case the breach was 77% larger than in Everton which logically suggests a starting sanction (before mitigation) of eight points, as follows:

14.3.1 Applying the minimum of three points alighted on by the Appeal Board in Everton;

14.3.2 In Everton a further three points were added for a £19.5m breach;

- 14.3.3 Since the size of Forest's breach was 1.77 times that of Everton's, multiply those 3 points by 1.77, which equals 5.31;
- 14.3.4 The starting point sanction of three points plus the five-point increase for quantum, to reflect the seriousness of the breach, results in an eight-point sanction applicable to Forest (before mitigation).
- 14.4 Alternatively, the Appeal Board in Everton may have awarded three further points for a breach of £19.5m, i.e. one point for every £6.5m. If the Commission applied the same approach to Forest, this would also result in five points being awarded for the breach of £34.5m, to be added to the minimum of three points.
- 14.5 The Premier League then considered the extent to which the sanction should be discounted to reflect mitigation. It suggested that the combined mitigation provided by the two factors of an early plea and cooperation justifies a discount of two points. This would be a meaningful reduction to a points deduction of the size suggested by the Premier League as the starting point (i.e. two points off eight) and would satisfy the twin objectives of fairly rewarding Forest for its conduct and appropriately incentivising other clubs in future cases to adopt a similarly cooperative approach. The Premier League's view is that the 50% discount suggested by Forest is too high: it gives too much credit for admission and cooperation and would be both disproportionate to the conduct being rewarded and subvert the legitimate purposes of the PSR outlined in paragraph 3 above. Further, it would circumscribe the sanctioning powers of this and future Commissions too tightly, giving little room to reflect the individual circumstances of any case in which an early admission, together with cooperation, requires recognition.
- 14.6 On the other hand, Forest noted that it was stated in the Everton Appeal [217] that there is some force to the submission that "*an Event of Insolvency is an inevitably more serious matter for the relevant club in respect of its sustainability, and so for the integrity of the PL as a competition*", than a breach of the PSR Threshold. As such, any approach to sanctions for breach of the PSR should not be "*internally inconsistent within the framework of the PL Rules*" as a whole. Where a club has breached the PSR Threshold but not triggered an Event of Insolvency, Forest would expect to see points deductions of no more than 8 points in nearly all cases. The exception is, perhaps, in the most exceptional cases involving the most extreme aggravating circumstances (taking into account the fact that an Event of Insolvency may in principle trigger sanctions additional to the automatic nine-point deduction provided for by Rule E.35). That will however, even in a very serious case of breach of the PSR, be the exception rather than the norm.

- 14.7 Forest too considered the “far more serious” Everton situation and noted that it merited a six-point deduction. Forest pointed out that Everton’s losses were c. £124.5m compared to its own of c. £95.5m. It invited the Commission to adopt a substantially more lenient approach to the exceptional circumstances that Forest had found itself in. It concluded that it is doubtful whether a points deduction would be appropriate at all on the facts of this case. The starting point should be no sporting sanction (and in particular no points deduction), although a warning and reprimand and/or some other sanction such as fine and/or submission to a Business Plan would be appropriate given the breach.
- 14.8 Alternatively, Forest suggested that if a points deduction is to be imposed, it should be minimal. This case is at the opposite end of the spectrum to Everton (in which a six-point deduction was made), taking into account the unique and exceptional circumstances, the absence of any sporting advantage, and Forest’s exceptional co-operation (together with the other mitigating factors).
- 14.9 In particular, Forest urged the Commission to take into account the “golden mitigation” of its “near-miss” with Player A, any points deduction that would otherwise be imposed by the Commission ought to be reduced by 50%, following the approach taken in Sheffield Wednesday Football Club v Football League Limited (SR/196/2020) (4 November 2020), also referred to in the Everton Appeal. Forest’s exceptional co-operation with the Premier League ought to lead to a further reduction of at least one third to a half. In short, taking into account all of the mitigating factors, it is hard to see a basis for anything more than the most minimal point(s) deduction (if any deduction is deemed truly necessary at all), whether suspended in whole or in part.
- 14.10 At the Hearing, Forest did accept an entry point of three points as the starting point in a “normal” case but submitted it should be a lower starting point here as “in the round” this case is not as serious as Everton.
- 14.11 The Commission notes that there is no fixed formula to use. However, the Premier League has suggested a couple of mathematical methods that look at sanctioning in terms of a point per so many million pounds or such a percentage over the appropriate threshold. The Commission notes that this was not too dissimilar to the Premier League Board’s guidance that was not followed in either the Everton First Instance or the Everton Appeal.
- 14.12 The Commission understands that this type of approach does bring certainty, but it seems to have a couple of drawbacks. Firstly, it makes the sole focus on the amount of the excess and does not allow for a consideration of the contextual background, unless the factors describing



that are also mitigating factors. Secondly, there seems to be an upper limit when taking into account how Events of Insolvency are dealt with. If the Commission followed the Premier League's suggestion, a slightly larger PSR breach would result in a similar, if not greater points deduction than an Event of Insolvency, when the offences are very different. An Event of Insolvency can disrupt the entire competition (if a club was to liquidate mid-season, then the table would need correcting to take points off clubs that had beaten or drawn with the former club, would one less club be relegated or one more club come up, etc) and would seriously undermine the integrity of the entire league, with many creditors suffering losses.

- 14.13 That noted, as stated above, the Commission does take into account the excess as part of the exercise to arrive at a starting point, before considering mitigation (there being no aggravation in the case at hand pleaded by the Premier League). All clubs have a margin of room up to the upper threshold which can be made good by additional investment its owners can make. Forest went beyond that by almost £35m, which the Commission treats as a significant breach. The Commission can see the merit in adopting the Appeal Board's approach in the Everton Appeal when dealing with a significant breach. As such, the entry point should be a three-point deduction too.
- 14.14 If the context was such and/or the quantum at the lower end of a significant breach, then the starting point might slide down the scale in terms of points and conversely, absent any contextual justification and/or with a higher quantum within the significant breach band, the starting point should slide upwards in terms of points. The Commission notes with Everton, there were a couple of factors that moved it up the scale to a starting point of six points - the size of the breach itself and what was initially termed as "misleading" the Premier League, but on appeal shown to be "incorrect" information being provided to the Premier League.
- 14.15 In the case at hand, the Commission considered whether there were any additional factors that should be taken into account - the "unique" position and/or the reasons for the excess. The conclusion was that these did not (nor were they mitigating factors, see above) and the only factor driving Forest up the scale will be the size of the breach. It was bigger than Everton's, but both were in the "significant" breach band. However, there was no additional consideration around incorrect information being provided to the Premier League, as Everton had. The Commission does not know how the three extra points were arrived at by the Appeal Board for Everton, but some part of those three points must relate to the provision of incorrect information. Forest's breach (not its losses, the Commission is concerned with the breach of the PSR Threshold) was larger than Everton's and as a result, that alone slides it up the scale by three further points to a starting point of six points.

- 14.16 From there the mitigation needs to be taken into account. There is no dispute that early plea/exceptional cooperation should result in a deduction. The Premier League suggested two points and would not be drawn at the Hearing on whether that should be expressed as a percentage. Forest felt the early plea alone should be worth a one-third reduction, in line with criminal sentencing guidelines and therefore a further deduction should be made for the cooperation.
- 14.17 There are difficulties with both approaches. The Commission can see the sense in avoiding taking fractions of points off clubs. In this instance, deducting two points is in line with the Premier League's suggestion but slightly less than Forest argued for. The Commission notes Forest's argument that a third should be deducted for the early plea (so two points) and there should be a further deduction for the cooperation. The Commission notes the sentencing guidelines and the various authorities cited by Forest, however, it further notes that in those cases (which were mainly criminal cases) a primary objective is to punish the offender. As noted above, that is a lesser objective in a case such as this. The Commission did not feel compelled to deduct a third for an early plea, rather it determined to deduct two points for the early plea and the cooperation together.
- 14.18 This leaves Forest now with a four points deduction, which the Commission considers to be fair, necessary and proportionate by reference to the facts placed in front of it:

	<b>Sanction effect</b>	<b>Paragraph reference</b>
Entry point for a significant breach	3 points	14.13
Circumstances and scale of the admitted breach	+3 points	14.14 & 15
Less: Mitigation	-2 points	14.17
<b>Total Sanction</b>	<b>4 points</b>	

- 14.19 The final issue to determine is whether all or any part of this should be suspended, as suggested by Forest, pursuant to the Commission's powers under Rule W.51. (in particular at Rule W.51.8).

- 14.20 Forest acknowledges that the Appeal Board in the Everton Appeal [228] rejected the idea that the points deduction in that case should be suspended, but Forest submitted that: (i) Everton had not asked for a suspension (as it had already breached its next year's PSR Threshold); (ii) it was a serious case involving a deduction of six points; (iii) Everton had clearly derived a sporting advantage that required rectification; and (iv) the Appeal Board had regard to the EFL Guidelines, by which an immediate points deduction is generally applied in contested cases. However, Forest argued that none of those factors apply here, indeed the relevant factors all point the other way.
- 14.21 Forest relied upon a number of EFL cases which suggest that suspended points deductions are often appropriate in cases where there has been Agreed Decision, i.e. where the breach is admitted. The main case it relied upon was EFL v Reading (Agreed Decision, 2021/22), where a six-point deduction was imposed immediately but a further six-point deduction was suspended on certain conditions. This was in response to serious circumstances, involving losses of £18.809m in excess of the Upper Loss Threshold under the EFL P&S Rules. A suspended sanction is, of course, still a significant punishment and deterrent.
- 14.22 The Commission notes that a suspension of a sanction can be a useful tool, in the right circumstances. The Reading and other cases are different to the case at hand. There is no structured settlement, there is no agreed budget for Forest to work to going forwards, etc. Suspensions may be used by a regulator or a Commission as part of a "carrot and stick" approach. The carrot is to comply with the settlement agreement and the suspended points hang over the club like a stick, in case it does not.
- 14.23 Taking into account the arguments made by Forest, the Commission notes that its breach is serious and its position on sporting advantage has been dealt with above. The four points sanction is not to punish Forest so much as it is to be fair to the other clubs; to give the public confidence that when a club invests as Forest did to compete in the Premier League it still needs to comply with the PSR Threshold for losses; and that when a club like Forest took the risk of effectively ignoring the PSR warning from its Finance Director before the January window in 2023, and rather than looking to sell players, it added players to its squad, ultimately leaving itself with just two weeks to sell Player A in the summer 2023 window, such risk taking and "sailing close to the wind" needs a proportionate sanction to maintain the integrity of the Premier League; and to hopefully enable Forest to operate a more sustainable business in terms of PSR going forwards. Suspending this sanction would not change anything. If the Commission's aim was to hold over some punishment to give Forest a chance to change its ways, then perhaps a suspension could be considered, but here Forest appears to understand its

PSR requirements for this current season and what it needs to do to avoid being in a similar situation in a year's time. It has already told the Commission of its positive trend and that it will not have PSR issues at the end of FY2024. The Commission hopes that will be the case. The four points are to be deducted immediately.

## **15     CONCLUSION**

- 15.1     The Commission finds that Forest shall be subject to an immediate deduction of four points.
- 15.2     The Commission invites the parties to maintain the levels of cooperation and to attempt to agree any consequential orders, including the question of the costs of the proceedings. The parties shall liaise and inform the Commission what they have agreed, and what issues remain for determination by the Commission.

Mark A. Hovell

18 March 2024

Mr Robert Glancy KC

Mr Steve Holt FCA