

IN THE REGULATORY COMMISSION
OF
THE FOOTBALL ASSOCIATION

CC/17/1569

Mr David Phillips QC, Mr Keith Allen, Mr Peter Fletcher
16 & 17 October, 7 November, 4 December 2018

BETWEEN

THE FOOTBALL ASSOCIATION

Complainant

and

WEST HAM UNITED

Respondent

WRITTEN REASONS

INTRODUCTION

1. The FA has charged West Ham with misconduct contrary to FA Rule E20. The allegation is that at its home match against Burnley FA on 10 March 2018 West Ham failed to ensure that its spectators conducted themselves properly. The charge letter is dated 27 June 2018. West Ham's Reply is dated 27 July 2018. It denies the charge, relying on the *due diligence* defence provided by E21. The Regulatory Commission heard evidence on 16 & 17 October and 7 November 2018: and closing submissions on 4 December 2018. The FA was represented by Mr Will Martin. West Ham was represented by Mr Nick de Marco QC. A number of witnesses attended to give oral evidence.

THE CHARGE

2. The charge is worded in the following terms -

You are hereby charged with misconduct for a breach of FA Rule E20 in respect of the above fixture.

It is alleged that West Ham United FC ("the Club") failed to ensure that its spectators conducted themselves in an orderly fashion and/or that no spectators or unauthorised persons were permitted to encroach onto the pitch area.

Without prejudice or limitation, in so far as the Club may call upon the defence set out at Rule E21, The Association will say that the Club failed to discharge its duty in respect of due diligence in that, the Club failed:

- i) to put in place an appropriate strategy to prevent or deter a pitch incursion;
- ii) to react appropriately to the incursions occurring in the 66th, 70th, 72nd or 80th minutes of the fixture by redistributing stewards so as to prevent or deter further incursions;
- iii) to ensure there were sufficient stewards/police available at pitch side to effectively prevent/deter an incursion;
- iv) to protect players and/or match officials from the risk of harm in the event of a pitch incursion; and
- v) to react appropriately to supporter disorder in front of the Directors' box.

3. In its Response dated 30 July 2018 Mr de Marco puts West Ham's case as follows –

The Club denies the charge by relying on the defence in FA Rule E21, i.e. that the "events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged."

FA RULE E21

4. Rule E21 provides –

Any Affiliated Association, Competition or Club which fails effectively to discharge its said responsibility in any respect whatsoever shall be guilty of Misconduct. It shall be a defence in respect of charges against a Club for Misconduct by spectators and all persons purporting to be supporters or followers of the Club, if it can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged.

5. It is common ground that the burden of providing the due diligence defence rests on West Ham, and that the standard to which that burden must be discharged is the balance of probabilities. It is also common ground that the two limbs of Rule E21 are conjunctive. To bring itself within the rule West Ham must prove *circumstances over which it had no*

control and all due diligence. Finally, it is common ground that, as stated in West Ham's Response -

When determining whether a Club has made out such defence, a Commission's enquiry cannot include a "descent into a counsel of precaution with the luxury of hindsight". A Club is not required to "eliminate the risks" of the events occurring "as that would nullify the due diligence defence".

6. West Ham accepted that for the purposes of this hearing it was responsible for the conduct of E20 and LS185 as if they were each its agents. They were to be treated as *its responsible officers or agents*. Mr de Marco, however, expressly disavowed any suggestion that either E20 or LS185 were agents for any other purposes. The club accepted that in order to establish the due diligence defence it must demonstrate that those who made the stewarding arrangements and provided the stewards exercised due diligence.

FACTUAL BACKGROUND

7. The incidents giving rise to the charge took place at West Ham's home match against Burnley FA on 10 March 2018 held at the London Stadium. During the match, particularly during the second half, there was considerable disturbance and unruliness by West Ham supporters. There were incursions onto the pitch on four separate occasions. Fights took place between supporters and security staff, and between supporters and other supporters. There was an incident at the director's box towards the end of the match. These incidents are clearly seen from the CCTV footage that we have seen.
8. West Ham had moved to the London Stadium in 2016. The London Stadium is owned by E20 Stadium LLP. West Ham's occupation of the London Stadium is pursuant to an agreement dated 22 March 2013. The

agreement gave West Ham no rights to manage or control the safety, security or stewarding at the London Stadium. That remained the responsibility of E20. E20 subcontracted the performance of those functions to LS185 Ltd.

9. In the period running up to the Burnley match it was known that a number of West Ham supporters were disaffected with the West Ham board. The disaffection was such that special security arrangements were in place to protect West Ham directors travelling to away games. A march protesting at the management of the club had been planned to take place before the match but had been cancelled following a conciliatory approach from the West Ham. Before the match the Police had categorised the risk of disturbance as being Category A - that is, the lowest category.

10. Three separate reports have been commissioned, were introduced into evidence, and have been considered by the Regulatory Commission. The first report in time was written by Dave Sadler, LS185's Head of Safety & Security, but updated by Graham Harris, LS185's Deputy Security Officer. We have seen two versions of this report, versions 1.2 (29 March 2018) and version 2 (9 April 2018). The principal differences between the versions that we have seen is that version 1.2 contained a number of negative comments concerning the reduction in staff that had been made by LS185 which comments were removed from version 2. Mr Sadler told us that, acting in consultation with LS185's Deputy Safety Officer, Operations Director, and Chief Executive, he was responsible for the revisions that were made to produce the final version of the report. Mr Sadler explained that the purpose of the revisions (including the removal of the negative comments) was to retain only passages that

were absolutely needed. We do not accept that as being an accurate explanation for the removal of the negative comments – for example, the passages on those dealing with *Reduction in Staff at the Stadium* and *Cause and Effect* (page 639 of the hearing bundle). Those passages seem to us to be very relevant to the issues being considered in the LS185 report. We consider that they were removed from the final version of the report because they were considered to be damaging to LS185's position. That conclusion is shared by Miss Watson who wrote *The report has changed somewhat from the interim report and as some of the points covered in the interim report are key to the issues being managed on the day, I am going to refer to them as well, as I feel they should have been left in the final report.*

11. The second report in time was written by Sue Watson of Watson Associates at the request of West Ham and E20: its purpose was to review the LS185 report. We have seen two versions of Miss Watson's report. Neither is dated. The second version was produced in order to incorporate comments by the Police on criticisms made by Miss Watson in the first version. The report is critical of LS185's management of the safety and security at the match. In section 5 Miss Watson comments on 27 recommendations that had been made in the LS185 report. In section 6 Miss Watson made 5 pages of recommendations, categorised under 11 heads.
12. The third report in time is dated 15 May 2018 and was written by Graham White on the instruction of the FA. Mr White is a Safety and Security Advisor for the FA. He was instructed to examine the circumstances surrounding the events that took place at the match, and to express an opinion whether there had been breaches of FA Rule E20, focussing in particular on the FA Rule E21 *due diligence* defence. Mr

White's conclusion was that there had been breaches such that the *due diligence* defence was not open to West Ham. We quote from Mr White's conclusion in paragraph 16, below.

13. Each of the reports, with varying degrees of detail, provides an analysis of the events, their background, the safety/security arrangements, and each expresses explanations and views about the responsibility for shortcomings. We have considered those reports thoroughly, both at the hearing and otherwise. We do not intend to set out their contents in greater detail than we already have but will refer further only to those passages that we consider to be most relevant to our decision. It is, however, sensible that we should set out some details of the disruption that has led to these proceedings.

14. We take this description of the pitch incursions (which we have viewed on the videos) from Mr White's report.
 - 4.2.2. **The first attempt at pitch incursion is actually by a Burnley fan (65mts.)** This emanates from the away sector South stand. The lone supporter is prevented from accessing the pitch being detained just over perimeter gate by a steward. He is handed to a police Football Intelligence Officer present in stadium. ...
 - 4.2.3. **The second incursion is by one male West Ham fan who is carrying a poster (66mts.)** ... This emanates from the South/East corner. This fan reaches the centre of the pitch and is confronted by a West Ham player. The supporter has then virtually left the pitch after the player involvement, behind the South goal, before a response team steward appears to chase. A Pitch Runner steward runs alongside the far touchline. Both then appear to detain offender at the South fence line with other stewards. This supporter is on the pitch approximately 45 seconds. A West Ham United player security officer initially runs to the pitch then walks onto the pitch from the tunnel area but doesn't intervene. Some of the pitch protection stewards around the pitch in camera shots remain seated watching the pitch. ... There is no intervention or coordinated response such as standing together in concert. Other Response Team stewards can be seen at the pitch perimeter fence line dealing with persons who appear to making

preparations to access the pitch. ... Behind the North goal from corner to corner just 4 stewards can be seen and all remain seated throughout. ...

4.2.4. **The third incursion is by two male West Ham fans (67mts.)** ... They are confronted by players and removed to the sidelines. A Pitch Runner steward appears to chase the two fans as they leave the pitch. A pitch perimeter/gate steward allows them to walk past him back into stand. They appear to be confronted at the top of lower tier steps by a steward and some crowd disturbance occurs around them. These supporters are on the pitch for approximately 30 seconds.

4.2.5. **The fourth incursion is by one male West Ham fan holding a corner flag who comes from the North stand end (73mts.)** ... He is confronted by players in the centre of the pitch. He throws the flag after first attempting to plant it in the centre circle. Two Response Team stewards enter the pitch and detain him. The West Ham player security officer plus one other person walk onto the pitch from the tunnel area but do not intervene. This supporter is on the pitch for approximately 50 seconds.

...

4.2.7. **The fifth and final incursion is by one male West Ham supporter (81mts.)** ... He is initially missed at the fence line by a Response Team steward who then immediately enters the pitch in pursuit. The supporter is tripped up by a Burnley player. A second Response Team steward enters the pitch. The supporter is detained by the stewards. The West Ham player security enters the pitch again from the tunnel area but takes no part. Some pitch perimeter gate stewards can be seen still seated and watching the pitch. ...

15. Mr White described the disruption at the Directors' Box in the following terms –

4.5.1. **The Director's Box Protest can be seen on the footage (82mts.)** ...

4.5.2. After the final goal there is a significant movement of the home support in and around block 114 South/West corner which initially appears to be persons leaving the stadium. ...a group of 20/30 persons walks towards the Director's box area along the central podium which circumnavigates the whole stadium between the upper and lower tiers. This group is then joined by many others who seemed initially about to leave. ...

4.5.3. Initially there are approximately 4 ordinary stewards present at each side of the juncture of the podium with the hospitality area entrance. They are quickly joined by several hospitality stewards.

- 4.5.4. This initial supporter group is now 50/60 strong and some are threatening and gesturing. They are joined on the opposite side of the Director's box by a lesser number of supporters arriving from the North side.
- 4.5.5. Stewards on the South/West cordon hold the line for a short while with the help of tensile metal and rope barriers but they are quickly overwhelmed on both sides with a female steward assaulted and pushed to the ground.
- 4.5.6. Hospitality stewards block the narrow bridges that lead to the Director's area entrance beneath the West stand. This is a key manoeuvre as access here would have put the board in great danger of assault.
- ...
- 4.5.8. As the crowd of supporters grows to 250/300 in front of the Director's box, a significant number become abusive, more threatening, gesturing and some missiles are thrown. A barrier post is thrown over the podium divide and stewards are struggling to contain the situation.
- 4.5.9. Most persons in the Director's box then leave the seats under steward guidance at the instruction of the Venue Safety Officer and the protest continues for a short while and then dissipates.

16. Mr White expressed his conclusions in the following terms.

- 6.5 My conclusions are as follows:
- 6.6 That there has been a breach of FA Rule E20 (b) by West Ham United FC at this fixture by:
- Spectators encroaching onto the playing area on several occasions putting players and officials at risk;
 - Spectators encroaching over the perimeter fence on several occasions; and
 - Threatening and abusive behaviour by spectators in front of the Director's box with several missiles thrown risking injury and causing intimidation.
- 6.7 I have also considered, from the information I have received, whether the West Ham United plans and LS185 safety and security team actions mean that they have fulfilled the defence conditions provided by Rule E21 in that the circumstances were beyond the control of the Club and/or for crowd safety reasons and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged.
- 6.8 I consider, that on the information available, a Commission, on the balance of probabilities, would be likely to find that West Ham United

FC are not entitled to rely on the Rule E21 defence in relation to these allegations for the following reasons:-

- 6.8.1. Stewarding had been reduced and was insufficient to meet the demands;
 - 6.8.2. Specifically the pitch protection team and the response teams were under resourced;
 - 6.8.3. The pitch protection team (the runners) failed to react in a pro-active and coordinated manner when incursions occurred;
 - 6.8.4. The selection of these key personnel was haphazard and some stewards accessing the pitch were not wearing issue footwear;
 - 6.8.5. The reaction of pitch protection stewards was uncoordinated and lacked vigour in some instances;
 - 6.8.6. The stadium messaging system was not utilised to good effect to deter further incidents;
 - 6.8.7. The response to incidents on the pitch and near the director's box was not adequate;
 - 6.8.8. The match officials were insufficiently protected and/or provided with adequate liaison at the key times; and
 - 6.8.9. Direct communication with match officials was lacking for a considerable period during the incidents.
17. Mr White concluded with the following positive observations about West Ham, particularly in relation to the action that it had taken after the events that led to these proceedings.
- 6.9. Any commission though would wish to consider the considerable mitigation which the club will put forward in that they and the stadium operators were dealing with a series of what they have described as 'unprecedented multiple scenes of disorder' in various parts of the stadium. They were forced to make choices with the available resources and that left other areas under resourced.
 - 6.10. The stadium had experienced no significant issues during the season and resourcing was based on that fact, possibly with insufficient emphasis placed on the potential for spontaneous or coordinated protest.
 - 6.11. The police action, which includes the major part in the categorisation of the match and the arguably slow response time in accessing the stadium, is largely beyond the control of the club and safety operators.
 - 6.12. They should also note the swift and what appears to be effective action the club, stadium operators and other partners have taken post event

to prevent further occurrences and bring offenders to justice.

FA's CASE

18. The FA advanced its case on a number of separate heads, some of which overlap with each other.
19. The first head is that there was a failure to devise and implement a proper strategy to prevent incursions and disruption as in fact occurred. It relies on a number of separate features that taken together should have alerted LS185 to the fact of an increased level of risk. The principal feature is the fact of supporter dissatisfaction with the management of the club. Notwithstanding the conciliatory meeting and cancellation of the protest march LS185 should have seen the enhanced level of risk. The FA points to LS185's Briefing Document prepared before the match which (on page 15) recognised the dissatisfaction felt by supporters, and what was described as *an anti-Board stance*. The possibility of issues being raised for stewards, the importance of vigilance and early intervention were all specifically mentioned. During the referee's briefing before the match it was recognised that there was potential for pitch incursions towards the end of the match, so reinforced pitch security was planned from the 80th minute.
20. It is common ground that LS185 had decided to trial reductions in the numbers of safety and security at this match. The FA's case is that given the features that it has identified such reductions were inappropriate.
21. The FA also relies upon failures in the training and equipping of stewards. The equipment complaint relates to footwear. The FA asserts that pitch security should have been wearing appropriate footwear –

football boots or similar studded footwear. They were not. It is inevitable that if they had been properly shod the pitch stewards would have been able to perform with greater agility. The FA points to this failure not just for its own effect, but also as demonstrating a wider lack of proper preparation.

22. The FA submits that the facts of the reaction to the pitch incursions speak for themselves. It describes the reaction as having been *ponderous* and *uncoordinated*. Lee Mason, the referee, describes the slow reaction to the first West Ham pitch incursion – a steward reacted only *eventually*. Graham Scott, the fourth official, said of the same incident that *initially, there didn't seem to be any reaction at all, ...* We were reminded that the video evidence demonstrated the lack of sufficient and proper reaction. The inference, the FA submits, is that the steward had not been properly trained.
23. The FA criticises the quality of stewarding. To an extent there is an inevitable overlap between quality in training. In the LS185 report Mr Harris records that before half time he had been visited by the Sports Grounds Safety Authority and LB of Newham enforcement officers who had carried out an audit of staff working in the London Stadium. They expressed *severe concerns with regards to the quality, training, experience and number of staff*. Mr Harris elected not to tell Newham that LS185 was trialling cuts in the numbers of stewards.
24. The quality of the staff was reflected by the fact that when instructed to stand (in order to present a more visible formidable barrier to would-be intruders) many stewards declined to do so. In response to an intervention from the Commission Mr Sadler accepted that the failure to

comply with the instruction to stand demonstrated that stewards were not doing their jobs properly, and that that failure would have had a determinantal impact on pitch incursions.

25. The second head is the failure to redistribute stewards after the first pitch incursion so as to deter further incursions. This may be seen in conjunction with the failure of the stewards to stand and face the crowd. In fact, reinforcement of stewards took place only in the 80th minute, in accordance with the original plan. There was therefore no reaction to incursions in the form of reinforcement. Mr Mason felt that there should have been earlier reinforcement. His opinion was shared by Mr White, who said that the conventional response would have been a *regimented influx of stewards...*
26. The third head is the reduction in the number of stewards. This is something that we have already referred to, above. The documents show that LS185 was under pressure from E20 to cut costs. Overall, staff numbers were reduced by 106 – approximately 10% of the total number. The FA points to the fact that pitch security was reduced from twelve stewards to eight. It says that it was inevitable that such reductions had an impact on the ability to make a flexible and coordinated response to incursions.
27. The FA accepts that the reduced numbers remained above the minimum required by the Guide to Safety at Sports Grounds – the Green Guide. Its response is simply that while a failure to meet Green Guide standards is fatal, compliance with them does not necessarily mean sufficiency. It is a question for judgment and evaluation in every case: the Green Guide is not a definitive solution, it provides a guide. The FA's argument is

supported by the opinion of both Miss Watson and Mr White. Version 1.2 of the LS185 report recorded that notwithstanding the fact that the Green Guide numbers had been met *LS185 were in a position where the stadium was being operated with the absolute minimum number of resources, and that the further reductions would leave event day deployment with a lack of suitable resilience in the team.*

28. The fourth head is a failure to protect those on the pitch. The FA argues that incursions put players and officials at risk.
29. The fifth head is a failure to react properly to the disorder developing in front of the Directors' Box. The first aspect arises from the unusual (for a football stadium) design of the concourse. Spectators are not segregated in sections of the ground but are able without difficulty to move from one section to another – there are not the lateral barriers as would normally be seen at a football ground. This enabled protesting supporters to join the increasing disruption by the Directors' Box. The FA criticises LS185 for failing, given the design of the concourse, to have implemented sufficient human cordons to prevent supporters from congregating by the Directors' Box.
30. The second aspect is the failure to remove the chairmen (who were the objects of the supporters' protest) from the visible part of the Directors' Box. The FA's case is that if that had been done the disruption would have dissipated more quickly. Philippa Cartwright gave evidence that Ben Illingworth had been despatched expeditiously to request the chairmen to move but that his progress had been impeded by the press of the supporters. The FA says that in such circumstances (and in any event) the instruction to vacate the Directors' Box should have been

made by telephone.

31. The sixth head is the very positive steps that were taken after the event to ensure that there should be no repetition of the disturbance and incursion. The FA acknowledges that the fact of those remedial steps redounds to the club's credit, but argues that the fact that they have been taken demonstrates the club's position of influence – in other words, notwithstanding the unusual nature of the terms under which it occupied the London Stadium it nevertheless retained a degree of influence and control.

WEST HAM's CASE

32. The club emphasised to the Commission the importance of guarding against hindsight. It reminded us of the principles that we have set out in paragraph 5, above. The test, it was submitted, was whether reasonable steps had been taken, with the question of reasonableness to be determined according to what should reasonably have been known at the time. Perfection is not required: the standard is *due diligence*.
33. The club openly accepted to the Commission its dissatisfaction with the fact of staff cuts, and that those cuts were not made known to it. But that does not mean that the cuts reduced the numbers below an acceptable level – they were compliant with the Green Guide, and reflected that the match has been categorised by the Police as Category A.
34. The club reminded the Commission of the unusual circumstances of its occupation of the ground. It had no control over E20 and LS185. It had no details of the security arrangements. It had had to seek an injunction to compel E20 to provide it with the necessary information required to

enable it to present its case. That case was very much dependent upon the evidence from E20 and LS185. In order to mount its due diligence defence the club has found itself in the position of defending the conduct of E20 and LS185, over whom it had no contractual control, but for whom it was responsible.

35. Mr de Marco grouped the club's detailed response into the nine separate heads advanced by Mr White in paragraph 6.8 of his report. We shall follow that grouping.

36. Steward numbers. The club relied upon the recommendations contained in the Green Guide, which Mr de Marco asserted (relying on an answer from Mr White) did not set out minimum standards but simply gave guidance. The number of stewards was sufficient for a Category B match, and therefore considerably above those required for the match in question – a Category A match. It therefore cannot be said that, without the benefit of hindsight, the numbers were insufficient.

37. Pitch stewards under resourced. Mr de Marco again relied on the Green Guide. LS185 had a strategy for deploying pitch stewards, which without the benefit of hindsight was proper. The scale of the pitch incursions from different locations made it inevitable that even a larger number of stewards would have proved to be insufficient.

38. Lack of coordination from pitch stewards. Mr de Marco reiterates that the scale of the pitch incursions would have overwhelmed even a larger number of stewards. He cautions about judgment based on hindsight. Mr de Marco reminded us of positive evidence from Mr White and Mr Mason. He pointed out that the true scale of the disruption was reflected

that the match was not abandoned, players were not taken off the pitch, and that whatever may be said about potential threats to safety no player or official was harmed. Judged at the time without hindsight the steps that had been taken were proportionate and sufficient.

39. Selection of key personnel; proper footwear. Mr de Marco makes the short point that neither of these features (the detail of which the club did not admit) was causative of any relevant event. For example, not only is it not known how many pitch stewards were not sufficiently shod, there is no evidence that their footwear contributed to any of the matters complained of by the FA.
40. Inadequate reaction of pitch stewards. This repeats in very much the same way the issue discussed in paragraph 39, above.
41. Stadium messaging system. The complaint originally advanced by the FA that the messaging system was not used in an attempt to control supporters' behaviour. It was not repeated in the FA's written closing submissions. Mr de Marco correctly points out that in evidence Mr White accepted that a decision not to use the messaging system in such circumstances was rational.
42. Disruption at the Directors' Box. Mr de Marco reminded us of the evidence that the chairmen had not refused to leave the Directors' Box: that assertion had been based on a mistake. There had been no specific intelligence of disruption in the area and once it developed increased security had been mobilised. Stewards were deployed to prevent movement of supporters towards the disruption but because of the design of the concourse it was not practicable to seal the area. The fact

that the modifications have now been made to prevent such access is not indicative of a lack of due diligence – viewed at the time without the benefit of hindsight the precautions taken, and the reaction implemented were sufficient and proper.

43. Match officials insufficiently protected/lack of proper liaison. Mr de Marco pointed out that this complaint was based upon a mistake that was corrected during the course of the evidence. Sufficient and proper liaison was in place.
44. Lack of available communication with match officials. This complaint was based upon the same factual mistake.
45. The final head of complaint addressed by Mr de Marco was the match categorisation. Mr White accepted that categorisation was a decision that was for the Police, and was one that was *largely beyond the control of the club and safety officers*. The Police match commander reviewed her decision in light of the events, and the criticisms made by Miss Watson but remained of the opinion that the Category A categorisation had been correct. Mr White's complaint had been expressly based on hindsight.

DISCUSSION

46. The Commission recognises the difficulty of the club in these proceedings. The effect of the Rules is that it is responsible for the actions of E20 and LS185. But because of the nature of the terms of its occupancy of the London Stadium it has no contractual right to control those actions. That, it says, is exemplified by the fact that it was unaware of the fact that LS185 was trialling a reduction in the number of stewards.

47. The burden of establishing the Rule E21 due diligence defence lies on the club. The standard is to the balance of probabilities. The defence involves two conjunctive limbs. First, the club must prove that those responsible for security did not have control over the supporters whose conduct is complained of. Mr de Marco correctly draws a distinction between a club's players and employees (over whom it has control) and its supporters (over whom it does not have control). We agree that neither the club nor those responsible for security had control over the supporters.
48. The relevant question, therefore, is whether the club can show that those responsible for security had exercised *all due diligence*. The FA emphasises the word *all*, submitting that its use must have been intended to add to standard. We see the force of that argument. We consider that is sufficiently addressed in the construction advanced by Mr de Marco, which properly reflects what is intended by the provision. We consider that the defence requires the club to show that those responsible for security had taken all reasonable steps to discharge their responsibility. What constitutes reasonable steps is what was known, or should have been known, at the time. It is not to be judged with the benefit of hindsight. Nor does it require perfection. It does, however, require that all reasonable steps should have been taken. What is required is what would have been done by a prudent, conscientious person in the position of those responsible for security, acting on the knowledge and information that was reasonably available to him. In the context of these proceedings the focus is on the conduct of LS185, but the conduct of both the club itself and of E20 are potentially relevant. A failure to use *all due diligence* by any one of the three would deny the club the due diligence defence.

49. The Commission is aware that there are other commercial issues involving the club, E20 and LS185, the details of which it does not know. That is apparent from the presence during the hearing (or the request for such presence) of legal advisors who were not directly involved in the proceedings. Those issues are not relevant to the matters that we are dealing with and we have not speculated as to what they might be. They are simply irrelevant to our decision. We have, however, been careful in these Written Reasons to limit our discussion and findings only to those matters that are necessary for the proper determination of the issues that arise in those proceedings. We have seen many documents, and have heard considerable evidence which are not directly relevant to what we have to decide. We have therefore consciously decided to not to refer to more than is necessary, and not to make findings where they are not called for. We have, however, considered the entirety of the evidence, both written and oral, and have evaluated all that we consider to be necessary to enable us to reach an informed decision.
50. We have expressed a view (paragraph 10, above) as to the true reasons for some of the changes made between versions 1.2 and 2.0 of the LS185 report. We made that finding for two reasons. First, as a matter of common sense a comparison of the two versions did not reveal a legitimate reason for the changes. We considered the removed passages to be highly relevant to the issues to which the report was directed. We agree with Miss Watson that *they should have been left in the final report*. We do not accept Mr Sadler's evidence that they were removed because they were not needed. Second, we found Mr Sadler generally, including in relation to this issue, to be an unsatisfactory witness. Perhaps understandably, he was cautious and guarded. Answers to many questions defensive, on many occasions declining to accept what

seemed to the Commission to be obvious issues of fact. We considered his evidence in relation to the editing of the report to fall into that category.

51. We have reached the clear conclusion that a number of the matters complained of were caused by a failure of those responsible for security to have taken all the steps which reasonably should have been taken.
52. First, we consider that it was wrong for LS185 to have reduced the number of stewards to the extent that it did. We completely recognise the need for economic efficiency. There is no objection to improving systems to achieve financial savings, which is what LS185 was under pressure to do. However, such savings cannot be made at the expense of standards, which is what we are satisfied happened on this occasion. We note that the club was unaware of the reduction in steward numbers. However, its case is that when it was made aware of the cuts it was unhappy that they had been made. This is some evidence of the inappropriateness of the reduction in numbers.
53. We find that this was simply a bad time to trial a reduction in numbers. The dissatisfaction amongst supporters was widely known. The hostility was such that directors travelled with additional security. A protest march had been planned. It is to the club's credit that its positive intervention led to the cancellation of that march, but the fact of underlying supporter dissatisfaction remained. We recognise that the numbers of stewards remained above the recommendation in the Green Guide, but that does not mean that the numbers were sufficient. Sufficiency was a matter to be determined by those responsible for security. The Green Guide is but one aspect of the decision making

process. Similarly, the Police categorisation is relevant, but is only one of the factors to be taken into account. We are satisfied that there was sufficient material available at the time to make it clear that this was an inappropriate time to reduce steward numbers. The reduction had a direct causative effect on the pitch incursions and the disruption at the Directors' Box.

54. Second, we consider that there were unacceptable deficiencies in the quality and training of stewards. The Green Guide defines a steward as *a person who has obtained a level 2 stewarding qualification within the relevant qualification network or is undergoing training and assessment for such a qualification*. It is clear from the audit carried out on the day by both the Sports Ground Safety Authority and Newham Council that the stewards on duty generally did not have such qualifications. Further, few, if any, of the stewards that they audited had or were working towards a relevant qualification. The paper qualification of stewards was therefore below the acceptable standards. This is reflected in what we find to be a lack of experience amongst, and training of the stewards. The slowness and inappropriate nature of the response to the pitch incursions is indicative of lack of quality and/or lack of training. Similarly, the failure to stand and face the supporters when instructed to do so demonstrates lack of quality and/or lack of training. These failings should not have been permitted. We find that they had a direct causative effect on the pitch incursions.

55. Third, we consider that there was a failure to react appropriately and promptly to the first West Ham pitch incursion. The appropriate response would be to deploy an influx of stewards, as suggested by Mr White. Such an influx is a conventional response and would have had

an immediate effect. In the event there was no such reaction. The increase in pitch side numbers did not take place until the 80th minute, by which time three separate pitch incursions had taken place. The increase after the 80th minute was not a reaction to events but was simply the deployment that had been planned in advance. We consider this to be an obvious failure to react appropriately to events. It is indicative of poor management/control and/or a lack of a sufficient number of stewards. We find that the failure had a direct causative effect on the pitch incursions.

56. Fourth, we are satisfied that at least some stewards did not have the appropriate footwear. We reject Mr Sadler's justification for not enforcing the wearing of proper footwear – namely, that it might cause religious difficulties. We find that the failure had a direct causative effect on the pitch incursions. We recognise that in itself this is a relatively minor feature of the case, but we find the fact that LS185 failed to ensure that stewards were properly shod to be characteristic of its failure to address necessary details.

57. Fifth, we make findings in relation to the incident at the Directors' Box. First, we consider that the failings that we have already identified (the number of stewards, the quality of stewards, the training of stewards, and the quality of management) each contributed to the failure to control the developing disturbance at an earlier stage. Second, we consider that the chairmen should have been required to leave the Directors' Box more expeditiously. We find that if they had done so the disruption in that area would have dissipated quickly, fewer supporters would have joined, and that the incident would have been significantly less disruptive. We express no view whether it was proper to have sent a

personal messenger rather than to have made a telephone call. But we have no doubt that once it became clear that the personal messenger had been obstructed a telephone call should have been made forthwith. The failure to make such a call prolonged the disruption and caused greater numbers of supporters to join it.

58. Finally, we record that we find that there is no relevant criticism to make of the categorisation of the match, the decision not to make use of the stadium messaging system, of the quality of liaison between the match officials and the security staff.

CONCLUSION

59. The due diligence defence is not made out. We shall proceed to the second stage of the process to hear submissions relevant to the penalty that we should impose.



David Phillips QC
Peter Fletcher
Keith Allen

13 January 2019
Revised 18 January 2019

Mr David Phillips QC, Mr Keith Allen, Mr Peter Fletcher
18 January 2019

BETWEEN

THE FOOTBALL ASSOCIATION

Complainant

and

WEST HAM UNITED

Respondent

WRITTEN REASONS
(Sanction)

INTRODUCTION

1. The Commission heard oral submissions directed to sanction on 18 January 2019. Both parties had lodged written submissions together with authorities in advance of the hearing. The oral submissions occupied the morning. After deliberation the Commission imposed a fine of £100,000, ordered that the hearing fee should be forfeited and that West Ham should pay the costs of and occasioned by the proceedings. The Commission's reasoning is set out in these Written Reasons.

THE APPROACH

2. The Commission was referred to a number of earlier decisions. Those decisions do not constitute precedents but they form helpful guidance as to the standard approach. The sanctions imposed show the range of penalties considered appropriate and provide something of a tariff. We therefore consider consideration of the earlier decisions to be sensible. We do not consider ourselves bound by them, but they provide helpful guidance.

3. In light of those earlier decisions we have adopted the following approach. We have considered the FA's *Guidance for Clubs*. That document does no more than provide guidance. It expressly states that the appropriate penalty remains a matter for the Commission's discretion: we are free to depart from the *Guidance* where appropriate. Further, it does not contain guidance that is specifically relevant to the facts of this case. The three issues that are expressly considered in the *Guidance* concern player conduct, not supporter conduct. It is clear, however, that the earlier decisions involving supporter conduct have adopted the figures given in the guidance. They have also adopted the approach that, as suggested in the *Guidance*, the level of penalty for similar conduct will increase significantly according to the league in which the offending club plays. We adopt and follow that approach in both respects.
4. The parties' submissions suggest that we should determine seriousness, culpability and mitigation. The suggested approaches are not identical but identify similar issues as being relevant. Having considered those submissions (both written and oral) we are satisfied that on the facts of this case we should address (1) the seriousness of the transgressions; (2) the culpability of the club; and (3) any relevant features of mitigation.
5. We do not set out in detail the respective submissions made in respect of those three heads. We have considered them in detail and set out our reasoning and conclusions below.

DISCUSSION - seriousness

6. We have set out in our earlier Written Reasons our findings of the failings of security. We shall not repeat them. In summary, there was a

widespread failure to achieve the necessary standards. The number of stewards was insufficient, their qualification and training was inadequate, and there were a number of executive management failures during the course of the game.

7. We agree with the FA that these were serious failings. However, we do not consider that they were cynical failings brought about by a consciously improper desire to save money. LS185 was under pressure to make economies but we do not consider that that pressure led it consciously to jeopardise security. We find that the failing was serious but was not at the top level of seriousness. We attribute the decisions to poor judgment and mistake rather than reckless disregard for safety.
8. Insofar as it is helpful to characterise seriousness in this way, we place the level of seriousness in the region of the sixty fifth centile - above medium but not high. In other words, we recognise that it was serious but are satisfied that it does not fall into the category of the highest levels of seriousness.

DISCUSSION - culpability

9. West Ham is in the unhappy position of having responsibility without power. It was responsible for security but had no contractual right to control it. The FA has adopted a realistic approach to West Ham's position when assessing culpability. In paragraph 8 of its submissions it advanced the following proposition -
 8. However, those features must be balanced against the practical reality of the Club's safety and security architecture i.e. the fact that match day operations at the London Stadium are, largely, a matter for LS185, subcontracted by E20 (albeit the Club entered into such commercial arrangements voluntarily).

This accords with the club's submissions that we must reflect the fact that it had no right to control security – although, as the FA points out, it was an arrangement that West Ham had entered into voluntarily.

10. However, we have no doubt that notwithstanding its lack of a legal right to control West Ham had the power to influence, and the ability to require that it should be consulted. The inference from the material that has been put before us is that West Ham certainly had such involvement after the match. We have seen no evidence of similar involvement before the incident.
11. Accordingly, we place the level of culpability at a medium level as suggested by the FA.

DISCUSSION - mitigation

12. In his written submissions, which he expanded orally, Mr De Marco lists eight specific features which he argues stand as mitigating factors. We have considered each of them. We consider the principal mitigating fact to be the remedial steps that were taken after the match. If what took place can be categorised as a wake-up call West Ham and/or LS185 reacted expeditiously and appropriately. Mr White described that reaction to constitute *considerable mitigation*, and described the steps taken as being *swift and what appears to be effective action*. We have quoted the relevant passages from Mr White's report in paragraph 17 of our earlier Written Reasons, and we take them into account now in determining the weight of the mitigating factors.
13. It is not clear to us whether those steps were instigated by West Ham or by LS185, or by a combination of the two – in the absence of direct

evidence we proceed on the basis that it was a combination of the two. We consider, however, that in the same way as West Ham was responsible for LS185's default it can take the credit for its positive reaction. Accordingly, irrespective who was the direct cause of the improvements we are satisfied that West Ham may enjoy the credit for them.

14. We consider Mr White's opinion to be correct. West Ham is entitled to substantial credit for the reaction to events that took place at the match.
15. We also note the steps taken by West Ham before the match to address supporter discontent. We note that there had been no previous incidents of this nature. We accept in the circumstances of this case it was not unreasonable for West Ham to have contested the charges, and recognise the legitimate motives that led it to do so.
16. We also take into account the fact that West Ham has incurred legal fees of approximately £300,000 on account of these proceedings. We do not consider that that constitutes mitigation in the strict sense, but we recognise it as being one of the many features that we should bear in mind in determining the appropriate sanction.

DECISION MAKING

17. We agree with both the FA and West Ham that the appropriate sanction is a monetary penalty. We do not see it as any part of our function to arrive at the size of that penalty by way of fine mathematical calculations. We are required to exercise our judgment, addressing the specific facts of this case against the background of such guidance as we consider it appropriate to draw from the earlier decisions. That is what we have

done. We have paid particular weight to the matters that we have discussed in these Written Reasons but we have also taken into account all the matters submitted to us by the FA and West Ham, orally and in writing. The conclusion of that informed exercise of our judgment is that the appropriate sanction is a fine of £100,000.

18. West Ham is responsible for the hearing and must therefore reimburse the FA the costs incurred. Accordingly, we further order that the hearing fee should be forfeited and that West Ham should pay the costs of and occasioned by the proceedings.

CONCLUSION

19. We therefore order that West Ham is fined the sum of £100,000, it shall forfeit the hearing fee, and shall pay to the FA the costs of and occasioned by the proceedings.



David Phillips QC
Peter Fletcher
Keith Allen

18 January 2019