

IN THE MATTER OF THE EFL REGULATIONS 2023/24 (FINANCIAL REGULATIONS)
IN THE MATTER OF A CFRU DECISION REVIEW
AND IN THE MATTER OF LEICESTER CITY FOOTBALL CLUB LTD

Before:

Jonathan Bellamy (Chair)
Dan Jones
Alison Royston

BETWEEN:

Leicester City Football Club Ltd

Applicant

and

EFL Club Financial Reporting Unit

Respondent

DECISION

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I: THE PARTIES

1. The Applicant is Leicester City Football Club Ltd (“LCFC”). LCFC is a Member Club of the Football League Ltd trading as The English Football League (“EFL”) and, in the current 2023/24 season, plays in the Championship Division of the EFL competition (“the Championship”).
2. In the 2022/23 season LCFC was a member of the Football Association Premier League Ltd (“the Premier League”) and played in the Premier League. At the end of 2022/23 season, LCFC was relegated to the Championship.
3. The Respondent is the EFL Club Financial Reporting Unit (“CFRU”). The CFRU is an internal department of the EFL with delegated authority to exercise the EFL’s rights and powers in respect of the Financial Regulations applicable to Member Clubs.

II: THE CFRP

4. The Club Financial Review Panel (“CFRP”) is an independent panel comprising of two legally qualified and experienced members, two accountancy and audit qualified and experienced members and two football administration experienced members.
5. The panel hearing this matter has comprised Jonathan Bellamy (Vice-Chair of the CFRP) as Chair, Dan Jones as Audit Member and Alison Royston as Football Member, each appointed by Sport Resolutions in December 2023 (“the Panel”).
6. The jurisdiction of the CFRP includes the referral by the CFRU of Compliance Matters, Call-in Reviews initiated by the CFRP and the referral by Clubs of CFRU Decision Reviews.

III: THE CFRU DECISION REVIEW

7. The current matter is a referral by LCFC of a CFRU Decision Review. In this area, the CFRP sits as an independent review body exercising supervisory jurisdiction and

operates as a forum and procedure for a challenge to the validity of the CFRU's decision on the grounds of:

“6.7.1 ultra vires (including error of law); or

6.7.2 irrationality; or

6.7.3 procedural unfairness,

and where the decision directly and foreseeably prejudices the interests of a person or persons who were in contemplation of The League”; EFL Regulations 2023/24 (“EFL Regulations”) Appendix 6 (Club Financial Review Panel).

8. The EFL Regulations state (Appendix 6, Rule 7.3) that the CFRP sits as an expert panel and not an arbitral panel. In addition, in respect of a CFRU Decision Review, the EFL Regulations state that the decision of the CFRP is final and binding and not subject to appeal (Appendix 6, Rule 12.2).
9. It is important for the Panel to make clear that it is not concerned with the substantive merits of, or justification for, the decision of the CFRU under review. That is for the CFRU. The question for the Panel, as an independent reviewing body, in this matter is whether on 23 November 2023 the CFRU was entitled under the EFL Regulations to require LCFC to submit a business plan pursuant to Rule 16.21.
10. The issue for the Panel's determination more specifically is whether, under the terms of the EFL Regulations, the CFRU was entitled on 23 November 2023 to issue an opinion under the Profit and Sustainability Rules (“P&S Rules”) applicable to Championship Clubs pursuant to Rule 2.9 of the EFL Regulations Appendix 5 (Financial Fair Play Rules), Part 1 – Championship Profitability and Sustainability Rules and thereby exercise its powers under Regulation 16.21.1 to require LCFC to submit, agree and adhere to a budget including such matters as Transfer Fees, Compensation Fees and Loan Fees. In the CFRU's Decision and during these proceedings, this sanction was referred to compendiously as a “business plan”. For convenience, the Panel will use that term in this Decision.

11. In the briefest summary at this stage, LCFC submits that, at that point in the 2023/24 season, the CFRU had no such power, its determination to issue a business plan was outside its powers and was therefore unlawful or, to adopt the formal language of the EFL regulations, *“ultra vires”*. If correct, the CFRU’s determination in respect of the business plan would be of no effect.
12. Again, in the briefest summary, the CFRU’s case in response is that, under the EFL Regulations, it had such a power at that time in the season and the determination in respect of the business plan was of legal effect.

IV: THE PARTIES’ REPRESENTATION

13. LCFC was represented by Counsel, Nick De Marco KC, instructed by solicitors, Centrefield LLP. The CFRU was represented by Counsel, Ian Mill KC, instructed by solicitors, Freshfields Bruckhaus Deringer LLP.
14. The Panel is grateful to both firms of solicitors for their co-operation in liaising to list the hearing on 11 January 2024, their compliance with the Panel’s procedural orders and their provision of agreed electronic bundles. The Panel thanks the parties’ Counsel for their submissions, which were, as one would expect given their experience in this sector, focussed and of assistance.

V: PROCEDURAL HISTORY

15. The procedure applicable to a CFRU Decision Review referred by a Club is set out in EFL Regulations Appendix 6, Rule 6.
16. LCFC submitted its CFRU Decision Report in respect of the CFRU’s decision dated 23 November 2023 (“the Decision”), with annexed documentation on 7 December 2023. The CFRU submitted its written observations on this report, together with supporting documentation, on 14 December 2023. By party consent, LCFC submitted a reply to the CFRU’s written observations on 5 January 2024.

17. Also by party consent, and with LCFC reserving all its rights of review, the CFRU submitted to the Panel a letter dated 26 December 2023 being a further determination and direction to adopt a business plan under Rule 2.9 and Regulation 16.21 (“the Second Decision”).
18. In its CFRU Decision Review Report, LCFC requested an oral hearing before the CFRP. By consent this took place on 11 January 2024 by online video conference.

VI: THE EFL REGULATIONS

19. The EFL Regulations state, so far as is relevant as follows:

EFL Regulations, Section 1

Definitions

“club’ means any association football club that is not a Member Club”

“Club’ means any Association Football Club which is, from time to time, a member of The League [...].”

“Member Club’ means any Club which is from time to time a member of The League in accordance with The League’s Articles of Association and these Regulations.”

Clubs (EFL Regulations, Section 4)

Clubs’ Financial Records

“All Clubs shall keep their financial records in accordance with the provisions of these Regulations and the Football Association Rules. The League may arrange for an inspection of all such financial records.” (Reg 16.1)

“Each Club shall submit a copy of its Annual Accounts [...] to The League, but in any event [...] by no later than 1 March following the end of the financial year to which those Annual Accounts relate (in the case of a Championship Club) [...]” (Reg 16.2.1);

Interim Accounts – Championship Clubs only

“If the Annual Accounts of a Championship Club [...] submitted pursuant to Regulation 16.2 [...] are prepared to a date prior to 30 November in the Season of submission, such Club [...] shall by the following 31 March submit to The League interim accounts covering the period commencing from its accounting reference date and ending on a date between the following and 30 November and 1 March [...]” (Reg 16.11);

“Each Club must by 7 April in each Season provide evidence to The League to confirm that [...] (Reg 16.14):

16.14.1 it has satisfied all Transfer Fee, Compensation Fee, Loan Fee or subsequent payments which had by 31 December (Relevant Date) become due under the terms of any transfer; and

16.14.2 it had at the Relevant Date paid all sums due and payable to or in respect of an employee employed during the relevant calendar year [...]"

Future Financial Information

"By 31 March (Championship Clubs) [...] in each Season, each Club shall submit to The League in respect of itself [...] future financial information ("**Future Financial Information**") comprising [...] in respect of any Championship Club, projected profit and loss accounts, cash flow, balance sheets and relevant explanatory notes commencing from its accounting reference date or, if it has submitted interim accounts pursuant to Regulation 16.11, from the date to which those interim accounts were prepared and expiring on the next accounting reference date after the end of the following Season. The projected profit and loss accounts, cash flow and balance sheets shall be prepared at a maximum of quarterly intervals." (Reg 16.16.1);

"The Future Financial Information shall: (Reg 16.18):

- 16.18.1 be prepared in accordance with the accounting principles adopted in the preparation of the Club's annual accounts [...];
- 16.18.2 be approved in writing by the board of directors of the company to which they relate;
- 16.18.3 include in the explanatory notes thereto principal assumptions and risks; and
- 16.18.4 include for comparison profit and loss accounts for the period covered by the Annual Accounts and interim accounts submitted pursuant to Regulations 16.2 and 16.11, a forecast for the current financial year and a balance sheet as at the date of the interim accounts submitted pursuant to Regulation 16.11."

"Each Club relegated or promoted into the League shall by 30 June in the year of its promotion or relegation subject to The League (Reg 16.19):

- 16.19.1 copies of the documents and other information that it would have been required to submit to The League pursuant to Regulations 16.2, 16.11 and 16.14 in that calendar year had it then been a Club;
- 16.19.2 Future Financial Information commencing from 1 August in the year of its promotion and expiring at the Club's next accounting reference date after the end of the following season; [...]"

"The League shall have the powers set out in Regulation 16.21 if (Reg 16.20):

- 16.20.1 the Club has failed to submit to The League [...] annual accounts as required by Regulation 16.2 and 16.3; or
- 16.20.2 the Club has failed to submit to The League interim accounts as required by Regulation 16.11; or
- 16.20.3 the Club has failed to submit to The League the Future Financial Information as required by Regulation 16.16 or

[...]

16.20.5 *the Club has failed to provide the evidence set out in Regulation 16.14 [...]; or*

[...]16.20.7 *a newly promoted or relegated Club has failed to subject to The League the financial information as required by Regulation 16.19;*

16.20.8 *as a result of its review of all the documents and information submitted by the Club pursuant to Regulations 16.2 to 16.19, and having taken into account any failure of the Club to supply any such documents or information, in its reasonable opinion it determines that the Club will not over the course of the following season be able to:*

- (a) *pay its liabilities to the creditors listed in Article 47.1 of The League's Articles of Association and to any foreign Transferor Club and to its employees as they fall due; or*
- (b) *fulfil its obligations to play fixtures under the jurisdiction of The League;*
- (c) *be able to provide such rights, facilities and services as are required to enable The League to fulfil its commercial and broadcasting contracts; or*
- (d) *discharge all other financial obligations that the Club has without having to rely on equity, loan, donation or other non-trading income or injections."*

16.21 *"The powers referred to in Regulation 16.20 are:*

16.21.1 *to require the Club to submit, agree and adhere to a budget which shall include, but not be limited to, Transfer Fees, Compensation Fees, Loan Fees or subsequent payments which become due under the terms of any transfer, players' remuneration and fees payable to any Intermediary;*

16.21.2 *to require the Club to provide such further information as The League shall determine and for such period as it shall determine;*

16.21.3 *to refuse any application by that Club to register any Player or any new contract of an existing Player of that Club."*

16.22 *"Any Club promoted or relegated out of The League shall, notwithstanding promotion or relegation, remain bound by the provisions of this Regulation 16, until such time as it has complied with the obligations relating to its last Season as a Club."*

Financial Fair Play

"Without prejudice to the foregoing provisions, The League and Clubs agree to actively work to introduce measures appropriate to each Division to promote financial fair play within The League, with the objective of: (Reg 18)

18.1.1 *improving the economic and financial capability of Clubs;*

18.1.2 *increasing the transparency and credibility of Clubs;*

- 18.1.3 *placing the necessary importance on the protection of creditors by ensuring that Clubs settle their liabilities with Players, HMRC and other Clubs (or clubs) punctually;*
- 18.1.4 *introducing more discipline and rationality in Club football finances;*
- 18.1.5 *encouraging Clubs to operate on the basis of their own revenues;*
- 18.1.6 *encouraging responsible spending for the long-term benefit of football; and*
- 18.1.7 *protecting the long-term viability and sustainability of League football. the 'Financial Fair Play Objectives'”*

EFL Regulations, Appendix 5, Financial Fair Play Rules

Part 1 – Championship Profitability and Sustainability Rules

Definitions

“Accounting Reference Period’ means the period in respect of which Annual Accounts are prepared.” (Rule 1.1.1)

“Annual Accounts’ means:

- (a) the accounts which each Club’s Directors are required to prepare pursuant to section 394 of the [Companies] 2006 Act [...]*
provided that [...] the accounts are prepared to an accounting reference date [...] which falls between 31 May and 31 July inclusive [...] (Rule 1.1.5)

“T’ means the Club’s Accounting Reference Period ending in the year in which assessment pursuant to Rules 2.2 to 2.9 takes place and:

- (a) T-1 means the Club’s Accounting Reference Period immediately preceding T;*
- (b) T-2 means the Club’s Accounting Reference Period immediately preceding T-1;*
- (c) T+1 means the Club’s Accounting Reference Period immediately following T; and*
- (d) T+2 means (the Club’s Accounting Reference Period immediately following T+1.” (Rule 1.1.20)*

Financial Fair Play Rules (EFL Regulations Appendix 5)

Profitability and Sustainability (Rule 2)

“Each Club shall by 1 March in each Season submit to The League:

- 2.1.1 *copies of its Annual Accounts for T-1 (and T-2 if these have not previously been submitted to The League) together with copies of the Directors’ report(s) and auditor’s report(s) and agreed upon procedures (where relevant), on those accounts;*
- 2.1.2 *a Player Registration Schedule;*
- 2.1.3 *its estimated profit and loss account and balance sheet for T which shall:*
 - (a) be prepared in all material respects in a format similar to the Club’s Annual Accounts;*
 - (b) be based on the latest information available to the Club and be, to the best of the Club’s knowledge and belief, an accurate estimate as at the time of preparation of future financial performance; and*

- (c) *if Rule 2.5 applies to the Club its P&S Calculation in a form approved by The League from time to time and which as at the date of these Rules is set out in Annex 1; and*
- 2.1.4 *full details of each and every Associated Party Transaction.*
- 2.2A *Each Club shall by 15 October in each season submit a Player Registration Schedule based on existing registrations as at the 30 September in that Season).*
[...]
- 2.6 *If the P&S Calculation results in a loss of up to the Lower Loss Threshold [...] then The League shall determine whether the Club will, until the end of T+1, be able to fulfil its obligations as set out in 16.20.8 (a) to (d).*
- 2.7 *Where The League determines, in its reasonable opinion and having considered any information provided to it by the Club, that the Club may not be able to fulfil its obligations as set out in Regulations 16.19.1, 16.19.2 or 16.19.3, The League shall have the powers set out in Regulations 16.21.*
- 2.8 *If the P&S Calculation results in a loss that exceeds the Lower Loss Threshold, then the following shall apply:*
- 2.8.1 *the Club shall provide, by 31 March in the relevant Season, Future Financial Information to cover the period commencing from its last accounting reference date [...] until the end of T+2 and a calculation of estimated aggregated Adjusted Earnings Before Tax until the end of T+2 based on that Future Financial Information;*
- 2.8.2 *the Club shall provide such evidence of Secure Funding as The League considers sufficient; and*
- 2.8.3 *if the Club is unable to provide evidence of Secure Funding as set out in Rule 2.8.2, The League shall have the powers set out in Regulation 16.21.*
- 2.9 *Where The League determines, in its reasonable opinion and having considered the Future Financial Information provided by the Club in accordance with Rule 2.8, that the Club is forecasting to breach the Upper Loss Threshold in T+1 and/or T+2 then The League shall have the powers set out in Regulation 16.21.”*

20. The EFL Regulations include, by way of guidance text, the following in relation to Rule 2:

“Guidance

In the event that a Club, based on the information provided by the Club to The League, is forecasting to exceed the Upper Loss Threshold in T+1 and/or T+2, The League will consider whether it is necessary to require the Club to operate in accordance with the terms of a business plan (to include, by way of example, requirements relating to player acquisitions, disposals, reduction in player costs (i.e. wages) and, where the Club thinks it is achievable, uplifts in revenue) in order to bring the Club back into compliance with Upper Loss Threshold for T+1 and/or T+2.

[...]

General Approach

The purpose of this Rule is to give Clubs and The League the opportunity to work together to develop the terms of a business plan which will include remedial measures to allow the Club to bring itself back into compliance with these Rules.

[...]"

Clubs ceasing to be Members of the Championship

"If a Club is promoted or relegated out of the Championship Division that Club shall, notwithstanding promotion or relegation, remain bound by these as if it were still a Championship Club, until such time as it has complied with all of its obligations relating to its last season as a Championship Club." (Rule 5)

VII: THE FACTUAL BACKGROUND

The CFRU's Decision

21. By letter dated 23 November 2023 the CFRU issued its determination, purportedly under Rule 2.9, that:
 - 21.1. it was entitled at that time to form a reasonable opinion as to whether LCFC will likely breach the Upper Loss Threshold ("ULT") for the assessment period ending in Season 2023/24;
 - 21.2. LCFC exceeded the Lower Loss Threshold ("LLT") of £15 million in the assessment period ending with Season 2022/23 (with Season 2022/23 representing T for those purposes);
 - 21.3. LCFC will have had to prepare Future Financial Information ("FFI") for Season 2023/2024 (which is Season T+1 for the purposes of the P&S Rules) and its assessment and Season 2024/25 (T+2); and
 - 21.4. based on both the FFI and subsequent performance, in the CFRU's reasonable opinion LCFC is forecasting to breach the Upper Loss Threshold (ULT) of £83 million in the Season 2023/24 being T+1.

22. On this basis, the CFRU directed LCFC to submit a business plan by 30 November 2023 to demonstrate how it will comply with the Championship P&S Rules.

The CFRU's Second Decision

23. By letter dated 26 December 2023, the CFRU issued a second, separate determination and direction to LCFC to submit a business plan, again purportedly under Rule 2.9, based on financial information received after 23 November 2023 and a FFI forecast provided to the CFRU.
24. This Decision is not to date the subject of a CFRU Decision Review Report and is not the subject of this Decision.

VIII: THE PARTIES' CONTENTIONS

LCFC

T

25. In relation to the definition of "T" in Appendix 5, Rule 1.1.20, LCFC submits that this is the Club's Accounting Reference Period ending in 2024, being that associated with the 2023/24 season. LCFC accounting reference period is to the year ended 30 June. It is therefore to 30 June 2024.
26. LCFC submits that this results from a natural reading of the text of this definition, which the Panel has set out in paragraph 19 above. LCFC relies on that part of the definition that states "*in the year in which assessment pursuant to Rules 2.2 to 2.9 takes place*". It refers to the date of 31 March in Rule 2.8.1 and submits that it follows that the assessment under Rules 2.2 to 2.9 must inevitably take place after that date.
27. As a Club relegated from the Premier League to the Championship at the conclusion of the 2022/23 season, LCFC was not a Club within the meaning of Regulation 16.2 as at March 2023. While playing in the Premier League in the 2022/23 season, LCFC submitted its Profit and Sustainability Rules ("PSR") Calculation on 1 March 2023. As a Club relegated into the Championship, it was subject to, and complied with the terms of Regulation 16.19 (see paragraph 19) above but that is not connected to the assessment under Rules 2.2 to 2.9 which, for a Club relegated into the Championship, does not take place until March of the first season in that Division.

28. It follows from LCFC's case that T+1 is its Accounting Reference Period associated with the 2024/25 season and T+2 is its Accounting Reference Period associated with the 2025/26 season.

Rule 2

29. LCFC relied on the well-known guidance in *Bradley v Jockey Club* [2004] EWHC 2164, affirmed by the Court of Appeal [2005] EWCA Civ 1056, that a sport governing body may only act lawfully within the ambit of powers and consistent with its rules and regulations.
30. LCFC submits, by reference to a direct textual analysis of Rules 2.8 and Rule 2.9 that the CFRU had no power under the EFL Regulations to make a determination under Rule 2.9 and exercise its powers under Rule 16.21, until after 31 March of the 2023/24 season. It submits that a conventional textual interpretation of the Rules is appropriate and that the CFRU's case on interpretation amounts to an attempt to re-write those Rules.
31. It submits that the text of Rule 2.9 (see paragraph 19 above) states expressly that, in order to make its determination, the CFRU is obliged to consider, "*the Future Financial Information provided by the Club in accordance with Rule 2.8*". It submits that the CFRU is not able to do this until a Club has provided the FFI by 31 March 2024.
32. In support of its submissions, LCFC relied on well-known and uncontroversial high appellate legal authority on the interpretation of contracts, including *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50. It relied on a summary of the principles by Popplewell LJ in *Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (The "Ocean Neptune")* [2018] EWHC 163 Comm at [8].

"The court's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. The court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the

contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest; similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.”

33. LCFC submitted that to interpret Rule 2.9 by reading in the words “*or otherwise*” or “*or provided otherwise*” would be to re-write and/or substantially alter the Rule. If the EFL wished to revise Rules 2.2 to 2.9, and by extension the relationship for relegated and promoted Clubs between those Rules and Regulations 16.19 and 16.20, that was a matter for the EFL and the Member Clubs and not for the CFRP.
34. LCFC sought to argue in the alternative that, in case of ambiguity, Rule 2.8 and 2.9 should be construed strictly against the EFL (*contra proferentem*) on the ground that the EFL was the *proferens*.
35. LCFC submitted further that the purposive interpretation submitted by the CFRU would have the effect of causing legal uncertainty or a breach of a general rule against non-retroactivity. It was also suggested that interpretation submitted by the CFRU would in some way “*breach LCFC’s legitimate expectation and be unfair*”.
36. It was a central part of LCFC’s submissions that the procedure set out in Rules 2.2 to 2.9, including therefore Rules 2.8 and 2.9, applied to LCFC but not until after 1 March 2024.

CFRU

T

37. In relation to the definition of “T” in Appendix 5, Rule 11.20, the CFRU submits, as it stated in the CFRU Decision, that this is the Club’s Accounting Reference Period ending in 2023 and therefore associated with the 2022/23 season. This submission was based on the substantive point that the relevant season was the 2022/23 season and that the CFRU’s purported assessment was made in November 2023 and therefore in the 2023 calendar year.

Rule 2

38. The CFRU submitted that the Panel should apply a non-textual, and as it described it at the hearing “*contextual*”, interpretation of Rules 2.8 and 2.9. A central part of the CFRU’s submissions was that Rules 2.8 and 2.9 were “*far from perfectly drafted*” to achieve the Financial Fair Play Objectives in respect of Clubs relegated or promoted to the Championship, at least for the first season of their membership. It was submitted that a strict textual interpretation, based on “*the niceties of language*” was not appropriate.
39. The CFRU submitted that relevant context is that LCFC has not disputed that it is forecast to breach the ULT in the 2023/24 season and that this is a serious matter. It submitted that LCFC’s textual submissions as to the interpretation of Rules 2.8 and 2.9 would result in inequality in the application of Championship P&S Rules between, on the one hand, Clubs relegated to the Championship from the Premier League and Clubs promoted to the Championship from League One and, on the other hand, the Clubs remaining in the Championship from the 2022/23 season.
40. It was submitted that LCFC’s textual submissions on the interpretation of the Rules were inappropriately technical, contrary to the Financial Fair Play Objectives and inconsistent with the underlying duty on the Club to co-operate with the EFL in respect of the Championship P&S Rules when playing in that Division. The CFRU referred to the well-known legal principle that a term to co-operate will be implied

into a contract where required for the performance of the contract; *The Interpretation of Contracts: Lewison 8th Ed Section 15.*

41. In support of its submissions, the CFRU also relied on much of the same well-known and uncontroversial high appellate legal authority on the interpretation of contracts, including the following specific dicta from *Rainy Sky SA*:

41.1. *“If the language of the bond leads clearly to a conclusion that one or other of the constructions contended for is the correct one, the court must give effect to it, however surprising or unreasonable the result might be. But if there are two possible constructions, the court is entitled to reject the one which is unreasonable and, in a commercial context, the one which flouts business common sense.”* (paragraph 16)

41.2. *“The more unreasonable the result, the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear”.* (ibid)

41.3. *“The language used by the parties will often have more than one potential meaning. I would accept the submission made on behalf of the appellants that the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other.”* (paragraph 21)

41.4. *“Speaking of a poorly drafted and ambiguous contract, Lord Bridge said that poor drafting itself provides: no reason to depart from the fundamental rule of construction of contractual documents that the intention of the parties must be ascertained from the language that they have used interpreted in the light of the relevant factual situation in which the contract was made. But the poorer the quality of the drafting, the less willing the court should be to be driven by*

semantic niceties to attribute to the parties an improbable and unbusinesslike intention, if the language used, whatever it may lack in precision, is reasonably capable of an interpretation which attributes to the parties an intention to make provision for contingencies inherent in the work contracted for on a sensible and businesslike basis.

[...] In my opinion, a court when construing any document should always have an eye to the consequences of a particular construction, even if they often only serve as a check on an obvious meaning or a restraint upon adoption of a conceivable but unbusinesslike meaning.” (paragraph 26)

42. The essence of the CFRU’s case was its submission that the Panel should, in order to achieve the underlying purpose of Rules 2.2 to 2.9, read into Rule 2.9 the words “*or otherwise*” or “*or provided otherwise*” so as to remove the textual connection between the CFRU’s determination under Rule 2.9 with the Future Financial Information provided by a Club under Rule 2.8.
43. The CFRU submitted, in further reliance on *Lewison* section 8, that, in interpreting Rule 2.9 the CFRP was entitled to and should consider the Guidance Notes to that Rule, including the General Approach text (see paragraph 20 above) emphasising the co-operation required between the Clubs and the CFRU to achieve the shared Financial Fair Play Objectives (see paragraph 19 above).
44. The CFRU accepted that, in making a determination under Rule 2.9 it is obliged to consider the FFI provided by a Club pursuant to Rule 2.8. This was entirely realistic given the way in which Rule 2.9 is drafted.
45. It did not seek to rely on any implied term. Given the way in which Rule 2.9 is drafted, this was again an entirely realistic position to take.
46. The CFRU submitted that, in respect of Clubs relegated (and promoted) to the Championship, the operation of Regulation 16.19 and 16.20 (see paragraph 19 above) should be considered as an aid to construction of Rules 2.8 and 2.9. It was

submitted that the CFRU's powers should not in respect of those Clubs be restricted to the terms of Regulation 16.20.

47. The CFRU disputed that its submitted interpretation of Rules 2.8 and 2.9 would create any legal uncertainty, breach any principle of non-retroactivity or be contrary to any expectations, legitimate or otherwise, on the part of LCFC. It observed, by reference to the CAS decision in *IAAF v USATF* (CAS 2002/O/401) at paragraph 11, that there was no legal basis for resort to the principle of *contra proferentem* and that there was no factual basis for any alleged legitimate expectation.
48. During the hearing it was suggested that LCFC did not have standing to bring this review because the CFRU did not “*directly and foreseeably prejudice[s] the interests of a person who were in contemplation of The League*” (see paragraph 19 above).
49. In its comments dated 14 December 2023 on the CFRU Decision Review report, the CFRU put the practical point in this way:

“The issue that arises in practice is that, at the start of a new Season, the CFRU will be in a position to investigate, sanction and/or take steps to require compliance by the 18 existing Championship Clubs, on the basis of the PSR Calculation and Future Financial Information submitted by those Clubs by 31 March during the previous Season. However, the CFRU will not have received the same information from the 6 new Clubs as those Clubs were not subject to the P&S Rules during the previous Season.”

IX: ANALYSIS

50. This analysis does not address each and every submission by the parties. It addresses those submissions the Panel considers relevant to reach its decision.

T

51. In relation to the definition of “T” in Appendix 5, Rule 1.1.20, the Panel finds that LCFC is correct in its submission that this is the Club's Accounting Reference Period ending in 2024, being that associated with the 2023/24 season. In this case, T is the 2023/24 season.

52. The Panel concludes that this follows from a natural reading of the text of the definition in Rule 1.1.20. The definition refers to the Club's Accounting Period "*in the year in which assessment pursuant to Rules 2.2 to 2.9 takes place*". It follows from the Panel's conclusion on the interpretation of Rules 2.8 and 2.9 that this assessment must take place after 31 March and therefore the assessment under Rules 2.2 to 2.9 must take place in 2024 and after that date. This conclusion is not affected by the CFRU's purported assessment on 23 November 2023 under Rules 2.8 and 2.9.

Rule 2

53. On the central question of the interpretation of Rule 2.9, the Panel accepts LCFC's submission that the text of Rule 2.9 permits of only one reading; namely that the CFRU is obliged, in reaching its determination, to consider the FFI provided by a Club and that, under the terms of Rule 2.8, this is provided in March of the season.
54. The Panel accepts LCFC's submission that, in this case, on a natural reading of Rule 2.8 and Rule 2.9, the CFRU has no power under the EFL Regulations to make a determination under Rule 2.9 and exercise its powers under Rule 16.21, until after 31 March of the 2023/24 season. In reaching this conclusion, the Panel has considered the principles of contractual interpretation set out in the case law, including *Rainy Sky*, referred to in the parties' submissions.
55. The Panel also accepts LCFC's submission that to interpret Rule 2.9 by reading in, as the CFRU submits it should, the words "*or otherwise*" or "*or provided otherwise*" would be to re-write and/or to substantially alter the Rule. It would affect not only the content of the FFI that the CFRU considered in making a determination under that Rule but also the timing of such determination during the course of a season.
56. The Panel finds that this is not a case of ambiguity that merits resorting to the principle of *contra proferentem*. It accepts the CFRU's submission, made in reliance on the CAS decision in *IAAF v USATF*, that there is no legal basis for reliance on this principle. In circumstances, where the Clubs have a say in the content of the EFL Regulations, the Panel does not consider it right to treat the EFL as the

proferens. It was, after all, part of LCFC's submissions that the Panel should not be persuaded by the CFRU to "re-write" Rule 2.9 by introducing words such as "or provided otherwise" or "or otherwise" because any revision to the Rules should be decided upon by the EFL and Clubs.

57. The Panel also rejects LCFC's submissions based on concepts of legal certainty and non-retroactivity. In any case of contractual interpretation, the legal logic is that a court or tribunal is declaring what the contract meant at its inception. LCFC led no evidence to support any relevant expectation, legitimate or otherwise, on the part of LCFC or any other Club, whether relegated or promoted to or in remaining in the Championship.
58. The Panel has taken into account and respects the CFRU's submissions that in various places the EFL Regulations are not perfectly drafted, that the Financial Regulations should be interpreted taking into account the Financial Fair Play Objectives, that there are duties of co-operation on Clubs, that there is general guidance in the EFL Regulations relating to Rule 2 and that where possible the Rules should be interpreted to apply in the same way between all Clubs playing in a Division. However, these legitimate considerations cannot be determinative where the text of Rule 2.9 is, as the Panel finds it to be, clear and sets out a workable procedure.
59. On the specific question of inequality of treatment between, on the one hand, Clubs relegated to the Championship from the Premier League and Clubs promoted to the Championship from League One and, on the other hand, the Clubs remaining in the Championship from the 2022/23 season, the Panel observes that the EFL Regulations go, some but not all the way, in achieving equality of treatment as regards Financial Fair Play Regulation. Under Regulation 16.19, a Club relegated or promoted to the Championship is required to provide the CFRU shortly after admission to the League and the Championship with the financial documentation and FFI required of Clubs remaining in that Division. Under Regulation 16.20, a Club relegated or promoted to the Championship must comply with the requirements of Regulation 16.20 or be subject to sanction under Regulation 16.21, including

potentially a business plan. However, the EFL Regulations as currently drafted do not connect Regulation 16.19 and Appendix 5, Rules 2.2 to 2.9, and specifically Rules 2.8 and 2.9, in such a way as to entitle the CFRU to make a determination under Rule 2.9 before March in the first season and thereby to level the playing field in terms of financial regulation for all Clubs in the Division.

60. For completeness, the Panel finds that LCFC had standing to bring this review because the CFRU Decision directly and foreseeably prejudiced its interests.
61. The Panel repeats that it is not concerned with the substantive merits of, or justification for, the decision of the CFRU under review. The CFRP accepts that the CFRU has acted at all times, not only in utmost good faith, but also with the intention of achieving the Financial Fair Play Objectives in respect of all Clubs in the Championship, including those relegated or promoted to it.

X: DECISION

62. Having heard and deliberated on the parties' evidence and submissions, the Panel decides unanimously that:
 - 62.1. in this case, T is LCFC's Accounting Reference Period associated with the 2023/24 season and therefore ending 30 June 2024;
 - 62.2. the CFRU did not have power on 23 November 2023 to issue a determination under Rule 2.9 in respect of LCFC and therefore did not have power to require the Club to submit a business plan pursuant to Rule 16.21.
63. It follows that the CFRU Decision was made ultra vires and is of no legal effect.

XI: FURTHER OBSERVATIONS

64. It is outside the jurisdiction of the CFRP to identify the need for any potential revisions to the Championship P&S Rules in the EFL Regulations Appendix 5, Part 1 arising from this Decision. This is a matter for the EFL to consider in consultation with the Clubs.

XII: COSTS

65. Pursuant to EFL Regulations Appendix 6, Rule 10, each party will bear its own costs.

XIII: CONFIDENTIALITY AND PUBLICATION

66. The Panel directs at the joint request of the parties that, until closure of the January transfer window on 1 February 2024, the fact and content of this Decision shall remain confidential between the parties and their legal advisors and shall not, without the prior written consent of the Panel, be disclosed to any third parties.

67. The Panel directs that on, or as soon as practicable after, 2 February 2024, the EFL shall publish this Decision on its website.



Jonathan Bellamy

16 January 2024

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