

IN THE MATTER OF A REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

MONDAY 3 APRIL 2023

BETWEEN:

THE FOOTBALL ASSOCIATION

And

FULHAM FOOTBALL CLUB (1)

MARCO DA SILVA (2)

ALEKSANDER MITROVIC (3)

WRITTEN REASONS

Background

1. These are the written reasons for the decisions made by a Regulatory Commission which sat on Monday 3 April 2023.
2. The hearing took place by MS Teams and the members of the Regulatory Commission were Christopher Stoner KC (Chair and Independent Legal Panel Member), Faye White (Independent Football Panel Member) and Gareth Farrelly (Independent Football Panel Member). Mr Michael O'Connor, Lead Judicial Services Officer at The Football Association ("**The FA**") acted as Secretary to the Commission.
3. The FA were represented at the hearing by Mr Yousif Elagab of Counsel, whilst the Participants charged, namely Fulham Football Club ("**Fulham**"), Mr Marco Da Silva ("**Mr Silva**") and Mr Aleksander Mitrovic ("**Mr Mitrovic**") were all represented by Mr Nick De Marco KC.
4. Mr Silva and Mr Mitrovic also attended in person, together with Mr Nick Alford, Fulham's Club Secretary, Mr Peter Limber, General Counsel and Mr Alistair Mackintosh, Fulham's Chief Executive Officer. Also in attendance, observing from The FA, were Mr Robert Marsh, On-Field Football Regulation Manager and Mr Charlie Kendrick, Paralegal.
5. The Commission wishes to place on record its gratitude for the submissions, both in writing and oral, from Mr Elagab and Mr De Marco KC, which were of considerable assistance to the Commission.
6. We had before us a bundle comprising some 148 pages, together with numerous video clips. We also had before us a bundle of authorities comprising some 21 authorities, with additional authorities being added after the bundle had been completed. Necessarily these written reasons are a summary of whether the charges in issue were proven and the appropriate sanctions for the proven charges and those which were admitted. Nothing should be read into the absence of a specific reference to any aspect of the material or submissions placed before us: the Commission have considered and given appropriate weight to all the material presented to us. This decision is a unanimous decision of the Commission.

The Charges

7. All the charges relate to events occurring during the 2nd half or after a match at Old Trafford between Fulham and Manchester United in the F A Cup Quarter Final on 19 March 2023 (“**the Match**”). The parties sensibly agreed to consolidation of the charges. On the 22 March 2023 the Judicial Panel Chair ordered:

“Save for the ‘clearly insufficient’ claim, all the charges against the Club, Mr Mitrovic and Mr Da Silva are consolidated and should be determined by the same Regulatory Commission at the same hearing.”

8. The ‘clearly insufficient’ charge was also referred to this Commission, the issue being a procedural one of whether it should be dealt with on the papers or whether oral submissions should be permitted. This is dealt with below.:

9. The charges against Mr Silva were as follows:

(a) “You are hereby charged with misconduct for four breaches of FA Rule E.3 in respect of the [Match] in or around the 72nd minute:

- (i) It is alleged that your behaviour in throwing a water bottle in the direction of the Assistant Referee was improper; and
- (ii) It is alleged that prior to your dismissal, you used abusive and/or insulting words towards the Fourth Official; and
- (iii) It is alleged that you used abusive and/or insulting words and/or gestures and/or behaviour towards the Match Referee; and
- (iv) It is alleged that following your dismissal, you used abusive and/or insulting words and/or gestures and/or behaviour towards the Fourth Official.

Please note that The Football Association has designated this as a Non-Standard Case due to the multiple reported incidents of misconduct.”

- (b) Separately from the foregoing:

“You are hereby charged with misconduct for a breach of FA Rule E.3 in respect of a comment that you made following the [Match]

It is alleged that your comment[s] in a post-match press conference referred to above, constitute improper conduct in that they imply bias and/or question the integrity of the match official, and/or bring the game into disrepute, contrary to FA Rule 3.1.

The following comment is taken from your post-match press conference:

“Ok I know it’s a huge club everyone knows, big respect, but it cannot be. It’s the quarter final and both teams have to have the same conditions to keep in the competition. They cannot decide in one way, sometimes because it’s Fulham or Man United, they decide completely different in the same situations. Because the ref he sometimes feels like the pressure, because he’s here, like I feel like Ten Haag can feel, both players, players of both teams, the people that are in the office there, it’s really difficult to accept things that jeep happening this season, week by week.”

10. The charges against Mr Mitrovic are:

- (1) “You are hereby charged with misconduct for two breaches of FA Rule E3 in respect of the [Match]:
 - (i) That pursuant to Regulation 20.2 of Section One of Part D: On-field Regulations and Fast Track 6 of Part E: “It is claimed that your behaviour in or around the 72nd minute, whereby you committed the sending off offence of violent conduct towards a match official, is such that the standard punishment otherwise applicable to that sending off offence is clearly insufficient.”
 - (ii) Pursuant to Fast Track 2: “It is alleged that following the offence for which you were dismissed, your behaviour and/or language was improper and/or abusive and/or insulting and/or threatening.

Please note that The Football Association has designated this as a Non-Standard Case due to the incident occurring outside the jurisdiction of the Match Officials and/or the aggressive nature of the reported behaviour.”

11. The charge against Fulham is:

“Fulham FC is hereby charged with misconduct for a breach of FA Rule E20.1 in respect of [the Match]

It is alleged that in or around the 72nd minute of the fixture, Fulham FC failed to ensure that its players conducted themselves in an orderly fashion.

Please note that The Football Association has designated this as a Non-Standard Case due to previous proven breaches of FA Rule 20.1 in a fixture against Nottingham Forest on 26 April 2022 and Chelsea FC on 12 January 2023.”

Contested Charges and Admissions

12. Mr Silva contested the charge of misconduct contrary to Rule E3 that his “behaviour in throwing a water bottle in the direction of the Assistant Referee was improper.” Otherwise, Mr Silva admitted the other charges against him.

13. Mr Mitrovic contested the charge of misconduct contrary to Rule E3 that the standard punishment for his sending off was ‘clearly insufficient’, but admitted the charge that following the offence for which he was dismissed, his behaviour and/or language was improper and/or abusive and/or insulting and/or threatening.

14. Fulham admitted the charge that contrary to FA Rule 20.1 it failed to ensure that its players conducted themselves in an orderly fashion.

Relevant Regulations

15. FA Regulation E3 provides, as relevant:

“A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.”

16. FA Regulation E20.1 provides:

“Each Affiliated Association, Competition and Club shall be responsible for ensuring that its Directors, players, officials, employees, servants, representatives, conduct themselves in an orderly fashion whilst attending any Match and do not:

E20.1. use words or otherwise behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative.”

17. The relevant regulations on the ‘clearly insufficient’ charge are referred to below, as appropriate.

Facts

18. Broadly speaking, the chronology of events is such that the facts relevant to the charges against Mr Silva come first, followed by the facts relevant to the charges against Mr Mitrovic followed by the facts relevant to the charge against Fulham.

19. As identified above many of the charges are admitted and it is not necessary for the purposes of these written reasons to recite every detail of fact that was presented to us.

20. The background to the relevant facts is that it was mid-way through the second half, in approximately the 71st minute, at a time when Fulham were leading 1-0. A Manchester United shot was blocked on the line by the Fulham player Willian. The Match Referee did not immediately give a penalty, but the incident was reviewed by the V.A.R.

21. Initially, it appears from video footage that the Commission were taken to numerous times, that Mr Silva was in discussion with the assistant referee, Mr Ledger. When he was cross-examined about this, Mr Silva suggested he was talking with the Assistant Referee about the West Ham game they had been involved in earlier in the year when Mr Kavanagh was the Match Referee.

22. In the Commission’s view it is plain from the video that Mr Silva turns round and faces away from the assistant referee and toward the end where Willian had blocked the shot. Mr Silva in his statement said:

“After Willian had blocked Jadon Sancho’s shot on the line and the Referee had given a corner, I saw that he had been advised to review the VAR monitor to check whether there should be a penalty for handball against Willian. I was so frustrated by this. All I could think was ‘how is it that the Referee is being asked to check this penalty incident, when he wasn’t asked to check either the Luke Shaw penalty incident or the Lisandro Martinez incidents in the first half?’ ‘How can the Referee be asked to check whether Willian should be sent off for handball, when he wasn’t asked to check whether Antony had kicked out at Anthony Robinson, off the ball?’ Although I had no problem with the penalty itself, I felt that we had been so harshly treated: had those earlier decisions been given, as they should, we would be comfortably winning the game, where now we were about to concede a penalty and be down to 10 men. However, I did not throw my water bottle at the Assistant Referee, or in his direction. There are cameras which show this and witnesses who saw it, and in these circumstances, I am surprised that the FA is pursuing this charge.

When I saw the Referee make the rectangle sign to show he was going to review the VAR monitor, the Assistant Referee was near me. [Interjecting here, the Commission is clear that when Mr Silva saw the Match Referee make the rectangle sign to show he was going to review the VAR monitor, it was clear that the Assistant Referee was behind him, so this was after he had turned away from his initial discussion with the Assistant Referee]. I threw my water bottle to the ground in front of me in frustration, but not with any significant force or aggression, and certainly not in a way that was designed to be aimed at the Assistant Referee. The bottle bounced on the ground and landed harmlessly near the Assistant Referee, who did not even raise his flag. I have been told that the Assistant Referee then took a drink from the same bottle.”

23. The Commission observes and finds, based on its numerous views of the video evidence, that when Mr Silva picked up his bottle he was facing away from the Assistant Referee. The Commission also finds that he turned to face the direction of the Assistant Referee before he threw the water bottle.

24. What the Match Officials say is as follows:

- (a) The Assistant Referee, Mr Ledger, said: *“In the 72 minute after the referee was advised by the VAR to go to the RRA to check a potential penalty incident, Marco Silva in an aggressive manner through a water bottle in my direction. I was 20 yards away and down the touchline monitoring the players on the field. I clearly saw the coach throw the bottle. The bottle did not hit me but landed several yards from my position.”*
- (b) The Fourth Official said *“In the 71st minute there was a handball appeal on field for penalty kick to Manchester United. As the referee, Chris Kavanagh, made the TV signal for an on field review of the decision, the Fulham manager, Marco Silva, threw a water bottle in the direction of the assistant referee Scott Ledger.”*
- (c) The Match Referee said: *“As I approached the Referee Review Area I could clearly see Mr Silva throw a bottle, in an aggressive manner, in the direction of the assistant referee Scott Ledger.”*

25. The evidence of the Match Officials was not seriously contested, although the Commission notes that Mr Silva, in cross-examination, observed that the Match Referee was some distance from the incident when it occurred.

26. The Commission also received evidence, in the form of witness statements from Chris Hanson, the Head of Medical at Fulham and Goncalo Pedro, the Head of First Team Fitness at Fulham. Mr Hanson said he witnessed Mr Silva throw the water bottle at the ground and not at, or in the direction of the Assistant Referee. Mr Pedro also said he witnessed Mr Silva throw his water bottle at the ground in frustration and not at the Assistant Referee.

27. Mr Silva gave evidence to the Commission in which he emphasised that he threw the water bottle at the ground in frustration.

28. The Commission, having viewed the relevant video evidence on numerous occasions and having taken all the evidence into account, concluded that the incident had to be viewed in the round and determined:

- (a) Mr Silva was, as he admitted, initially in discussion with the Assistant Referee.

(b) He then clearly turns round, such that the Assistant Referee is behind him. It is at this point that Mr Silva sees the Referee make the rectangular sign that he is going to undertake a V.A.R Review.

(c) Mr Silva then picks up the bottle.

(d) However, he does not simply throw it to the ground in frustration. Rather, he turns around and again faces the Assistant Referee before throwing the bottle. He does not throw the bottle at the body of the Assistant Referee, but into the ground in the direction of the Assistant Referee.

(e) For the Commission, however, the consideration of the incident does not end there. Mr Silva then makes a gesture with his arm having thrown the bottle, which he accepted when giving evidence was probably at the Assistant Referee. We find that it was a gesture made at the Assistant Referee.

29. In all the circumstances, the Commission is completely satisfied that Mr Silva threw the bottle in the direction of the Assistant Referee, if not at the Assistant Referee.

30. Mr Silva then turned his attention to the Fourth Official, which is the subject of the (admitted) second element of the charge of Misconduct pursuant to Rule E.3. Mr Coote, the Fourth Official's evidence to the Commission was:

"He then approached me in an angry and confrontational manner, shouting at me and gesturing angrily towards me. I reacted calmly, asking him to calm down and then told me to "fuck off" and made his way towards the referee, who by now had reached the Referee Review Area."

31. Mr Silva's recollection of the wording is slightly different. His statement says:

"I accept before I was sent off, I raised my voice and swore at the Fourth Official, saying words to the effect of 'this is a fucking joke' and 'fuck off'."

32. In so far as there are any discrepancies in wording, these are noted but ultimately do not matter. The charge of using abusive or insulting words towards the Fourth Official is admitted and the language used on any basis is abusive or insulting.

33. In his fury, Mr Silva, turned his attention to the Match Referee, Mr Kavanagh, who had started his review in the Referee Review Area. This is the subject of the third (admitted) breach of Rule E.3. The evidence of the Fourth Official was:

“... and made his way towards the referee, who by now had reached the Referee Review Area. As Marco Silva left his technical area and was clearly walking towards the referee, I followed him and told the referee over our communications system ‘Marco Silva red card, red card’. After he had been shown the red card, he shouted “fuck off” twice, and gestured with two fingers toward the referee.”

34. The Match Referee’s evidence was:

“Once at the Review Area Mr Silva then left his technical area to approach me and Mr Coote told me to “red card, red card”. As I showed Mr Silva the red card he told me to “Fuck off” on two occasions.”

35. It was also plain to the Commission, having reviewed the video footage, that Mr Silva made a gesture toward the Match Referee just after he has been red carded.

36. In his statement, Mr Silva accepts that after he was shown the red card by the Match Referee he said *“fuck off man”* as he walked away. However, we were told that Mr Silva had fairly indicated that if it had been put to him that the Match Referee’s account was correct, he would not be in a position to positively say to the contrary. Again, in the Commission’s view, the difference in wording is of marginal relevance in circumstances where the charge is one of using abusive and/or insulting words and/or gestures to the Match Referee and is admitted.

37. Mr Silva then turned back to the Fourth Official, which is the subject to the fourth (admitted) breach of Rule E.3. The Fourth Official’s evidence is that:

“...he made a movement to leave, but then tried to approach the referee again, and was stopped from doing so by myself and Luis Boa Morte of Fulham, again protesting angrily and again telling me to “fuck off” with the same two finger gesture towards the referee.”

38. Although Mr Silva’s statement does not refer to swearing at this stage, the Charge is admitted.

39. The chronology then turns its attention to matters on the pitch. Mr Kavanagh concluded his review and determined that Manchester United should be awarded a penalty and that Willian should be red carded. Mr Kavanagh's evidence was:

"In the 72nd minute, after an on-field review, I showed Fulham No 20 Willian a red card.

Immediately after I was walking [past] Fulham No 9 Mr Mitrovic who approached me in an aggressive and confrontational manner pointing his finger in my face. As I tried to walk past Mr Mitrovic he thrust his arm into me in a forceful way making physical contact with me.

I showed Mr Mitrovic the red card at which point he aggressively moved his body and head towards me, to the extent I had to move my head and body backwards to avoid further contact. He continued to point aggressively in my face whilst shouting 'you're a fucking disgrace, you're a fucking disgrace, you'll get banned.

Mr Mitrovic [had] to be restrained by both sets of players and members of the Fulham technical area staff but broke through these attempts to again approach me in an aggressive manner.

Following this the player did not leave immediately and approached the 4th official David Coote."

40. Mr Mitrovic provided a long statement to the Commission, but the essence of his evidence on the sending off incident is in paragraphs 14 – 15 of his statement, which provide:

"As the Referee approached me after reviewing the VAR monitor, I said to him 'hey!' to get his attention, but he ignored me and kept on walking. I said 'hey!' again, but he still didn't engage and continued to walk past me. I remember saying 'hey!' a couple of more times to get his attention because I wanted to say to him that it should be a yellow card not a red. I thought the Referee was making another mistake and I wanted the opportunity to tell him that so he could consider it and perhaps change his mind. [We interject her to observe that we consider it is wholly unrealistic that an experienced player such as Mr Mitrovic could have had any, let alone any reasonable expectation that he could speak to a Referee who had already brandished a red card, after having

undertaken a review on the V.A.R monitor in the Referee Review Area, with the consequence of his 'perhaps' changing his mind.] *But the referee was not listening. He just kept walking towards the penalty area, which meant that I had to walk to the side of him to keep up. That is why I nudged him with my arm: in an instinctive attempt to get his attention and turn and face me so I could explain my point.* [We interject again to note our disappointment at Mr Mitrovic's description of the physical contact with the referee as a 'nudge'. This, in our view, seeks to downplay what was a clear push with his arm, which was raised in an angry manner]. *But as soon as I touched the Referee, I knew it was the wrong thing to do. He immediately showed me a red card, which was devastating.*

... . I honestly did not nudge the Referee forcefully, and certainly not violently. I know it was the wrong thing to [do] and that you should not put your hands on match officials, but in the moment, but I was not being aggressive, I was just trying to get the Referee's attention because I thought he was ignoring me and making a mistake."

41. As regards the out of jurisdiction charge, relating to his conduct after the red card was shown, the essence of what Mr Mitrovic says is in paragraph 20 of his statement which states:

"In the immediate aftermath of my red card, everything seemed to go wrong for 10 or 15 seconds, I was so upset that I had been sent off and I was pleading with the Referee saying "why are you giving him [Willian] a red card?', 'why not a yellow?' I accept that, for a split second, my posture may have appeared aggressive and my behaviour looked bad. [Interjecting again, the Commission considers, having viewed the video evidence numerous times, that it is wrong for Mr Mitrovic to say he was aggressive for 'a split second'. Again, the Commission finds this is an attempt to downplay the seriousness of what occurred.] I said to the referee "you're a fucking disgrace' because it seemed unbelievable what was happening. He had sent off the Manager, given a penalty and now he was showing a red card to Willian as well. I thought the Referee had made a mistake in sending Willian off and I was saying to him 'he [Willian] will get banned."

42. Undermining his own suggestion that “for a split second” his posture “may” have appeared aggressive, Mr Mitrovic proceeds to say “*Within seconds of being shown the red card and initially acting badly, however, I was trying desperately to recover the situation.*” He proceeds to give evidence of how he was then pleading with the Referee in a non-aggressive manner.
43. Of course, the Commission was also able to view the video footage of the incident, which was played on multiple occasions during the hearing. The Commission observes and finds from this:
- (a) Mr Mitrovic approaches the Match Referee;
 - (b) Mr Mitrovic does appear to start by seeking to gain the Referee’s attention by saying ‘hey’ or similar;
 - (c) Once the Referee turns his head toward Mr Mitrovic the latter angrily jabs his finger toward the Referee;
 - (d) The Referee then turns away which appears to annoy Mr Mitrovic who angrily and with some aggression pushes the Referee with his arm;
 - (e) As the Match Referee brandishes the red card to Mr Mitrovic, he moves round to face the Referee. He is shouting at the Match Referee.
 - (f) He again jabs his finger toward the Match Referee’s face as the Match Referee is holding the red card. Mr Mitrovic is shouting at the Match Referee;
 - (g) Mr Mitrovic then very aggressively moves into the Match Referee’s space causing the Match Referee to have to move his head back and arch his back away from Mr Mitrovic. Mr Mitrovic is shouting;
 - (h) With the Match Referee backing away, Mr Mitrovic closely pursues him and again jabs his finger aggressively toward the March Referee. Mr Mitrovic still appears to be shouting;
 - (i) Then a point in time comes where Mr Mitrovic spreads out his palms and appears to adopt a suddenly far less aggressive approach, although he continues to argue with the Match Referee who is continually backing away.

(j) Other players then arrive as well as individuals from the Fulham technical area.

44. There then follows, as is evident from the video evidence, as a result of Mr Mitrovic's actions, a mass surrounding of the Match Referee, which relates to the charge which Fulham have accepted. It is notable that even when Mr Mitrovic is pulled away from the Match Referee, he then seeks to re-approach him and takes some time before he finally leaves the field of play.

Preliminary Point

45. A preliminary point arose between the parties as to the correct procedure to be adopted in considering the 'clearly insufficient' charge. The FA's position was that it should be dealt with by the Commission on the basis of written submissions and evidence (including video evidence) alone. Such a stance reflects Regulation 7 of Fast Track 6 which provides:

"Matters falling within this Fast Track 6 will be determined on video and written evidence only, and parties shall not be present or represented in person. For the avoidance of doubt, none of the Match Officials nor the Club or Player are entitled to be present or represented in person at the Regulatory Commission established for such purpose."

46. However, this provision is subject to the general overriding power of the General Principles applicable to Fast Track Regulations and, in particular, Regulation 3 which provides:

"The directions set out in these Regulations may be deviated from at the discretion of the Judicial Panel Chairman or the Regulatory Commission dealing with any given case if the circumstances of that case so dictate ..."

47. The matter was considered by the Judicial Panel Chairman at a hearing on 22 March 2023. He determined that he would appoint one Regulatory Commission to determine not only the other consolidated charges, but also the 'clearly insufficient charge', leaving it to the Commission whether it dealt with the matter on paper or heard oral argument.

48. Having received the written submissions and the evidence from the parties, we considered the issue before the hearing commenced, so we could inform the parties of our decision at the outset. We concluded that given that the ‘clearly insufficient’ charge, which relates to Mr Mitrovic’s sending off for violent conduct, was part of a sequence of events which we would be considering in detail, with the parties fully represented before us, this was a case where it was appropriate to use the power vested in us by Regulation 3 recited above and permit oral submissions on the issue of whether or not the 3 game ban Mr Mitrovic received as a standard suspension for his red card was ‘clearly insufficient’.

The Contested Charges

‘Clearly insufficient’

49. The first of the contested charges was that Mr Mitrovic was in breach of Rule E3 and that the standard punishment of a 3 game ban was ‘clearly insufficient’, invoking Fast Track 6 albeit subject to our deviation from the prescribed procedure by permitted oral submissions on the point, as detailed above.

50. The FA directed us to Regulation 11 of Fast Track 6 which provides:

“11.2. After considering the evidence, the Regulatory Commission will decide whether the claim is rejected or is successful. A claim will only be successful where the Regulatory Commission is satisfied so that it is sure that:

11.2.1. the circumstances of the dismissal under review are truly exceptional, such that the standard punishment should not be applied; and

11.2.2. as a result of the truly exceptional circumstances the standard punishment would be clearly insufficient.

11.3. In considering the matters at paragraph 11.2 above, the Regulatory Commission shall have regard to:

11.3.1. the applicable Law(s) of the Game and any relevant FIFA instructions and/or guidelines;

11.3.2. the nature of the dismissal offence including the Player's state of mind, in particular any intent, recklessness or negligence;

11.3.3. where applicable, the level of force used;

11.3.4. any injury to an opponent caused by the dismissal offence;

11.3.5. any other impact on the game on which the incident occurred;

11.3.6. the prevalence of the type of incident in question in football generally;

11.3.7. the wider interests of football in applying consistent punishments for dismissal offences."

51. The FA urged us to consider Mr Mitrovic's conduct as truly exceptional, stating:

- (i) He had clearly lost control in a violent manner towards a Premier League Match Referee;
- (ii) That Match Officials should be treated with the utmost respect;
- (iii) That such conduct towards a Match Official is clearly not within the reasonable parameters of the standard 3 game ban;
- (iv) That the force used was clearly distinct from examples where a player makes physical contact with a Match Official for the purposes of gaining his attention;
- (v) That Mr Mitrovic's conduct came at a point in time where the Match Referee was having to deal with a number of matters, including the red cards given to Mr Silva and Willian and the award of a penalty to Manchester United;
- (vi) That Mr Mitrovic's conduct had a significant effect on the match, causing a subsequent crowding around the Match Official, all of which events were deleterious to the image of the game of football.

52. Orally, Mr Elagab, on behalf of The FA urged us to consider the behaviour of Mr Mitrovic as truly exceptional, stating his behaviour was far from how players normally behave and that it was clear that he had crossed a threshold into a high level of misconduct in dealing with a Match Official.

53. On behalf of Mr Mitrovic, Mr De Marco KC submitted to us that Mr Mitrovic's behaviour did not cross the high hurdles necessary for the standard punishment of a 3 match ban to be considered to be 'clearly insufficient'.
54. Mr De Marco KC suggested there was a danger of procedural unfairness as it was not known to Mr Mitrovic how many cases there had been where The FA had lost a claim that the punishment was clearly insufficient. It was suggested that disclosure would have been sought, but equally the Commission noted that this was not one of the grounds that was advanced on behalf of Mr Mitrovic when asking that he be permitted to make oral submissions on the issue.
55. In any event we were simply asked to take the point into account when considering the issue, which we did. Assuming that other cases had failed that could only have a marginal relevance to our principal task, which was to consider the facts of *this* case and ask ourselves the question of whether we considered the 3-match standard suspension to be 'clearly insufficient'.
56. We were also provided with a total of 9 video clips. In written submissions Mr De Marco KC referred to these clips as showing incidents of which Mr Mitrovic was aware which show players putting hands on (or worse) a Referee, which show Mr Mitrovic's conduct was not 'truly exceptional.' In oral submissions, Mr De Marco KC said that 7 of the 9 incidents were not as serious, but none of the incidents involved even a red card.
57. The Commission considered the video clips and did consider them of assistance. Although advanced as part of the suggestion Mr Mitrovic's behaviour was not 'truly exceptional', the Commission considered that the video clips in fact served to highlight the egregious and, thankfully, highly unusual nature of Mr Mitrovic's conduct toward the Match Referee, including his physical push on him and that it was properly categorised as 'truly exceptional'.
58. We were also directed to the definition of 'violent conduct' in the Laws of the Game, namely:
- "Violent conduct is when a player uses or attempts to use excessive force or brutality against an opponent when not challenging for the ball, or against a team-mate, team official, match official, spectator or any other person, regardless of whether contact was made."*

59. Mr De Marco KC submitted there was not a separate rule or description of violent conduct against a Match Official: the test for violent conduct was one of excessive force or brutality. Whilst the Commission accepts there is not a separate rule of violent conduct against match officials, Mr De Marco also specifically stated that it was accepted that it was wholly unacceptable to use any force or put your hands on a referee. This reflects, in the Commission's view, that 'excessive force' in the context of a match official falls to be considered from the admitted starting point, namely that it is unacceptable to use any force or put hands on a Match Official.

60. We were referred to the decision in the *FA v Ronaldo*. As a general observation, given the number of 'authorities' cited to us during the course of the hearing and in submissions, we have had regard to the words stated by the Appeal Board in the case of *The FA v Jurgen Klopp*¹ at paragraphs 26 & 27:

"In The FA v Everton FC (28 September 2022) the Regulatory Commission observed (at paragraph 14) as follows:

'Parties appearing before Regulatory Commissions frequently submit that the doctrine of precedent does not apply. Each case turns on its own facts and must be approached from the basis of those facts. We agree. Nevertheless it is plainly sensible that whilst every case is determined on its own facts there should be a degree of consistency and uniformity of approach. That does not require a Regulatory Commission slavishly to follow the approach of an earlier Commission, but it does require that it should take into account the reasoning of an earlier decision and to apply the wisdom to be gained from it.'

We endorse that observation. Absent good reason to the contrary, parties charged with a breach of the FA Rules are entitled to expect a broad consistency of approach by Regulatory Commissions tasked with sanctioning them if that breach is admitted or found proven. Achieving that requires any Regulatory Commission:

(a) To have regard to any guidelines in place as to sanction for breaches of particular Rules or Regulations – in this case, the Standard Penalty Guidelines – and ask itself how, if at all, those guidelines might apply or be relevant to the facts of the case before it as the Regulatory Commission finds them to be;

¹ 13 November 2022 (Ch: Graeme McPherson KC)

(b) *To have regard to previous decisions of other Regulatory Commissions and/or Appeal Boards and once again ask itself how, if at all, those decisions might be relevant to the facts of the case before it. As was said in *The FA v Everton* (supra) that does not mean that a Regulatory Commission should ‘slavishly’ follow the approach of an earlier Regulatory Commission. Nor does it mean that a Regulatory Commission can never adopt a different approach or arrive at a decision that might be considered inconsistent with that reached by an earlier Regulatory Commission. Not only do cases vary on their facts, but attitudes and approaches may, for good reason, change over time. The perceived gravity of what might have been considered trivial misconduct (or even acceptable conduct) at a particular point in time can alter. Provided that the approach taken by a Regulatory Commission and the decision reached by a Regulatory Commission is justifiable and reasonable on the facts of the particular case, it will be a rare case in which an Appeal Board will interfere.”*

61. Having these words in mind we did not consider the case of *The FA v Ronaldo*² to be of any particular assistance to us in considering the issue of whether the standard suspension was ‘clearly insufficient’. It was a wholly different scenario and indeed we note that the Commission in that case observed that the issue it was considering was “*completely different from ... misconduct on the field of play.*” We considered that of far more relevance and assistance were the cases of *The FA v Bacuna*³ and *The FA v McEvoy*⁴, albeit in the latter case there were no Written Reasons for the decision.

62. Having regard to the totality of the submissions, whether in writing or oral, and also having regard to the provisions of Regulation 11 of Fast Track 6 and the evidence presented to us, including the statements and the video evidence, the Commission considers that the circumstances of Mr Mitrovic’s dismissal are ‘truly exceptional’. It is a positive relief that other examples of such an egregious example of misconduct toward the Match Referee could not be found, the closest in the Commission’s view being that in the case of the Assistant Referee in *Bacuna*.

² 17 November 2022 (Chair C Quinlan KC)

³ 2 March 2017 (Chair B Jones)

⁴ 11 March 2023

63. In the circumstances we were readily satisfied that the standard suspension of 3 games was 'clearly insufficient' for the actions of Mr Mitrovic. We might add that whilst Mr Mitrovic has apologised for what happened, including to the Match Referee, publicly and to the Commission, where his contrition was evident, Mr Mitrovic gains no credit from contesting the 'clearly insufficient' charge.

'Bottle throwing'

64. The other contested charge is that of a breach of Rule E3 against Mr Silva relating to the thrown water bottle. We have already, in considering the chronology of events above, identified our findings of fact in relation to this charge, including that we find that Mr Silva did throw the water bottle in the direction of the Assistant Referee.

65. On behalf of Mr Silva, Mr De Marco KC said an issue arose over the wording of the charge. In his written submissions he said the "... *natural meaning of the wording of the allegation suggests that [Mr Silva] was deliberately throwing a water bottle at, or towards, the Assistant Referee.*" The Commission does not accept that this is correct: the charge, taken in the round, was that Mr Silva threw a water bottle, in the direction of the Assistant Referee, in circumstances which were improper.

66. For the reasons identified above, we have found, as a matter of fact, that the first two elements, namely that Mr Silva threw a water bottle and that it was in the direction of the Assistant Referee are established. The issue is whether it is improper, which in the view of the Commission must be considered having regard to the context of the bottle being thrown.

67. We were shown a number of video clips of water bottles being kicked and thrown, the utility of some of the clips being questionable. Whilst a Regulatory Commission should have regard to previous decisions, albeit not slavishly so, the parties should also have regard to how helpful other examples might be and not simply slavishly seek to find as many examples of a particular type of event as it can: in the present instance an approximately 1 second clip of Mr Klopp throwing a water bottle to the ground, without any context being provided whatsoever, was high on useless in terms of evidential value. We were told that the incident involving Mr Klopp and also one involving Mr Guardiola were not actually reported to The FA.

68. We had regard to an incident involving the kicking of a bottle, which ended in the spectators section, involving Mr Emery and we also had regard to other instances shown, including that of *The FA v Heckingbottom*⁵ involving the kicking of a substitution board being held by a Match Official as well as *The FA v Jose Mourinho*⁶ involving the kicking of a water bottle.
69. Ultimately, the question for the Commission is whether the throwing of the water bottle in the present instance, in the direction of the Assistant Referee, was improper. Having regard to the totality of the evidence and the totality of the incident we conclude that it was. Whilst satisfied that Mr Silva did not intend to throw the bottle at the Assistant Referee, taken as a whole Mr Silva, having picked up the bottle, did not simply throw it to the ground in frustration (in contrast to various of the clips viewed): instead he turned back to face the direction of the Assistant Referee before throwing the bottle and having thrown it then made a gesture which he accepted was probably toward the Assistant Referee (and the Commission finds was to the Assistant Referee). The throwing of the bottle has to be viewed in the context of this entire incident.
70. Viewed objectively, the throwing of the bottle was improper behaviour on the part of Mr Silva and the breach of Rule E.3 is established comfortably to the Commission's satisfaction.

Sanctions

71. In circumstances where we had informed The FA, Mr Mitrovic and Mr Silva (as well as Fulham) that the contested charges were found to be proven, we then heard submissions on sanction in respect of those charges and the admitted charges.

Mr Silva

72. Dealing firstly with the charge of four breaches of FA Rule E3 against Mr Silva, The FA's position was that the 'Standard Penalty Guidelines' for a breach of Rule E3, including abusive or insulting language is a 1 match touchline ban and a fine of £8000 (at Premier League level). Although this was an FA Cup match, it was submitted it should be treated as being at Premier League level.

⁵ [2023]

⁶ [2016]

73. The FA then proceeded to urge us to apply, as a *minimum*, in relation to each of the four charges that had been proven or admitted, the sanction identified in the Standard Penalty Guidelines. Thus, overall The FA submitted Mr Silva should be subject to a touchline ban of 4-6 matches. As we understood the submissions there would also be a cumulative financial penalty of at least £32,000.
74. A particular aggravating feature relied upon by The FA was that Mr Silva had interrupted the V.A.R process which, it said, should be considered as sacrosanct. Against this Mr De Marco KC said that Mr Silva had not been charged with interfering with the V.A.R. process, which is correct. The Commission considered that if The FA wished to argue that Mr Silva's conduct was improper in breaching the 'sanctity' of the V.A.R. process that is something that should have been specifically stated. Against this, the Commission considered it could take the fact that the Match Referee was in the Referee Review Area into account, but only as a general aggravating feature in considering the admitted breach relating to Mr Silva's improper behaviour towards the Match Referee.
75. It was said by Mr De Marco KC on behalf of Mr Silva that The FA's approach involved 'salami slicing' what was, in truth, one course of misconduct.
76. Mr De Marco KC took us through a number of authorities to seek to make good his points that the approach of The FA was usually one of charging in respect of the totality of the Misconduct alleged and that the usual sanction imposed was not more than a one match touchline ban plus any financial penalty: the cases referred to included *The FA v Touchel and Conte*⁷, *The FA v Klopp*⁸ and *The FA v Lowe*⁹.
77. At the outset the Commission was not attracted by The FA's stance of seeking a separate sanction for all four of the breaches of Rule E3 on the part of Mr Silva as if they were separate incidents and without regard to their, effectively, being part of the same course of misconduct, albeit where Mr Silva lost control for a prolonged period. Circumstances might have been different if, purely by way of example, Mr Silva had not calmed down and had approached the Match Referee again after the game. In the Commission's clear view for the sanction to be proportionate the totality of the breaches needs to be considered for what it was: different facets of one course of Misconduct.

⁷ 22nd August 2022 (Ch Mr Stuart Ripley)

⁸ 13 November 2022 (Ch Graeme McPherson KC)

⁹ 13 September 2022 (Ch Mr Udo Onwere) – where a 2 game ban was imposed.

78. We were also referred to the case of *The FA v Jesse Marsch*¹⁰ and noted, at paragraph 10 of the Written Decisions, that the description of the incident showed that Mr Marsch (a) had run out of the technical area and entered the field of play; (b) he then came back aggressively toward the Fourth Official using foul language; (c) he then left his technical area again to remonstrate with the Assistant Referee using foul language.” The Commission noted this was all dealt with as a single breach of Rule E3, alleging that Mr Marsch’s language and/or behaviour was improper.
79. Having considered all the evidence (including Mr Silva antecedents), the submissions and had regard to the other Written Decisions cited to us, as well as the need for the sanction to be proportionate, we reject The FA’s approach of effectively seeking a separate sanction for each separate breach. Mindful of the other matters we were referred to and the sanctions imposed in them, we consider that the 4-6 game touchline ban sought by The FA would be disproportionate to the course of Mr Silva’s misconduct.
80. However, we equally consider that Mr Silva’s misconduct was undoubtedly serious, with the aggravating features of it being at a time of the Match when the Match Referee was under great pressure and seeking to undertake a V.A.R review, with repeated foul language being used to more than one Match Official. The Commission also found that the throwing of the water bottle, in the circumstances as we have found them, which was a charge that Mr Silva denied, did him no credit. The Commission also had regard, when considering the sanction, to the fact there were four breaches of Rule E3, three of which had been admitted as well as to a previous sanction imposed on Mr Silva in April 2022 for comments made to the Assistant Referee in a game at Bournemouth, which bore some similarities to some of the conduct we were considering and for which Mr Silva was fined £2000.
81. The Commission also considered the mitigating factors in Mr Silva’s favour, including his apology, to the Match Referee, publicly via the Fulham website and to us as a Commission. We accept he was contrite about what had happened. In having regard to this mitigation the Commission considered that it removed any possibility of a 3 match touchline ban, which the Commission would otherwise have considered imposing.

¹⁰ 12 September 2022 (Ch Mr Simon Parry)

82. In considering a fine, in addition to the touchline ban, the Commission took into account all the circumstances of what was a prolonged period of misconduct, as well as Mr Silva's antecedents. The Commission considered that, in context, a substantial fine along with the 2 match touchline ban was proportionate and properly reflected the seriousness of the events, having regard to bans that were imposed in other cases cited to us which were often for a single incident, but which usually led to a single game ban.
83. Accordingly, in all the circumstances, the Commission determined that the appropriate and proportionate sanction is:
- (a) A touchline ban for 2 games. The 2 match suspension will start on 3 April 2023, such that Mr Silva is suspended from the touchline of all domestic club football until such time as Fulham have completed 2 first team competitive matches (Category 1) in approved competitions;
 - (b) A financial sanction in the form of a fine of £20,000.
84. The second matter concerning Mr Silva was the admitted breach of Rule E3 relating to the comment made by Mr Silva in his post – match press conference, which is set out above, which comments the Commission had no doubt would cause the reasonable bystander to believe that Mr Silva was implying bias on the part of the match officials and/or questioning their integrity.
85. In submissions we were referred to the cases of *The FA v Klopp*¹¹, *The FA v Lampard*¹² and *The FA v Warnock*¹³. It was suggested by Mr De Marco KC that the appropriate sanction was a fine of £10,000, whilst The FA's position was that it should be much higher, although no particular figure was advanced. Mr De Marco also suggested the comments were less serious than in the case of Mr Lampard.
86. It is wholly unacceptable to imply bias on the part of the Match Officials, or to question their integrity. Having regard to all the circumstances, including the fact Mr Silva is an experienced manager who must know that it is not permissible to make such comments and having regard to Mr Silva's salary, details of which were provided, but in so doing disregarding the comments made as to the salaries that may have been in

¹¹ (21 February 2019) (Ch Mr Peter Powell)

¹² (30 May 2022) (Ch Christopher Stoner QC)

¹³ (1 May 2019) (Ch Mr Gareth Farrelly)

issue in the other cases, which was simply not evidence before the Commission, the starting point for an appropriate sanction in the Commission's view was a fine in the sum of £30,000.

87. However, the Commission accepts there are a number of mitigating factors:

- (1) The comment was a comment that was said without malice.
- (2) The comment was made after Fulham had just been knocked out of the FA Cup Quarter – Final, having been leading 1-0 immediately before the incidents with which this Commission has been concerned and about which Mr Silva was being closely questioned at length;
- (3) Mr Silva had not previously been sanctioned for a similar offence;
- (4) Mr Silva was speaking in a second language;
- (5) Mr Silva admitted the charge at the first opportunity.

88. Having regard to this mitigation, the Commission considers that in all the circumstances of the matter, the appropriate and proportionate sanction is a fine of £20,000.

Mr Mitrovic

89. In considering sanction, the Commission divided the charges against Mr Mitrovic into two distinct sections: namely that element of Mr Mitrovic's conduct leading to the red card and, secondly, that element of Mr Mitrovic's conduct after he was shown the red card, which was outside of the Match Referee's jurisdiction. Having undertaken the sanctioning exercise, the Commission was then able to step back and consider the events concerning Mr Mitrovic in the round and, as a check and balance, ask itself whether the overall sanction imposed was a reasonable and proportionate one.

90. Starting with the standard punishment for the red card being 'clearly insufficient' Mr De Marco KC, on behalf of Mr Mitrovic, stated that having determined that the standard penalty was 'clearly insufficient' the Commission had to impose an additional sanction, which must be right, and that such a sanction was a single additional game. Against

this The FA's position was that the appropriate sanction was one of *at least* 3 additional games.

91. The Commission does not propose to repeat its reasons for determining that the standard penalty of a 3 match ban was 'clearly insufficient'. That has already been set out above, but the Commission took this into account when it was considering the appropriate sanction. The Commission also took into account that, thankfully, there was very little by way of comparable incidents to consider. The Commission accepts The FA's submission that this was the worst example of on-field behaviour toward a Match Referee for a very long time.

92. It is appropriate to record that during the course of submissions, the Commission were addressed on the issue of deterrent as part of the sanctioning process. We were taken to *The FA v Klopp*¹⁴ where the Appeal Board, having considered statements on the extent to which deterrence can play a part in sanctioning, in *Hartlepool United FC & Others v The FA*¹⁵ and *The FA v Everton FC*¹⁶ said:

"We endorse what was said in those decisions:

(a) When considering sanction a Regulatory Commission is entitled to have regard to issues of deterrence as a legitimate sanctioning objective (along with other legitimate sanctioning objectives such as punishment of the offender and wider issues such as protecting/preventing harm to the integrity, reputation and image of the game) if it considers the same to be relevant.

(b) While a Regulatory Commission is entitled to impose a sanction which has combined aims of punishing the offender, deterring him and others from offending and protecting/preventing harm to the integrity, reputation and image of the game, the sanction imposed must remain a proportionate response to the facts of the cases under consideration and the offending in question.

(c) A Regulatory Commission is not entitled to include a 'deterrent element' in/add a 'deterrent element' to a sanction if by doing so the overall sanction imposed would become disproportionate to the offending under scrutiny in the particular case. Put

¹⁴ 11 November 2022 (Ch Graeme McPherson KC)

¹⁵ 21 September 2018

¹⁶ 28 September 2022

simply a Regulatory Commission is not entitled to increase a sanction for the purpose of deterring others (or the respondent) from offending in the future if by doing so the nature or level of the sanction would increase to a level that was no longer proportionate to the facts of the case for which the sanction is being imposed.”

93. The Commission were mindful of these comments when considering the appropriate sanction for Mr Mitrovic. However, the Commission wishes to emphasise that whilst addressed on the issue of deterrence, at no stage did it overtly consider deterrence as a part of the appropriate sanction that should apply to Mr Mitrovic. Rather, the Commission concentrated on the facts as it found them, as set out above.
94. As Mr Elagab on behalf of The FA submitted, having regard to the explanation Mr Mitrovic offered as to why he wished to speak with the Match Referee, namely to seek to try and persuade him that Willan should not be red carded, this was no gentle inquiry or request. The Commission is also at a loss to understand how an experienced player such as Mr Mitrovic could realistically consider that the red card having been shown to Willian, in the context of a V.A.R review process having just been completed, there was a scintilla of a possibility that the Match Referee’s view of the matter would be changed by any on-field dialogue.
95. It is in that context we consider the aggressive jabbing of the finger by Mr Mitrovic toward the referee and his egregious conduct in physically pushing the referee, which the Commission considers clearly and significantly crossed the line in conduct toward match officials which simply cannot be tolerated. Put simply there was no reasonable excuse for Mr Mitrovic to be approaching the Referee, let alone engaging in physically and aggressively pushing the referee in the manner that he did.
96. Mr Mitrovic was red carded for violent conduct toward the Match Referee. We have already commented that in the context of Match Officials, the starting point must be that no force is permissible. Indeed, as also stated, it was accepted on behalf of Mr Mitrovic that no player should use force toward the Match Referee.
97. We were invited by Mr De Marco KC to consider the 1 minute and 32 seconds that are relevant in the round, which of course includes that element of Mr Mitrovic’s conduct which relates to the ‘out of the jurisdiction’ charge and in so doing we were taken to a number of video clips and previous decisions, although the only one the Commission found of any assistance when considering the ‘clearly insufficient’ charge was that of

*The FA v Bacuna*¹⁷ where the Commission notes that the player was given an additional 3 matches for ‘*an intentional and physical action by a player on a match official.*”

98. Considering the entirety of Mr Mitrovic’s conduct leading to the red card, the Commission is wholly satisfied that not only is the standard sanction ‘clearly insufficient’, a point which was vigorously contested on behalf of Mr Mitrovic, but that in all the circumstances (including mitigation, such as Mr Mitrovic’s apology and the fact he has not been red-carded for 6 years) the appropriate and proportionate sanction is one of an additional 3 games, such that Mr Mitrovic will, in essence, have a 6 game ban for the red-card offence.
99. We now turn to Mr Mitrovic’s conduct after he was shown a red card, which we have already described above. It was submitted to us on behalf of The FA that the appropriate sanction for this offence was 4-6 games, whilst on behalf of Mr Mitrovic it was suggested the appropriate sanction should be a single game.
100. The Commission considers that, if anything, Mr Mitrovic became more aggressive and threatening toward the Match Referee in the seconds after he had been red-carded. Although there was no physical contact at this point, if the Referee had not moved his head back, arched his back and then walked backwards, there is no doubt there would have been.
101. Having been referred to the definition of violent conduct and noting that contact does not need to be made, the Commission is wholly satisfied that had the post red-card events occurred in isolation, they would have warranted a red-card in and of themselves, which would have attracted a 3 game ban as a standard penalty.
102. Not only was there the physical aggression shown by Mr Mitrovic, but there was his language, where he called the Match Referee “a fucking disgrace”. The Match Referee was doing his job in very difficult circumstances and the Commission considers there was only one person on the field whose behaviour could properly be called a disgrace. Indeed, that behaviour then led to a surrounding of the Match Referee on the field, which is the subject of the charge we shall deal with below. The Commission also notes that the entire context of the post-red card behaviour of Mr Mitrovic is that of his failing to leave the field of play.

¹⁷ 2 March 2017 (Chair Mr Jones)

103. We were shown a number of videos of other incidents of players failing to leave the field of play where 1 match sanctions were imposed, including those involving Gabriel Armando De Abreu, Diego Costa and Jamie Vardy. Noting that Mr Mitrovic's conduct of failing to leave the field of play was only one element of his post red-card misconduct, in any event the Commission was not greatly assisted by these references. We were also taken to videos of incidents involving Jefferson Lerma and Shaun Rooney, which the Commission had regard to.
104. Ultimately, however, we were considering the actions of Mr Mitrovic. Having regard to all the circumstances of the events after the red card, namely 'out of the jurisdiction' we were completely satisfied that the appropriate and proportionate sanction was a ban for 3 games. The Commission considered that the 1 game suggested on behalf of Mr Mitrovic was plainly inadequate and carried with it an inherent failure to recognise the seriousness of what had occurred. The Commission also considered that, in all the circumstances, a suspension of 4-6 games as advocated by The FA was disproportionate. We must be careful to have regard to the totality of the events, but also avoid double counting and in considering this charge we are only considering the post red-card events. Those events warrant a 3 game ban.
105. The Commission also stood back and considered the totality of the 1 minute 32 seconds and asked itself the question of whether, before applying mitigation, a 9 game ban was proportionate. This the Commission undertook as a check and balancing exercise. Although sanctioning for separate charges, the Commission was of the view that it should also consider the totality of the events and the sanction imposed. Having undertaken this exercise the Commission was wholly satisfied that a 9-game ban was proportionate.
106. The Commission also considered mitigation on the out of jurisdiction charge. Mr Mitrovic, we were told, had apologised to the Match Referee, Mr Kavanagh. Mr Mitrovic had also issued a public apology and although not giving evidence he attended before us to express his remorse and contrition for what had happened. The Commission accepted his apology and contrition as genuine. Whilst it was also suggested that Mr Mitrovic has volunteered for an internal club fine at Fulham, we did not consider this to have much mitigating effect in circumstances where we were told that the fine had not yet been applied.

107. In all the circumstances, including the fact Mr Mitrovic accepted the 'out of jurisdiction' charge at the earliest opportunity, the Commission determined that it was appropriate to reduce the ban by one match to have proper regard to the mitigation.

108. The Commission was also supplied with evidence of Mr Mitrovic's earnings and having regard to these and all the circumstances, determined that it was reasonable, appropriate and proportionate to fine Mr Mitrovic in the sum of £75,000 for the incident.

109. Accordingly, the Commission determines:

(1) That the standard penalty for Mr Mitrovic's red card being 'clearly insufficient' he be banned for a further 3 matches, such that Mr Mitrovic have an immediate suspension of 6 matches for the offence;

(2) That for the out of jurisdiction misconduct, namely that following his red card, Mr Mitrovic be banned for a further 3 matches, mitigated to 2 matches; and

(3) That Mr Mitrovic be fined the sum of £75,000.

Fulham

110. Finally, the Commission turns to the admitted charge that Fulham breached Rule E20.1 in that it failed to ensure that its players conducted themselves in an orderly fashion.

111. The charge was advanced as a non-standard case as Fulham had former proven breaches of the Rule, namely in a fixture against Nottingham Forest on 26 April 2022 and against Chelsea FC on 12 January 2023.

112. We were taken to the standard penalty guidelines which identify that in such a case the sanction should be a fine of £20,000. Thus, the issue for the Commission was what was appropriate in view of the antecedents. Mr De Marco KC submitted on behalf of the Club that in all the circumstances, the appropriate fine should be in the region of £30,000 - £40,000, whilst Mr Elagab on behalf of The FA suggested it should be higher, without advancing any particular figure.

113. The Commission had regard to the fact the mass surrounding of the Match Referee was caused by the previous events relating to Mr Mitrovic, which in context came shortly after the events relating to Mr Silva. The Commission also had regard to the fact that Fulham had proven examples of the same Rule being breached twice within the last 12 months and determined that the appropriate and proportionate sanction in all the circumstances was a fine of £40,000.

Costs

114. Pursuant to Rule 52 and having regard to all the circumstances, including the Commission being engaged in a Teams call for in excess of 8 hours, the Commission determined that Mr Silva, Mr Mitrovic and Fulham would equally bear the costs of the Regulatory Commission.

Appeal

115. Save that pursuant to Rule 12 of Fast-Track 6 our decision in respect of the standard penalty being 'clearly insufficient', including the additional 3 match suspension imposed as a consequence, is not subject to any right of appeal, the remainder of our decisions are subject to the relevant appeal provisions in the Disciplinary Regulations.

Christopher Stoner KC (Chair)

Gareth Farrelly

Faye White

6 April 2023.