

**IN THE MATTER OF AN APPEAL BEFORE A LEAGUE ARBITRATION PANEL UNDER SECTION 9 OF THE REGULATIONS OF THE ENGLISH FOOTBALL LEAGUE**

**ON APPEAL FROM AN INDEPENDENT DISCIPLINARY COMMISSION UNDER SECTION 8 OF THE REGULATIONS OF THE ENGLISH FOOTBALL LEAGUE**

**AND IN THE MATTER OF THE ARBITRATION ACT 1996**

Before:

The Rt Hon Sir Gary Hickinbottom (Chair)

**BETWEEN:**

**SOUTHAMPTON FOOTBALL CLUB LIMITED (“SFC”)**

**Claimant**

– and –

**THE FOOTBALL LEAGUE LIMITED (“EFL”)**

**Respondent**

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**WRITTEN REASONS OF THE LEAGUE ARBITRATION PANEL**

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**Introduction**

1. The Respondent (“the EFL”) organises the English Football League (“the League”), a competition comprised of three divisions (the EFL Sky Bet Championship (“the Championship”), and EFL Sky Bet Leagues One and Two) which are part of the English

football pyramid with promotion and relegation, not just between the EFL divisions, but to and from the Football Association Premier League (“the PL”) which sits above the EFL divisions and to and from the National League which sits below. The EFL also manages some cup competitions, including the EFL Vertu Trophy (“the EFL Trophy”), a knock-out competition open to all clubs in EFL Leagues One and Two and Under 21 teams from the Premier League and EFL Championship.

2. The Championship is contested on a league basis, with the top two clubs at the end of a season being promoted to the Premier League and the clubs in third to sixth positions contesting a knock-out competition in which there are two-leg semi-finals and a single-leg final, the winner of which is also promoted.
3. This appeal arises out of disciplinary proceedings brought by the EFL against the Appellant club (“the Club” or “Southampton”) in relation to the Club’s observation of opposition training sessions prior to Championship fixtures against three other clubs namely Oxford United Football Club (“Oxford”), Ipswich Town Football Club (“Ipswich”) and Middlesbrough Football Club (“Middlesbrough”) during the 2025-26 Season including, in relation to Middlesbrough, shortly before the first leg of the Championship Play-Off Semi-Final between the Club and Middlesbrough. I shall refer to these as “the Oxford Incident”, “the Ipswich Incident” and “the Middlesbrough Incident” respectively.
4. In respect of each observation, the EFL brought two charges against the Club under EFL Regulations 3.4 (Utmost Good Faith) and 127.1 (Prohibited Conduct – Observing Training Sessions) respectively. In each case, the Club admitted the breaches.
5. On 19 May 2026, following a hearing, an Independent Disciplinary Commission (“the Commission”) imposed the following sanctions:
  - (i) In relation to Charges 1 and 2 (relating to the Middlesbrough Incident), the Club was expelled from the Championship Play-Offs for the 2025-26 Season, with the consequence that Middlesbrough, whom they beat in the Semi-Final, proceeded to



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the Play-Off Final against Hull City Football Club (“Hull City”) at Wembley Stadium on 23 May 2026.

- (ii) In relation to Charges 3 and 4 (relating to the Oxford Incident), and Charges 5 and 6 (relating to the Ipswich Incident), an aggregate four-point deduction was imposed on the Club to be applied at the start of the 2026-27 Season.
  - (iii) In relation to all charges, the Club was issued with a reprimand.
6. The Club appealed against elements (i) and (ii) of that sanction on the basis that the sanction was “excessive, erroneous and grossly disproportionate” and that the Commission proceedings were procedurally unfair.
  7. Given the urgent need to determine the appeal in relation to the sanction imposed in respect of Charges 1 and 2 because of the imminent Championship Play-Off Final, an expedited appeal hearing was arranged for 20 May 2026 before me as sole arbitrator. At the hearing, Lord Pannick KC, Kate Gallafent KC and Tom Coates of Counsel, instructed by Squire Patton Boggs (UK) LLP (“SPB”) and Clifford Chance LLP, appeared for the Club; and Brendan Kelly KC and Amina Graham of Counsel, instructed by EFL Head of Legal, appeared for the EFL. At the outset, I thank them for their helpful written and oral submissions, prepared under necessarily tight time constraints.
  8. At the end of that hearing, as requested by the parties, I gave an Operative Decision, dismissing the appeal and confirming the sanction imposed by the Commission. These are my reasons for that Decision.
  9. It would be helpful if, at the outset, I indicate how I propose to refer to the individuals involved in the relevant events. Tonda Eckert is the Club’s First Team Head Coach, and he is responsible for a Coaching Team which includes an individual to whom I shall refer as “the Assistant Coach” and an Analysis Team which includes individuals to whom I shall refer as “Analyst 1”, “Analyst 2” “Analyst 3” and “the Junior Analyst Intern”. One of the



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Club's Operations Managers ("the Operations Manager") and one of its Group Directors ("the Group Director") also briefly appear, as does Middlesbrough's Head of Football ("Middlesbrough's HoF").

## **The Charges**

10. Regulation 3.4 of the EFL Regulations provides (so far as relevant):

*"In all matters and transactions relating to The League each Club shall behave towards each other Club and The League with the utmost good faith..."*

11. Under the heading "Prohibited Conduct – Observing Training Sessions", Regulation 127 provides:

*"Without prejudice to the requirements of Regulation 3.4 (that each Club shall behave towards each other Club with the utmost good faith), no Club shall directly or indirectly observe (or attempt to observe) another Club's training session in the period of 72 hours prior to any match scheduled to be played between those respective Clubs".*

12. Regulation 127 was inserted in the 2019-20 Season following a complaint by Derby County Football Club ("Derby") alleging that an employee of Leeds United Football Club ("Leeds") had been caught observing one of their training sessions. During the course of the EFL investigation, the Leeds Manager (Marcelo Bielsa) admitted that he had instructed an individual to observe training sessions of a number of clubs including Derby; but Leeds denied that this was a breach of the EFL Regulations. However:

- (i) following discussions, Leeds altered its position, accepted the breach of Regulation 3.4, and the EFL and Leeds entered into an Agreed Sanction Decision whereby Leeds was fined £200,000 and subjected to a reprimand; and
- (ii) following consultation with all the EFL clubs, at the EFL Annual General Meeting in June 2019, what is now Regulation 127 was inserted which made the prohibition of



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observing an opponent training expressly clear and restricted it to the period of 72 hours before any match.

13. In respect of each of the three incidents, Southampton was charged with directly or indirectly observing (or attempting to observe) the other club's training session in the period of 72 hours prior to a match scheduled between the clubs contrary to Regulation 127; and failing to act with the utmost good faith towards another club, namely the club whose training session they observed contrary to Regulation 3.4.

### **The Oxford Incident**

14. The Club was scheduled to play Oxford in a fixture on 26 December 2025.
15. A few days before Christmas, Oxford sacked their Manager, Gary Rowett, and replaced him with an Interim Manager, Craig Short. Mr Rowett had usually played with a back five. At a Southampton coaching and analyst meeting in preparation for the match, Mr Eckert asked if someone could go to observe the Oxford training session to see how they were lining up and whether a particular player (Cameron Brannagan) was fit to play. In his statement for the Commission hearing, Mr Eckert said that he did not see any issue in doing this: he said he was surprised to learn, after the Middlesbrough Incident, that observing an opposition team shortly before a match was a breach of the Regulations.
16. Analyst 1 identified an intern with the Club (the Junior Analyst Intern) to go with the instructions to travel urgently to Oxford and report back on Oxford's tactical set up and player selection. Analyst 1 accepted in his evidence to the Commission that, although he had not looked at the Regulations, as a result of the disciplinary proceedings brought against Leeds some years before, he was aware that such conduct was a breach of the rules.
17. In his evidence to the Commission, the Junior Analyst Intern said: "I didn't really have an option and wasn't provided an opportunity to say no.... I was an intern and was doing



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what I was told.”. There was evidence from the Junior Analyst Intern and Analyst 1 that an analyst had lost his job earlier in the season, and there was a concern that they might lose theirs too. They felt pressurised to do the observations that Mr Eckert and the senior coaches wished them to do.

18. The Junior Analyst Intern duly attended Oxford’s training ground, where he was able to observe from public areas and footpaths. During the course of the training session, he sent updates, photographs and videos to Analyst 1 and Analyst 3 concerning matters such as tactical shape and player selection.
19. The Club instructed the Junior Analyst Intern to return to observe the Oxford training session the following day, which he did. From his observation, he knew Oxford were going to line up with a back four, not a back five. Analyst 1 said that he prepared a predicted Oxford line up on the basis of the observations made by the Junior Analyst Intern, which he sent to the Junior Analyst Intern and asked him if he was happy with that prediction on what he had seen, to which the Junior Analyst Intern responded: “Yh spot on”. Within five minutes of that message, Analyst 1 sent the same predicted team sheet to Mr Eckert, which included a section entitled “key messages”, which appear to be gleaned from the Junior Analyst Intern’s observations that morning. After that second session, the Junior Analyst Intern had a telephone conversation with Mr Eckert and Analyst 3 when he answered questions about what he had observed, including line up.
20. Whilst Mr Eckert said that he did not personally view the footage from the training session and maintained that the information obtained had no impact on the match preparation, during the period of observation and following the provision of some information, Analyst 1 messaged the Junior Analyst Intern on WhatsApp: “Try and make out as much as you can please. You legend. Manager loved it.”
21. Southampton lost the fixture to Oxford 1-2.



## **The Ipswich Incident**

22. The Club was scheduled to play Ipswich in a home fixture on the evening of 28 April 2026. In preparation, Ipswich trained at Eastleigh Football Club (“Eastleigh”) prior to the match. The evidence before the Commission was that Southampton and Eastleigh had a close working relationship.
23. Mr Eckert’s evidence before the Commission was that he had understood that someone from Eastleigh had sent CCTV footage of the Ipswich training session to someone at Southampton, the existence of which he (Mr Eckert) knew only a couple of hours before kick-off. After a short while, he asked for it to be switched off, so he could concentrate on the pre-match meeting. He said the footage showed nothing of influence, and he made no alterations to the match preparations which were in any event complete by that time.
24. However, it was Analyst 1’s evidence that the Assistant Coach (one of Southampton’s First Team Coaches) told him that Mr Eckert had said at an earlier match preparation meeting that “someone should go to Eastleigh to look at Ipswich”; and the Junior Analyst Intern said he was approached by the Assistant Coach to go to Eastleigh to watch Ipswich “as the boss is adamant that someone needs to go”. The Junior Analyst Intern felt uncomfortable doing this and said, “No”, and no further pressure was applied for him to go. Analyst 1 also felt uncomfortable: he said in his evidence that he grouped himself with the younger members of the analysis team who were being pressurised into carrying out observations, and he felt pressurised himself. Furthermore, at the time of the Ipswich match, he was attending a UEFA Coaching Course. So, he did not go to observe the Ipswich training session either. But Analyst 2 called him when he was at that course, saying the coaches were insistent that someone should go to Eastleigh, and Analyst 1 called an Academy Analyst Intern who had worked with Eastleigh before, and he said he



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would go. Analyst 1 asked that he be provided with Eastleigh kit and a legend, i.e. what his supposed “role” was at Eastleigh.

25. The Junior Analyst duly went to Eastleigh and observed the training sessions. Someone at Eastleigh video recorded the whole session on the morning of the match, this was sent to Southampton. From that footage, the Club was able to predict the exact Ipswich team for the fixture.
26. The fixture with Ipswich ended in a 2-2 draw.

### **The Middlesbrough Incident**

27. At the end of the league season, on Saturday 2 May 2026, Southampton learned that it would face Middlesbrough in the Championship Play-Off Semi Final, the teams finishing fourth and fifth respectively. The first leg was scheduled for 9 May 2026.
28. On Monday 4 May 2026, Mr Eckert attended a match preparation meeting with his coaching and analyst teams. At that meeting, he asked whether it would be possible to see Middlesbrough train that week – he was particularly interested to see whether a particular player, Hayden Hackney, was training or not, because there were differing reports as to his fitness – and it was agreed that someone would be identified to go to Middlesbrough’s training ground. The Junior Analyst Intern was again chosen. Analyst 2 told him that he (Analyst 2) had disagreed with this course when Mr Eckert proposed it. The Junior Analyst Intern said that he felt under extreme pressure due to the context of the importance of the game for the Club. He feared that he might be dismissed by the Club or it might otherwise adversely affect his career if he did not do it. So, he went. He felt bound to take videos on his phone because (as he said in a message to Analyst 1 after he was caught), he felt pressurised by the coaches: “With them all telling me they want more out of it than what I got at Oxford as got it wrong etc they clearly don’t think my word is good enough so wallop there’s your footage”. At one stage, Analyst 1 suggested to him that he might not go to the Middlesbrough training session, but simply report back



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that security there was too tight to make any observations and Mr Eckert would be none the wiser.

29. The Operations Manager made arrangements for the flights and two nights' accommodation. Before he left, the Junior Analyst Intern was shown drone footage of the Middlesbrough training facilities so that he could get an idea of where to stand. He flew up to Middlesbrough on Wednesday 6 May. The Junior Analyst Intern was told that Mr Eckert was unhappy because he did not fly up on the Tuesday so that he could see the Wednesday training session; but the first flight he could get was on the Wednesday.
30. On Thursday 7 May, he walked from his hotel to the training ground, arriving at about 10.40am. The first team training session started at 11.15am. He identified where the first team were training at about 11.30am, and he proceeded to record three videos on his phone from behind a tree. After a few minutes, four people began walking towards him, and he sent the videos to Analyst 1 who sent Mr Eckert information from the videos including the projected Middlesbrough line up (including Mr Hackney). The Junior Analyst Intern started to move rapidly away, but one of the men ran and caught him up. The Junior Analyst Intern said he was "just watching", and the man asked him to delete the videos which he did. He then walked on to a nearby golf clubhouse where he changed and deleted his LinkedIn profile because he was worried that Middlesbrough would recognise him from that.
31. The Junior Analyst Intern then left the area and went back to his hotel from where he rang Analyst 1 who told him to wait there until Mr Eckert agreed he should return to Southampton. After some time, the Junior Analyst Intern not having received any confirmation, left of his own accord, returning to Southampton by train. It was while he was on the train that he learned from the internet news that Southampton had been caught "spying" on Middlesbrough.



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32. Analyst 1 provided Mr Eckert with a breakdown of what he interpreted from the videos, including a predicted line up and (Analyst 1 said) it showed how, when Southampton built up on the left side, Middlesbrough would press man-to-man. It was predicted from what had been seen that Mr Hackney would play. Analyst 1 suggested they ask the media team to take down or hide the manager of the month pictures online, because the Junior Analyst Intern featured in the background: “The only way they can put his face from CCTV with [Southampton] as he’s deleted his LinkedIn picture. Just got to hope they won’t put the 2 together”. He asked Mr Eckert whether he wished to see the videos, and he said he did. Analyst 1 also shared the videos with Analyst 3, upon request, on the Friday before the match.
33. Mr Eckert said the videos were of poor quality, taken from far distance and it was difficult to work out who was who – and, so, they were of no benefit to him, nor was Analyst 1’s interpretation of them. He said neither impacted on his preparation for the match. Mr Eckert said that they had decided on formation by the Wednesday, Thursday was a day off for staff and Friday was devoted to set pieces; and, so, the videos received on the Thursday had no effect on the preparations for the game. In the event, Mr Hackney was not in Middlesbrough’s line up for the match.
34. The match was drawn 0-0. Southampton won the second leg, and thus the semi-final, 2-1 on Tuesday 12 May 2026. They were due to play Hull City, the winners of the other semi-final, at Wembley Stadium on 23 May 2026.

### **The Commission Proceedings**

35. The day of the Junior Analyst Intern’s observation (7 May 2026), Middlesbrough made a complaint to the EFL, who wrote to Southampton setting out a summary of the allegations. That letter sought an initial response from the Club by midday the following day, including (i) a full factual account of the incident, (ii) confirmation of the identity, employment status and role of the individual concerned, (iii) confirmation of whether any footage was



captured, transmitted, shared or analysed, (iv) confirmation of any instructions given to that individual and who provided them, and (v) copies of all relevant documents and data.

36. In its response on 8 May from its Chief Executive Officer:

- (i) The Club said it was concerned about the allegations because “the conduct described is not conduct which is part of the Club culture or conduct which it condones”.
- (ii) It confirmed that a person associated with the Club (i.e. the Junior Analyst Intern) was in the vicinity of the Middlesbrough training ground the previous day; but that the Junior Analyst Intern was “a very junior member of the analysis department” and he “was not instructed by any members of senior Club staff”.
- (iii) It said that the Junior Analyst Intern “did not retain or transmit to Club staff any information about what he saw.... No footage was captured, transmitted, shared or analysed”. So, the Club had “no relevant documents or data”.
- (iv) It said that: “As soon as an analyst who was aware of the rules became aware of the incident he made a telephone call to ensure that the individual did not attend the team training session”.
- (v) Unlike previous clubs who had been found guilty of observing an opponents’ training session, “senior executives and first team manager have not endorsed this”.

37. Following that response, that same day (8 May 2026), the EFL served the Club with a Notification of Charge in respect of Charges 1 and 2 (i.e. charges under Regulations 3.4 and 127 respectively), with an indication that it would seek expedition in view of the imminent Play-Off matches.

38. Having served the charges, on 10 May 2026, the EFL made a further request for specific disclosure from the Club asking for (e.g.) the mobile devices of all members of the Club’s



analysis team and Mr Eckert for forensic analysis; all relevant emails, messages and telephone calls between members of the analysis team; and relevant bank/credit card statements for the Junior Analyst Intern and the Club.

39. On 12 May 2026, SPB responded on behalf of the Club, apologising for inaccuracies on the response of 8 May; and confirming that (i) the visit to the Middlesbrough training ground was carried out at the request of Mr Eckert, (ii) prior to deleting them, The Junior Analyst Intern transmitted three videos to Analyst 1 at the Club, and (iii) Analyst 1 had explained to Mr Eckert via WhatsApp what he discerned from the videos. The videos and some WhatsApp messages were attached. The letter also disclosed that, in the course of the investigations, the Oxford and Ipswich Incidents had come to light.
40. A Disciplinary Commission was established and, on 13 May 2026, it issued directions with an expedited timetable.
41. Amongst other things, the Club denied it had obtained any sporting advantage from the Middlesbrough observation, and it relied heavily on the mitigation of having promptly admitted the breaches and cooperated with the EFL. It submitted that, in the absence of any sporting advantage, a sporting sanction would be disproportionate, and that the sanction should be limited to a fine and reprimand; but, if a sporting sanction were appropriate, then it should be only a one-point deduction.
42. The Commission refused an application by Middlesbrough to intervene in the proceedings.
43. At 7.30am on 17 May 2026, following disclosure made by the Club, the EFL served a second Notification of Charges in respect of Charges 3-6 (i.e. those relating to the Oxford and Ipswich Incidents). The EFL sought a direction from the Commission that (i) time be abridged so that the Club's response be served by noon on 18 May 2026 and (ii) the hearing of the six charges be consolidated and the hearing be held on 19 May 2026. The Club objected to consolidation on the basis that it would have insufficient time to gather



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relevant evidence in relation to the Oxford and Ipswich Incidents and have those charges heard the following day.

44. At 5.30pm on 18 May 2026, the Commission granted the application for consolidation and directed that any Response to Charges 3-6 should be filed by 7am on 19 May 2026. The Club in fact filed a Response (together with further witness statements from Mr Eckert, Analyst 1, Analyst 2 and the Assistant Coach) at 11.11pm on 18 May 2026.
45. The Commission duly heard the case on 19 May 2026, at a hearing commencing at 8am and finishing at 1pm. In addition to written statements from other witnesses, the Commission heard oral evidence from five witnesses: Middlesbrough's HoF (called by the EFL), and Mr Eckert, Analyst 1, the Director and the Junior Analyst Intern (called by the Club). I have had the benefit of a transcript of that hearing.
46. At 2.44pm that day, the Commission gave an Operative Decision with the sanction it made in the terms set out above (at paragraph 5); and it produced its Reasoned Decision at 9.35pm that day.

### **The Commission's Reasoned Decision**

47. As the Commission emphasised in the Reasoned Decision itself (at paragraphs 13 and 22), given the urgency of the matter – and the possibility that there might be an appeal, which might have to be dealt with and determined in time for the Play-Off Final fixed for 23 May 2026 – it was vital that the Commission produced a Reasoned Decision quickly. It was therefore necessarily not as full as it might have been had the Commission had more time. But the Commission confirmed that, despite that brevity, all of the evidence and submissions had been fully considered (paragraph 22).
48. Having set out the main strands of the parties' submissions (paragraphs 22-30) and reminded themselves of the relevant legal principles (paragraph 31), the Commission



made findings and drew conclusions which, in view of the nature of the appeal, it would be helpful to set out in full:

*“31. ... Public confidence is paramount. We have concluded that there was, on the part of the [Club], a contrived and determined plan from the top down to gain a competitive advantage in competitions of real significance by deliberate attendance at opposition training grounds for the purpose of obtaining tactical and selection information. It involved far more than innocent activity and a particularly deplorable approach in its use of junior members of staff to conduct the clandestine observations at the direction of senior personnel. There was transmission and internal dissemination and analysis of footage and observations. The Commission is not persuaded that this is an exceptional case in which there is evidence that no use was made of the material and therefore no sporting advantage. Submissions from the [Club] suggested that such a conclusion could be drawn from matter such as: the evidence of the pre and post observation training being unaltered, the team selection having already been internally announced, the poor first half performance on a variety of metrics against [Middlesbrough] and the evidence of Mr Eckert that he did not find the information useful, that it was wrong or that he did not have regard to it.*

*32. The Commission consider that the evidence demonstrates that the output of the observations fed into analysis conducted by the team, it was discussed with Mr Eckert and others and it was sought so as to inform the strategy for the match. Mr Eckert accepted, as he must, that information such as team selection and injuries is sensitive information which a club would wish to keep private in the build up to a game. He also accepted that he had specifically authorised the observations to obtain information about formation (in the [Oxford] Incident) and about the availability of a key player (in the [Middlesbrough] Incident). Such information could only be sought in order to factor it into strategy, whether the information confirms a strategy, is disregarded as unreliable or leads to a change of strategy does not, in our view alter the wrong which is committed when such information is sought. It is inherent in having information which your opponent would wish to keep private that you have a sporting advantage.*



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33. *We agree with the parties that sporting advantage is different from sporting success. The result of the matches which follow the incidents is not, in our view, a guide as to whether there was any sporting advantage.*

34. *The Commission accepts the [Club's] expressions of remorse, although this is tempered by the initial misleading response to the EFL [in relation to the culture of the Club, and whether the video footage was captured, transmitted, shared or analysed]. We were unimpressed by suggestions on the part of some of the [Club's] witnesses that they were unaware that these actions were in breach of the Rules. The [Club] is a member of the EFL and has agreed to be bound by the Rules.*

35. *We have had regard to the Respondent's submissions in relation to the Leeds case which we find to be of limited assistance given that it pre-dates Regulation 127 by some years, was an agreed decision and does not provide a full factual background. It has now been many years since the express prohibition on observing training sessions in the 72 hours prior to a match was introduced and the Commission accept that the circumstances in which the Leeds agreement was reached are sufficiently different so as to make reliance on the outcome as a guide for the treatment of future cases inappropriate. We have also had regard to a number of other authorities, including Canada Soccer and FIFA (7 August 2024) and World Motor Sport Council concerning Vodafone McLaren Mercedes Limited (13 September 2007). The Commission was also referred to many cases involving sanctions for financial misconduct which were of limited assistance to the present case.*

36. *In determining sanction, we have reminded ourselves of the range of sanctions available to us under Regulation 93.2.*

37. *We consider that a particular aggravating feature, which distinguishes Charges 1 and 2 from the other charges, was the willingness of the [Club] to act in breach of Regulation 127 in a competition which is one of the most prestigious and important in English Football. It has not only reputational significance but considerable financial consequences and benefits for a club in the event of success in the competition and promotion to the Premier League.*



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38. *The integrity of the Play-Off competition was seriously violated, and the actions of the [Club] constituted a deliberate attempt to obtain an unfair advantage. For that reason, Charges 1 and 2 attract a much more serious sanction which in this case must result in expulsion from the Competition. We have considered whether a lesser sanction would be possible or appropriate while achieving the aim of the rule which has been breached. Were this event to take place during the regular season a points deduction or other sanction could be applied which would strip any sporting advantage and achieve the aims of the rule by making such activities not worth the risk. In the Play-Offs such a position is not possible. Points deductions for the regular season might still be a risk worth taking if it enhanced the possibility of promotion. A financial penalty, as proposed by the [Club] would not be effective at this stage in the competition since the financial rewards on offer for a team which is promoted to the Premier League through the Play-Offs would render any penalty meaningless. Perversely this may act as an incentive for clubs to breach Regulation 127 and pay the fine in an effort to increase the chance of promotion.*

39. *So far as the remaining charges are concerned, we took a starting point of a three points per incident. As indicated above a sanction at this level achieves the aim of the rule since it effectively makes breach of Regulation 127 a zero-sum game. The six-point deduction was mitigated to four points to reflect the available mitigation, including the Respondent's acceptance of the charges, co-operation (although it is not accepted that this was unqualified) and their proffering of information in relation to the [Oxford] Incident and [Ipswich] Incident (although we accept that they were on notice from the initial letter of 8 May that the EFL were investigating another incident and so these admissions were not entirely unprompted). We did not consider that a financial sanction was required in addition.*

40. *In addition to the sporting sanctions a reprimand is considered appropriate in the present case because of the way in which junior members of staff were put under pressure to carry out activities which they felt were, at the least, morally wrong. Such staff were in a vulnerable position without job security and with limited ability to object to, or resist the instructions given to them."*



49. Those were the reasons for which the Commission imposed the sanctions set out in paragraph 5 above.

### **The Appeal**

50. The Club lodged a Notice of Appeal against that Decision and Grounds of Appeal (“the Grounds of Appeal”) overnight on 19-20 May 2026. It comprised over 30 pages and sought an order setting aside the Commission’s Decision and replacing the sanction with a financial penalty and reprimand.

51. The Club relied on two grounds:

- (i) It was submitted that the consolidation of the hearing to include Charges 3-6 was procedurally unfair and severely adversely affected the Club, because it had insufficient time to gather the evidence it wished to gather in respect of the Oxford and Ipswich Incidents in particular in relation to sporting advantage.
- (ii) As its main ground of appeal, it was submitted that the sanction imposed by the Commission was excessively severe having regard to the following factors which, it was submitted, the Commission failed properly to take into account: (a) that the Club derived no sporting advantage from any of the three incidents, (b) the mitigation open to the Club in terms of making admissions at the first opportunity and showing exceptional levels of cooperation in the course of the EFL investigation and the disciplinary proceedings, and (c) precedents in relation to the observation of opponents and other integrity-related infringements with which the sanction imposed by the Commission was wholly inconsistent.

### **Procedural Unfairness**

52. I can deal with the procedural ground shortly. It has no force.

53. In coming to that conclusion, I have taken into account, in particular, the following:



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- (i) The Club admitted all six charges. The only issue was sanction.
- (ii) The ground can only have any traction in relation to Grounds 3-6. It can have no impact on Charges 1 and 2, which are the charges for which a more severe sanction was inevitable; nor does the Club suggest that it does.
- (iii) Charges 1 and 2 on the one hand, and Charges 3-6 on the other, are not discrete. The conduct that comprised Charges 3-6 aggravates the breaches reflected in Charges 1 and 2, because they show that the Middleborough Incident was not a “one off” but part of a series. On the other hand, in imposing a sanction for all of the conduct reflected in the six charges, the Commission were required to have the principle of totality in mind. That, too, required consideration of the conduct reflected in all six charges.
- (iv) Although the Club initially submitted that the appeal in relation to the sanction imposed in relation to Charges 1 and 2 could and should be severed from the appeal in relation to Charges 3-6 because only the former had real urgency (Grounds of Appeal, paragraph 6), by the time of the hearing before me, both parties agreed that the appeals could and should be dealt with together.
- (v) As the Commission recognised, to maintain the integrity of the competition – and to be fair to, not only Middlesbrough, but all of the clubs in the Championship – it was imperative that the disciplinary proceedings against Southampton were concluded before the Championship Final and, indeed, in time for arrangements to be put in place for that Final.
- (vi) The Club says that the expedition of Charges 3-6 so that they were dealt with at the same time as Charges 1 and 2 at the hearing on 19 May 2026 was unfair because it robbed the Club of a reasonable opportunity to submit evidence of (e.g.) the lack of sporting advantage gained by the Oxford and Ipswich Incidents. However, (a) in respect of those Incidents, Southampton submitted written evidence from four



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witnesses and it was open to the Club to call those witnesses to speak to the Oxford and/or Ipswich Incidents if and insofar it were so minded; and (b) the Club has not suggested any particular witness/evidence that it would have adduced if it had been given more time.

54. This ground was not strongly pressed before me and, in my view, rightly so. There is simply no arguable basis for the contention that there was procedural unfairness to the Club by the way in which Charges 3-6 were case managed by the Commission. The Commission were clearly entitled – indeed, I consider they were clearly right – to deal with the sanction for all six charges together at a single hearing prior to the Play-Off Final, as they did.

### **Sanctions: General Principles**

55. A Commission has the power to make decisions and impose any sanction listed in Regulation 93.2 which include a reprimand, a financial penalty, a points deduction, suspension of membership of the EFL, a recommendation for expulsion from the EFL and “any other sanction as the Disciplinary Commission may think fit”.
56. However, any sanction imposed must be proportionate, i.e. it must achieve the aims of the rules which have been breached but not exceed that which is required to achieve those aims (EFL v Derby County Football Club Limited (SR/107/2020) (30 June 2021) (“Derby County”) at [22], frequently approved, recently in EFL v Swindon Town Football Club Limited (SR/020/2026) (5 February 2026) (“Swindon Town”). In Derby County at [20]-[23], the EFL Disciplinary Commission said that any sanction should serve four purposes, namely (i) to punish the club for the breach, (ii) to vindicate other clubs which had not engaged in misconduct, (iii) to deter future breaches of the rules, whether by the relevant club or other clubs and (iv) to restore/preserve public confidence in the fairness of the EFL competition by, amongst other things, ensuring that the competition is in fact fair. The Commission went on to say that, consequently, “proportionality” in this context



meant that any sanction should go no further than reasonably necessary to achieve those four aims, such that any sanction that went beyond the achievement of those aims would be disproportionate, and conversely any sanction that failed to achieve those aims would be inadequate. That was said in the particular context of breaches of the EFL Profit & Sustainability Rules (“the EFL P&SR”); but it was adopted in (e.g.) Swindon Town which involved disciplinary proceedings against a club playing ineligible players in an EFL Trophy match and it is generally applicable to sanctions for other breaches of the EFL Regulations including those under Regulations 3.4 and 127.

### **Appeals: General Principles**

57. Under Regulation 95.1 and Section 9 of the EFL Regulations, a party may appeal any final decision of a Disciplinary Commission to a League Arbitration Panel which has the power to confirm the decision or set it aside in whole or in part and substitute a new decision or order a re-hearing.
58. In terms of standard of review, Regulation 96.5 provides:

*“In the case of a Disciplinary Appeal, the League Arbitration Panel sits as an appeal body and the standard of review is:*

*96.5.1 where required in order to do justice (for example to cure procedural errors in the proceedings before the Disciplinary Commission), the Disciplinary Appeal shall take the form of a re-hearing de novo of the issues raised in the proceedings i.e. the League Arbitration Panel shall hear the matter over again, from the beginning, without being bound in any way by the decision being appealed;*

*96.5.2 in all other cases, the Appeal shall not take the form of a de novo hearing but instead shall be limited to a consideration of whether the decision being appealed was in error and the burden of establishing the decision was in error shall rest with the appellant; and*



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*96.5.3 in the case of appeal against sanction, the grounds are that the original sanction was too severe or too lenient having regard to all the circumstances.”*

59. It is not suggested that justice requires a full re-hearing of this matter. It was submitted on behalf of the Club that the primary basis of the appeal was Regulation 96.5.3, the relevant question being whether the sanction imposed was “excessively severe having regard to all the circumstances”; but, if it were excessively severe, the sanction would also be “in error” for the purposes of Regulation 96.5.2 because it was disproportionate. It was (rightly) common ground that the Commission had a wide margin of discretion in relation to sanction. However, it was rightly submitted on behalf of the Club, the Commission must exercise the assessment required lawfully and reasonably. If the resulting sanction was disproportionate (as, it is said, the sanction was in this case), then the Commission acted neither lawfully nor reasonably in imposing it.
60. It was submitted that the Commission failed properly to consider three factors, which led to the imposed sanction being excessively severe, namely:
- (i) the Club derived no sporting advantage for any of the three incidents;
  - (ii) the Club made admissions at the earliest opportunity in respect of each of the three incidents and showed exceptional levels of cooperation in the course of the EFL’s investigation and the disciplinary proceedings; and
  - (iii) the available precedents in relation to the observation of opponents and other integrity-related infringements with which the sanction imposed by the Commission was wholly inconsistent.
61. I will deal with these in turn.

## **The Relevance of Sporting Advantage**

62. It is clear beyond any doubt that Southampton intended to obtain a sporting advantage over their league rivals by cheating. It intended to obtain such an advantage by observing their opponents training shortly before a match with those rivals, because they intended to obtain information about formation, who was injured (and therefore would not play), the team selection and tactics. Information obtained from observed training as to what opponents are going to do in the forthcoming match (even if confirming formation, tactics etc which had been used in previous matches) is obviously a valuable analytical tool. Indeed, obtaining an unfair sporting advantage in that way was the whole purpose of the exercise.
63. However, it was submitted by the Club that that intention and potential benefit were different from the distinct question of whether any sporting advantage was in fact obtained. Lord Pannick and Ms Gallafent submitted that, in this case, the Club's evidence that there was no sporting advantage (e.g. Mr Eckert's evidence that the observation of Middlesbrough did not contain anything of any value to Southampton's preparation for the match, and it did not in any way affect that preparation or Southampton's formation which was unchanged after the period of observation) was unchallenged; and there was no evidence of any actual sporting advantage.
64. In particular, they conducted a detailed forensic exercise on the evidence of Middlesbrough's HoF who suggested ways in which a sporting advantage may have been gained, namely:
- (i) Anyone observing the early part of the training session would have seen that Middlesbrough were planning to use a formation with Luke Ayling operating in a more advanced man marking role. However, Mr Eckert said that Southampton were already aware that Middlesbrough might deploy Mr Ayling in a more advanced role, as they had done so against Southampton in the second half of their league match



in January 2026 and against Fulham Football Club in an FA Cup match earlier in the season.

- (ii) A most important advantage was that Southampton would have known that a particular Middlesbrough player, Hayden Hackney, would not be starting the match. However, (a) from the videos' obtained, the Junior Analyst Intern/Analyst 1 (wrongly) surmised that Mr Hackney *would* be playing whereas, in the event, he did not; and (ii) on 7 May 2026, the press had reported that Mr Hackney would not be playing, and Middlesbrough's Head Coach confirmed that he would not be playing at a press conference on the same day as the observation.
- (iii) Middlesbrough's HoF noted that Southampton made four changes from their previous match and, in the first half of their first leg match with Middlesbrough, they sat very deep and did not press, which was a tactic he assumed was the result of their observing Middlesbrough's formation. However, Mr Eckert's evidence was that (a) to make four changes was not unusual, (b) video evidence showed that the Southampton formation did not change between their training session on the Wednesday of that week and the match, and (iii) as Mr Eckert said, sitting deep and not pressing did not work well and Middlesbrough were dominant in the first half of the first leg of the Play-Off Semi-Final match.

65. In short, it was submitted, none of Middlesbrough's HoF's identified matters showed any sporting advantage. It was further said that that conclusion was consistent with the analytical data, for example the attacking and defensive metrics for the first half of the first-leg match with Middlesbrough unequivocally showing that Southampton's performance was very poor by any standard.

66. However:

- (i) The Commission considered that "sporting advantage is different from sporting success" (paragraph 33 of their Reasoned Decision). That is clearly right. The



proposition relied on by the Club (at paragraph 52 of its Grounds of Appeal) that “if a club has observed a rival’s training session but lost the subsequent match by a significant margin anyway, as a matter of common sense the observation is highly likely not to have given rise to any or any material sporting advantage” is based on a *non sequitur*. No matter how badly a team perform, they might have performed worse: and Southampton might have had even worse data metrics and even less success in the first leg match if they had not conducted the observation on its opponents that it did conduct. In any event, in the first leg of the Play-Off Semi-Final, Southampton did not lose by a “significant margin” or lose at all: the match was drawn.

- (ii) It is submitted by the Club that “if the information gleaned from observation was readily available through legitimate sources in any event, there can have been no or no material sporting advantage” (again, paragraph 52 of the Grounds of Appeal). However, that proposition is subject to its own caveats. Observation might confirm a matter that was, before the observation, only probable or simply possible. For example, knowing that Mr Ayling was going to be deployed in a more forward role in the forthcoming match was a sporting advantage, even if he were known to have played in that role a couple of times before. As for Mr Hackney, it may be that the report back on the observations as to whether he was fit to play was, at best, ambiguous if not wrong; but I accept Middlesbrough’s HoF’s evidence that, simply because a manager publicly states that a player will not be fit, does not mean that that player will not be playing. There have been instances of a manager making such a statement and then, either because the statement was deliberately misleading or circumstances later changed, and the player has in fact played. Middlesbrough’s HoF provided evidence of one such case.
- (iii) As for the sporting advantage of knowing that Middlesbrough would adopt the tactic of pressing, which was observed in training, it is no answer for Mr Eckert to say that



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Southampton's response to that tactic was ineffective; or that Middlesbrough had been known to use that tactic in some other matches; or that Southampton did not alter their formation as a result of the observation. To know that that was to be Middlesbrough's tactic gave Southampton a sporting advantage.

67. Therefore, I do not accept the proposition that there was no evidence that Southampton gained a sporting advantage as a result of its observation of Middlesbrough.

68. In any event:

- (i) Of course, a sporting sanction is not inevitable for a breach of Regulations 3.4 or 127. Whilst the actual sporting advantage obtained is a relevant factor in determining sanction, I do not accept Lord Pannick's proposition that, if no sporting advantage is obtained, then it is inappropriate and disproportionate to impose any sporting sanction.
- (ii) As I have described (paragraph 56 above), a sanction may serve several purposes, only one of which is to restore/preserve public confidence in the fairness of the competition by ensuring that the competition is in fact fair. Public confidence in the integrity of the competition may be undermined by an attempt to gain an unfair sporting advantage or otherwise cheat, particularly if that goes unpunished; and, in any event, a legitimate purpose of a sanction is to punish the offending club or deter future misconduct by that club or another club engaged in the competition. It may properly be considered that nothing less than a sporting sanction will meet the needs of these other purposes, particularly that of deterrence.
- (iii) In PL v Everton Football Club Company Limited (26 February 2024), the PL Appeal Board rejected the contention that a sporting sanction depended upon proof of measurable sporting advantage, recognising that certain forms of misconduct inherently threaten the integrity as well as the fairness of competition irrespective of whether any resulting advantage can later be precisely identified or quantified; and



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considered, in that case, that only a sporting sanction in the form of points deduction “with its immediate and overt effect has the appropriate power of disincentive for clubs” not to breach the PL Sustainability and Profitability Rules (“the PL PSR”) in the future (see [202]).

- (iv) The Commission in this case expressly considered whether a lesser sanction than that which they imposed would be appropriate (paragraph 38 of their Reasoned Decision, quoted at paragraph 48 above). I deal with the issue of proportionality specifically below (paragraphs 81-93). However, the Commission expressly considered that a mere financial penalty would not only be ineffective as a sanction but, rather, “perversely [such a penalty] may act as an incentive for clubs to breach Regulation 127 and pay the fine in an effort to increase the chance of promotion”. That analysis, which would equally apply to any non-sporting sanction, is unimpeachable.
- (v) Middlesbrough’s HoF put forward a number of respects in which Southampton may have gained a sporting advantage from its observation, which Lord Pannick and Ms Gallafent sought to deny. As set out above, I do not accept that there was no evidence of such advantage, as they submitted: there was evidence that it had gained such an advantage.
- (vi) But, in any event, it was not necessary for the EFL to prove the respects in which a sporting advantage was gained or, indeed, that any such advantage had been gained. The EFL and/or Middlesbrough could not prove – and could not be expected to prove – the negative that Southampton had not, in fact, obtained any advantage by their misconduct. The relevant evidence was uniquely in the hands of Southampton. As the Club frankly accepted before the Commission, any submission that it had not obtained any such advantage could only be based on evidence that it adduced to that effect. The Commission considered that evidence, and concluded (in paragraph 31, again quoted in paragraph 48 above) that it “was not persuaded



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that this is an exceptional case in which there is evidence that no use was made of the material [from the observation] and therefore no sporting advantage”.

(vii) Lord Pannick relied heavily on the last sentence in paragraph 32, “It is inherent in having information which you opponent would wish to keep private that you have a sporting advantage”, to support his proposition that the Commission had elided the act of misconduct (i.e. the observation) and the consequences of the misconduct (whether or not there had been any actual sporting advantage), and had failed to consider the second issue and take into account the fact that, in the event so far as the Middlesbrough Incident is concerned, there was no such advantage. I do not agree. Allowing for the fact that its Decision was prepared with very considerable speed (as it had to be), the Commission was clearly satisfied that, by its observation, not only did the Club intend to obtain information from its observation of the Middlesbrough training that would give it a sporting advantage, it did obtain such information which was put into the hands of Mr Eckert as First Team Coach, Mr Eckert considered that evidence and he had failed to persuade the Commission that he had not taken it into account when preparing for the first leg match. That analysis was clearly open to the Commission on the evidence before it. Indeed, despite Mr Eckert’s denial, it would have been a counterintuitive conclusion if the Commission had found that Mr Eckert did not have regard to that information.

(viii) With regard to the Oxford and Ipswich Incidents, there was clear evidence of sporting advantage, i.e. that information from the observations had been passed to the senior coaching team at the Club, and it had been used in preparation for those matches.

69. For those reasons, I do not accept the submission made on behalf of the Club that the Commission erred in the manner in which they dealt with sporting advantage.



## **Mitigation**

70. It was submitted on behalf of the Club that the Commission failed properly to take into account the admissions it made “at the earliest opportunity and provided information as swiftly and accurately as it could in the context of an extremely fast-moving situation” in respect of each of the three incidents (paragraph 72 of the Grounds of Appeal), and it showed exceptional levels of cooperation in the course of the EFL’s investigation. In relation to the Middlesbrough Incident, the Club accept that the initial response on 8 May 2026 included errors because, it says, that response was given prior to an extensive internal investigation conducted by external legal advisors, prior to the full and frank response on 12 May 2026; and, in relation to the other incidents, these were self-reported in that same response. Thereafter, the Club agreed to an expedited procedural timetable for this disposal of these proceedings, in circumstances in which the usual timetable predicated in the EFL Regulations would have made it impossible for this matter to be resolved before the Play-Off Final (paragraph 79).
71. In the event, the Commission do not refer to any relevant mitigation in their Reasoned Decision in relation to Charges 1 and 2 (the Middlesbrough Incident); and, whilst it is accepted by the Club that weight of factors is inherently a matter for the Commission, it is said that the Commission erred in not taking this mitigation into account and giving no credit at all for the admission and cooperation in relation to Charges 1 and 2.
72. However:
- (i) It is clear that the Commission had well in mind the mitigation put forward on the Club’s behalf. When dealing with Charges 3-6 and reducing what they identified as the appropriate starting point of six points to four, they expressly afforded credit for “the available mitigation, including the [Club’s] acceptance of the charges, cooperation (although it is not accepted that this was unqualified) and their proffering of information in relation to the [Oxford and Ipswich Incidents] (although we accept

that they were on notice from the initial letter of 8 May that the EFL were investigating another incident and so these admissions were not entirely unprompted)”.

- (ii) It was submitted on behalf of the Club that that was only in relation to Charges 3-6, and not Charges 1 and 2 in respect of which (it is said) there is no mention of mitigation and no indication that the available mitigation was taken into account. However, when the Reasoned Decision is read as a whole, the Commission made clear that, in respect of Charges 1 and 2, in all of the circumstances (which must have included the mitigation put forward on behalf of the Club), a sanction nothing less than expulsion from the Championship Play-Offs would be adequate or sufficient to achieve the purposes of Regulations 3.4 and 127. It is clear from this that the Commission considered that the mitigation which had been put forward was insufficient to make a lesser sanction appropriate or sufficient to meet that aim.
- (iii) Under the EFL Regulations (to which each Club, each season, agrees), a club is required to cooperate with the EFL in any investigation and in any disciplinary proceedings by the obligation to act with utmost good faith in Regulation 3.4 as well as the specific requirements of (e.g.) Regulation 84.5 which makes the failure to respond to an EFL request for information a separate breach of the Regulations. Cooperation can only be mitigation if it is exceptional, i.e. over and above that inherent in these obligations. It is not mitigation for a Club to do what it is in any event required to do by the EFL Regulations.
- (iv) Whilst the Commission accepted the Club’s expressions of remorse (as evidenced by, e.g., its cooperation with the investigation), they considered that that mitigation was tempered by the initial misleading response to the Middlesbrough Incident allegations in its 8 May 2026 letter as described above (paragraphs 36-39). The 12 May letter indicates that, whilst time had not allowed for the interview of those involved “directly”, the Club’s Chief Executive Officer had, before the 8 May letter was written, “made urgent enquiries” which he relayed to the Club’s General



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Counsel. However, whilst I accept that the Club produced the 8 May response letter at some speed, any enquiry of the coaching staff (notably, Mr Eckert himself) would or should have belied the 8 May response given to the EFL's particular and obviously vital questions, e.g., that (i) "no footage was captured, transmitted, shared or analysed" and (ii) the Junior Analyst Intern was not instructed by members of the senior club staff. Even given the reasons set out in SPB's letter of 12 May 2026, how those answers came to be given on 8 May remains a mystery. In any event, the Commission were certainly justified in considering that those false responses reduced any mitigation available in respect of Charges 1 and 2.

- (v) Equally, they were "unimpressed" by some of the Club's witnesses, including Mr Eckert, suggesting they were unaware that such observations were in breach of the EFL Regulations in circumstances in which (a) the Club had agreed to be bound by the Regulations, (b) Analyst 1's reaction to The Junior Analyst Intern being "caught" suggests that he understood that observation was wrong, and he passed on that concern to Mr Eckert, (c) Analyst 1 appears to have accepted that, as a result of Leeds United, he was aware that it was in breach of the Regulation, (d) Analyst 2's reaction was to send a WhatsApp message to the Junior Analyst Intern: "I said all along I was never happy about it all & it wasn't right but no one listened to me!", and (e) even the Junior Analyst Intern, only an intern, appeared to act on the basis that what he was doing was wrong but he considered he was bound to do it because of his position at the Club. The Commission was clearly – and justifiably – unimpressed by the suggestion that, whilst these members of the Southampton staff thought observation was morally wrong, they did not know it was a breach of the Regulations.

73. In all the circumstances, it cannot be said that the Commission failed appropriately to take into account the mitigation relied on by the Club, including the extent to which it accepted the charges and cooperated.



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## **Precedent**

74. It was submitted that the sanction of expulsion from the Play-Offs was contrary to all available precedents, which again was an indication (it was said) that it is excessive and disproportionate.
75. Particular reliance was placed on Leeds United which, it was said, was “the most relevant and closely analogous precedent insofar as it concerns the observation of rival teams in the EFL Championship” (paragraph 83 of the Grounds of Appeal). Indeed, it was submitted that Leeds United was more serious, because Mr Bielsa admitted in a press conference that he observed each team which Leeds played before each match. Nevertheless, the EFL imposed only a fine of £200,000 and a reprimand. Expulsion from the Play-Offs for Southampton was not only a sporting (rather than a non-sporting) sanction, it was submitted that it is also at a level which is irreconcilable with the sanction in Leeds United. It is irreconcilable because the sanction imposed on the Club is disproportionate and wrong.
76. The Club also relied on two other categories of case which, it was again submitted, showed that expulsion of Southampton from the Championship Play-Offs was inappropriate and disproportionate.
77. First, the Club relied on cases in which serious breaches of integrity obligations have not resulted in a sporting sanction. Reliance was placed on two PL cases.
- (i) In PL v West Ham United Football Club Limited (27 April 2007), West Ham United (“West Ham”) entered into agreement conferring on third parties rights in two players (Carlos Tevez and Javier Mascherano) before the players were registered; and, when the players were registered, West Ham not only failed to reveal the agreements, it positively declared there were no such agreements. By registering the players as it did, West Ham was able to secure the services of the players without paying any transfer fee for the rest of the season in which, in the final match, it



avoided relegation and secured its place in the PL for the following season. West Ham was fined £5.5m, and the Commission ordered that the PL could terminate the registration of Mr Tevez. No sporting sanction was imposed.

- (ii) In PL v Chelsea Football Club Limited (16 March 2026), it was established that, between 2011 and 2018, Chelsea Football Club (“Chelsea”) failed to disclose to the PL payments of £47.5m made by third parties associated with the club to players, unregistered agents and other third parties in relation to the transfer of several high profile players. Chelsea accepted that the making of the payments and the failure to disclose them to the PL constituted a breach of the requirement to act in good faith towards the PL. The PL considered, but did not impose, a points deduction; but entered into an Agreed Sanction Agreement with Chelsea under which a two-year transfer ban was imposed, suspended for two years because of the level of cooperation and self-reporting by Chelsea, together with a fine of £10m. Again, no sporting sanction was imposed.

It was submitted on behalf of Southampton that an appropriate and proportionate sanction need not eliminate any possibility of sporting advantage; and these decisions showed that the decision to expel the Club from the play-offs was disproportionate and wrong.

- 78. Second, Southampton relied on cases which, it was said, showed that even serious breaches of rules concerning integrity had consistently received less severe sporting sanctions than that imposed on Southampton in this case.

- (i) In both PL v Everton Football Club Company Limited (26 February 2024) (a case before the PL Independent Appeal Board) at [120] and PL v Nottingham Forest Football Club Limited (18 March 2024) (a case before a PL Independent Commission) at [9.20], it was said that the “entry point” for a significant breach of the PL PSR should be a deduction of three points. In PL cases, points deductions of no more than six points (in Everton) have been imposed for breaches of the PL PSR.



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- (ii) That reflects a similar position for breaches of the EFL P&SR. The EFL has issued a guideline which recommends a graduated points deduction for breaches of the P&SR based on the amount by which the maximum loss threshold is breached up to a maximum on 12 points in the most serious cases.

Again, it was submitted on behalf of the Club that these are an indication that the expulsion sanction imposed on Southampton was inappropriate and disproportionate.

79. However:

- (i) Unless they are designed to give guidance (which cases at appeal level, such as Everton, are), previous cases have limited precedential value because they are usually highly fact-specific. They are of even less value where they are the subject of sanction agreements, as opposed to a decision made after full argument.
- (ii) It was submitted that Leeds United was “the most relevant and closely analogous precedent insofar as it concerns the observation of rival teams in the EFL Championship”, and it had factual similarities to the Southampton case. However, (a) although the misconduct in Leeds United was a breach of Regulation 3.4, it occurred before the introduction of Regulation 127 which made observation of an opponent’s training session with 72 hours of a match a clear and specific offence, (b) it was the subject of a Sanction Agreement between the EFL and Leeds, (c) the sanction in Leeds United was clearly not a deterrent to Southampton to act as it did in this case, (d) in Canada Olympic Committee and Canada Soccer v FIFA (CAS OG 24/09) (7 August 2024) (“Canada Soccer”) at [81], a case following observation by drone surveillance heard by the Court of Arbitration for Sport, it was said: “FIFA has speculated, not without basis, that it would have imposed a higher sanction in the Bielsa case”, suggesting that the sanction in Leeds United was excessively lenient, (e) if the Commission in this case considered that anything less than a sporting sanction was appropriate, an earlier Sanction Agreement in Leeds United in which



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no sporting sanction was imposed cannot make it inappropriate, and (f) there was nothing akin to legitimate expectation here: it was not suggested that Southampton had, in any way, acted to its detriment by acting as it did because of the level of sanction imposed in Leeds United.

- (iii) The Middlesbrough Incident involved observing the team whom Southampton was due to play in a knock-out competition, indeed a knock-out competition in which the financial prize for the winner is valued at £150m-200m. The Commission was sensitive to the importance, prestige and potential financial value of that knock-out competition (see, e.g., paragraph 38 of the Reasoned Decision). In those circumstances, the Commission expressly considered a non-sporting sanction which the Commission found would be at best ineffective, if not positively perverse: see paragraphs 48 and 68(1) above. It also expressly considered a sporting sanction in the form of a points deduction which it considered might have been appropriate if the breaches had been “during the regular season” (i.e. in the league phase) because such a sanction might properly then address any sporting advantage and achieve the aims of the relevant rules; but was not appropriate in the knock-out play-offs (again, paragraph 48 above). The Commission clearly considered the fact that the Middlesbrough Incident involved observation of an opponent’s training in a knock-out competition as an important factor. Precedent, in so far as any weight can be placed upon it, is against Southampton here: in EFL v Swindon Town Football Club Limited (5 February 2026), Swindon Town was expelled from the EFL Trophy and fined £40,000 (half of which was suspended) for fielding two ineligible players in a trophy match. In Canada Soccer, another observation case but one in which a sanction of six points was imposed, upon which the Club relied, (a) the observation took place at the group (i.e. league) stage of the Olympic football competition, not the knock out stage, and (b) although Canada ultimately progressed, the six point deduction has to be seen in the context of a group of only four teams, each playing



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only three games. In context, on appeal, the Panel considered the sanction “harsh” but not excessive.

(iv) The Financial Fair Play cases (i.e. the cases under the PL PSR or EFL P&SR) are very different from this case of unlawful observation, and it is particularly difficult to draw comparisons in relation to the appropriateness/proportionality of sanctions. None concerned a knock-out competition. It is understandable why the Commission found they were of little assistance. Having said that, I do not consider the sanction in this case to be noticeably out of kilter with the Financial Fair Play cases.

80. For those reasons, I do not consider that the sanction in this case was “contrary to all available precedents” or that earlier cases are an indication that the sanction is excessive and disproportionate.

### **Proportionality and Totality**

81. That has dealt with the particular arguments relied on by the Club. However, in any case where the proportionality of the sanction is in issue, it is important to stand back and consider the matter as a whole.

82. Having done so, I do not consider that the sanction imposed was disproportionate or otherwise unlawful. In coming to that conclusion, I have taken into account particularly the following.

83. This was not a “prank”. Cheating in sport, including spying, is a serious offence, undermining as it does the concept of “fair play”, one of the fundamental principles in sport (see, e.g., Leeds United at [10], and Canada Soccer at [65]). As the Commission observed (in paragraph 31 of its Reasoned Decision), public confidence in the integrity of sport – and of each competition within a sport, particularly at elite level – is paramount. Cheating undermines that confidence. Here, the Middlesbrough Incident seriously violated the integrity of the play-off knock out competition.



84. This was not an individual on a frolic on his own. Mr Eckert accepted that he had specifically authorised the observations of Oxford and Middlesbrough to obtain information that would be strategically valuable in preparing for a match. The Commission found (as, on the evidence, they were entitled to find) that, on the part of the Club, this was “a contrived and determined plan from top down to gain a competitive advantage in competitions of real significance by deliberate attendance at opposition grounds for the purpose of obtaining tactical and selection information”.
85. I have dealt with the sporting advantage obtained above (paragraphs 62-69). The whole purpose of the cheating was to obtain a sporting advantage over the Club’s rivals in the Championship. In each observation, information as to formation etc was obtained. The Commission was not persuaded that this was an exceptional case in which there was evidence that no use was made of the material and therefore no sporting advantage. Indeed, there was evidence of sporting advantage in respect of each of the three incidents. The Commission found (as, on the evidence, they were entitled to find) that the output from the observations was fed into the analysis conducted by Southampton.
86. The Commission found (as, on the evidence, they were entitled to find) the Club adopted “a particularly deplorable approach in its use of junior members of staff to conduct clandestine observations at the direction of senior personnel”. These junior members of staff felt compelled to do what they were very uncomfortable doing because they considered their jobs would otherwise be at risk. They were, to that extent, exploited. The Commission considered that was a seriously aggravating factor. They were entitled to do so. It clearly was.
87. The Commission considered that it was also a particularly aggravating factor that the Club’s misconduct occurred in one of the most prestigious and important in English football, which had reputational as well as financial consequences.



88. It also occurred within the context of a knock-out phase of the Championship which, in the Commission's view, made lesser sanctions (including a points deduction) inappropriate. That was a justified assessment.
89. As described above (paragraphs 70-73), the mitigation available to the Club was limited. It was appropriately reflected in the two-point discount given in the points deduction imposed for the Oxford and Ipswich Incidents.
90. In relation to the Oxford and Ipswich Incidents, the Commission was entitled to take a three-point deduction as a starting point. That was in line with sanctions for other integrity breaches such as breaches of the EFL P&SR/PL PRS.
91. The Commission carefully considered less severe sanctions and discounted them for proper reason in each case: they did not consider that a lesser sanction would adequately fulfil the aims of a sanction for breach of the Regulation in the circumstances they were breached. That was an assessment which the Commission was entitled to make. Contrary to the submissions made on behalf of the Club, expulsion from the Play-Off Finals was not the most severe sanction open to the Commission: it was open to them to expel the Club from the Championship. They clearly considered that any more severe sanction would be disproportionate.
92. Whilst it was not a specific issue raised on behalf of the Club, I have carefully considered the principle of totality, i.e. that the aggregate sanction imposed should not be disproportionate to the aggregate misconduct. Whilst the Commission do not expressly refer to "totality", (i) the EFL made submissions on totality (see, e.g. paragraph 130 of its Commission Skeleton Argument, and towards the close of its oral submissions), (ii) the Commission made clear that it had taken into account all submissions made and (iii) there is no basis for any contention that they did not have the principle of totality in mind when imposing the aggregate sanction for all the breaches they in fact imposed.



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93. The Commission had a wide margin of discretion in relation to factual findings, evaluative judgments and sanction (see, e.g., Football Association v Bradley Wood (20 June 2028) at [23]), and they heard all of the evidence and so were in the optimal position to exercise that discretion. In making their assessment, they had in mind the right principles and approach, took into account all relevant matters (including those in aggravation and those relied on in mitigation) and did not take into account anything irrelevant. They exercised this discretion as to sanction fairly and reasonably. The sanction imposed was not out of kilter with relevant precedents, such as they are. In all of the circumstances, it cannot be said that the sanction imposed was disproportionate, excessive or otherwise unlawful.

### **Conclusion**

94. As indicated in the Operative Award dated 20 May 2026, for those reasons:

- (i) The appeal against the decision of the Disciplinary Commission dated 19 May 2026 in relation to the sanction imposed in respect of Charges 1 and 2 that the Appellant, Southampton Football Club, is expelled from the EFL Championship Play-Offs for the 2025-26 Season is dismissed and that decision of the Disciplinary Commission be confirmed (with the consequence that Middlesbrough Football Club proceeded to the Championship Play-Off Final against Hull City Football Club at Wembley Stadium on 23 May 2026).
- (ii) The appeal against the aggregate four-point deduction to be imposed at the beginning of Season 2026-27 in respect of Charges 3-6 is also dismissed, and the decision of the Disciplinary Commission in respect of that sanction (and the reprimand imposed in respect of all the breaches) is also confirmed.

95. I have given directions in relation to costs which will be the subject of a separate Decision in due course.



96. Subject to Sections 67 and 68 of the Arbitration Act 1996, this Award is final and binding and there is no further right of appeal or challenge (Regulation 104 of the EFL Regulations).
97. This Award shall be published by the EFL on its website.

Gary Hickinbottom

The Rt Hon Sir Gary Hickinbottom  
London, UK  
1 June 2026

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