

**BEFORE AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION  
ON APPEAL FROM A DECISION OF A REGULATORY COMMISSION**

**B E T W E E N:-**

**MARCO SILVA**

**The Participant / The Appellant**

**-and-**

**THE FOOTBALL ASSOCIATION**

**The FA / The Respondent**

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**DECISION OF THE APPEAL BOARD**

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**Introduction and Summary**

1. Marco Silva (hereafter “MS”) is the Head Coach of Fulham Football Club and appeals against a decision of a Regulatory Commission that found<sup>1</sup> him in breach of FA Rule E3.1 by making comments that implied bias and / or questioned the integrity of and / or were personally offensive towards the Video Assistant Referee, John Brooks. Those comments were made during a post-match media interview following Fulham FC’s fixture against West Ham United FC on 4 March 2026.
2. MS admitted the charge and hence the Regulatory Commission had to decide only the appropriate sanction. The penalty imposed was:
  - (a) An immediate one-match touchline suspension; and
  - (b) A financial penalty of £90,000.

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<sup>1</sup> The original decision, at a hearing determined only on paper, was dated 30 March 2026; the written reasons for that Decision followed on 2 April 2026.

3. The FA agreed with MS's request that the imposition of the touchline suspension (also referred to as the "Sporting Sanction") should be stayed pending the determination of this appeal.
4. MS requested an in-person hearing of his appeal, which we heard, remotely, on 15 April 2026.
5. At the hearing, MS was represented by Mr Nick De Marco KC, supported by several observers from Fulham FC and The FA was represented by Mr Tom Middleton, Regulatory Advocate. We also had the advantage of a substantial body of papers, including those directly related to the instant case, as well as various authorities to which we shall refer, albeit only in relatively short summary.
6. We are extremely grateful to both Mr De Marco KC and to Mr Middleton for their detailed written submissions and for their helpful and clear exposition of the issues we had to decide.
7. Our decision, which was communicated to the parties in a summary which is annexed to this statement of our written reasons, was that the appeal was allowed in one respect. We rejected the appeal against the fine of £90,000 (which is the issue we shall address first in these written reasons), but we allowed the appeal against the sporting sanction to the extent that we suspended that sanction until the conclusion of the 2026 / 2027 season.

### **What MS Said in the Post-Match Interview**

8. It is convenient to start with what MS actually said. The specific comments referred to by The FA in the charge (in the material respects) were as follows:

*"The incidents the referee decisions they were at very low level in my opinion, not at level that one game like this one and decisive games in this moment of the season should be, should be and have the impact of VAR. Keep going the great season John Brooks with Fulham Football Club. He was on VAR and he was able to, to decide against the referee decision on the pitch is something unbelievable, OK. Keep going has been little bit of story of our, our season when John Brooks is involved in games with us. He was very unlucky against in a decision even was not on the pitch a decision that he took in, in the office.*

*[...]*

*Many many incidents that the game can really now in our direction. Even the penalty that after I repeat again John Brooks can decide against the, the field decision. Difficult, very difficult to understand like many mistakes from him this season against, in games against ourselves.*

[...]

*OK but incidents are part of the game and all the all the decisions they were against us.”*

9. Following that interview, which we have also seen in full, The FA wrote on 6 March 2026 in a letter which, apart from the links attached, asked the following:

“I am writing regarding your media comments during a post-match interview with BBC Sport following the above fixture. Your comments have been widely reported in the press, including by The BBC and The Mirror.

BBC article:

<https://www.bbc.co.uk/sport/football/articles/cvg33vzvp44o>

Mirror article:

<https://www.mirror.co.uk/sport/football/news/marco-silva-fulham-john-brooks-36819125>

Your comments are of concern to The Football Association (“The FA”). We would therefore welcome your observations in relation to this post-match interview, and in relation to the following comments in particular:

From BBC Sport post-match interview available at:

<https://www.bbc.co.uk/sport/football/articles/cvg33vzvp44o>

*(From 00:13- 00:25)*

*So many incidents that dictate results this evening, for me it’s clear first if you talk about ourselves and the goal we conceded*

*(From 00:33 – 02:04)*

*‘The incidents the referee decisions they were at very low level in my opinion, not at level that one game like this one and decisive games in this moment of the season should be, should be and have the impact of VAR, keep going the great season and John Brooks with Fulham Football Club, he was on VAR and he was able to, to decide against the referee decision on the pitch is something unbelievable, ok, keep going has been little bit a story of our, our season and when John Brooks is involved in games with us, he was very unlucky again in a decision even was not on the pitch a decision that he took in, in the office.*

*Looking for decision even the second yellow card for Mateus has to be one, dangerous freekick if you if you give to us like the referee gave has to be second yellow card, Josh is going to strike the ball the goal and Mateus didn't didn't allow him to do it. Many many incidents that the game can really now in our direction even the penalty that after I repeat again John Brooks can decide against the, the field decision, difficult very difficult to understand like many mistakes from him this season against, in games against ourselves but as it is we have to respect, cannot do it, cannot control, what control is ourselves even so I think we first half we did create some good chances to score before half time we didn't we are not clinical enough we made a big mistake and we are punished by that.*

*(From 2:09-2:15) Ok but incidents are part of the game and all the all the decisions they they were against us.'*

*Please note that your response will be considered as part of The FA's assessment as to whether disciplinary action should be taken against you in respect of this matter. In addition, in the event that such action is taken, your response could be used at any associated disciplinary hearing. We would be grateful if you could provide your written observations on this matter by close of business on **Wednesday 11th March 2026.**"*

10. MS's reply was provided on his behalf by Fulham FC in a letter of 17 March 2026. The material parts of that letter include the following:

*"We note that your letter seeks Mr Silva's observations on the comments he made following the Match, which you state will be considered as part of the FA's assessment as to whether disciplinary action will be taken against him. Having discussed this matter with Mr Silva, he has asked the Club to prepare his response on his behalf, which he has signed to confirm his agreement with its contents. Please note that the Club also agrees with its contents and the Club supports Mr Silva in this matter. For the avoidance of doubt, this response is without prejudice to the Club and Mr Silva's ability to plead further in response to any charges against Mr Silva, if brought.*

- 1. You state that Mr Silva's comments "are of concern to the FA", but you do not make clear which comments in particular give rise to any such concern, nor what your concern is. Instead, this letter seems to be in the FA's standard form, which routinely results in disciplinary action being taken. For clarity, until we understand what that concern is, we can provide nothing more than the general observation below.*
- 2. Pending further information from the FA, Mr Silva's position is that his comments were not, and/or were not intended to, cause concern to the FA or any Match Official. Mr Silva's comments do not imply bias on the part of any Match Official, they do not impugn the integrity of any Match Official, they are not personally offensive, threatening, abusive or insulting to any Match Official, they are not discriminatory, and they do not bring the game into disrepute. Whilst his comments were critical of*

*the standard of refereeing in the Match and raised concerns about the merit of particular decisions reviewed by the VAR, he believes they were within the boundaries of reasonable responses, in the relevant context.*

*For the reasons set out above, we do not believe that this matter should result in any disciplinary action being taken against Mr Silva.”*

### **The Breach of the Rules Alleged and Admitted**

11. The relevant rule is FA Rule E3.1. It provides as follows:

*“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.”*

12. Following receipt of the reply sent by Fulham FC on MS’s behalf, The FA charged him with a breach of FA Rule E3 by letter dated 18 March 2026. The charge was that:

*“It is alleged that you acted in an improper manner during a media interview after the Match by making comments that imply bias on the part of a Match Official and/or question the integrity of a Match Official and/or were personally offensive towards a Match Official, contrary to FA Rule 3.1.”*

13. The Letter of Charge included reference to the relevant evidence upon which The FA would rely, enclosed a Reply Form and notified him that he could request a personal hearing if he wished.

14. On 23 March 2026, MS returned his Reply Form under the “Fast Track 2” process, in which he admitted the charge and agreed that it should be dealt with by a Paper Hearing. In addition, Fulham FC, on his behalf, provided the following “Response to the charge”:

*“Enclosed with this letter is a copy of the FA’s Reply Form, completed by Mr Silva. As you will see, following discussions with the Club, Mr Silva admits the Charge and is content for a Regulatory Commission to determine this matter on the papers, without the need for a hearing. For the avoidance of doubt, Mr Silva did not intend to breach Rule E3.1. he did not intend to imply bias, be offensive to, or question the integrity of, any Match Official. As set out below, whilst Mr Silva’s emotions were running high and he voiced his general frustration about the fact that his team had been on the wrong end of a number of contentious refereeing decisions – both during the season and during this Match in particular – he did not intend to cause offence to the VAR for the Match, John Brooks. That said, having reviewed the passage of his interview highlighted in the FA’s letter, Mr Silva accepts that a reasonable bystander could interpret his*

*comments in a negative way. Given this, he has decided to admit the Charge at the earliest possible opportunity and prepare this letter as evidence of his understanding of the Charge and his remorse if his comments caused any offence to Mr Brooks. Mr Silva respectfully asks that, when determining this matter, the Regulatory Commission gives appropriate weight to the following submissions on sanction and mitigation...*

15. The reply by Fulham FC on MS's behalf also included a number of submissions on sanction and advanced what it characterised as five relevant mitigating factors. We shall deal with those factors in the next paragraphs.

### **MS's Submission on Sanction and Mitigation to the Regulatory Commission**

16. To summarise the first submission, it was said that MS's words had to be seen in context and the relevant context included what were described as a "*number of contentious refereeing decisions*" that had affected Fulham FC during the course of the season. The letter explained that Fulham FC had sought to raise its concerns about the quality of decision making through appropriate channels and that Mr Brooks, the VAR Referee involved in the Match on 4 March 2026, had also been involved in several of those matches. This, it was said, caused particular frustration to MS because of what he considered to be a wrong decision during the course of the Match on 4 March.
17. Whilst emphasising that context, Fulham nevertheless stated that MS accepted that "*his comments could be viewed by a bystander as implying bias against Mr Brooks and he is remorseful for that... [but] the fact is that his comments were made in the heat of the moment in circumstances where he was frustrated at another instance where an incorrect VAR intervention had led to a perceived injustice against Fulham*".
18. The second submission was closely allied to the first. It was emphasised that these were extracts from a relatively short interview which took place only 19 minutes after the Match. It was pointed out that at that time emotions will have been running high and the Regulatory Commission was invited to distinguish these comments which, whilst they may have been reported in different media outlets, were not the sort of comments that can sometimes be made sequentially to different publications. It was also pointed out that the interview was given in what is MS's second language, but this is not a point to which

the Regulatory Commission attached any weight, nor was any significant weight attached to it in the course of the submissions made to this Appeal Board.

19. Third, it was submitted that MS's comments were at the lower end of the spectrum of misconduct under Rule E3.1 and comparisons were drawn with remarks by other managers in other cases. This is a point to which no great significance was attached during the course of the appeal which we heard, and probably that is rightly so as, whilst consistency between decision making is obviously important, no two cases are ever identical and all similarities or dissimilarities vary considerably according to their particular circumstances. We certainly think this Regulatory Commission was entitled to take a dim view of the kind of personal criticisms that MS directed towards Mr Brooks on this occasion.
20. Fourth, it was said that MS had a "*good recent disciplinary record*". This is more contentious in the sense that, whilst it is correct that MS had not been charged by The FA in respect of any breach of FA Rules for more than two years, nevertheless his record was something that the Regulatory Commission evidently considered to be an aggravating – or at least not a mitigating – factor.
21. Lastly, it was submitted that MS had been cooperative and that he should be "*afforded a high degree of credit for admitting the Charge at the earliest opportunity*". Particularly, this part of the submission concluded that:

*“Mr Silva respectfully submits that his contrition and cooperation with the Charge should weigh in his favour as an important mitigating factor – one that should ultimately result in him receiving a discount of one third, if the Commission is minded to give him a financial penalty. This would follow the approach taken by previous regulatory commissions in cases where a charge is admitted at the earliest opportunity and in full (The FA v Rodrigo Hernandez Cascante).”*

### **The FA's Submission to the Regulatory Commission**

22. The FA's submissions are conveniently summarised by the Regulatory Commission at paragraphs 13 to 18 of its Decision.

23. In summary, The FA had submitted that although MS should be entitled to some credit for his admission of the charge, he had actually no realistic alternative other than to admit the charge in the circumstances and as such any credit that was afforded to him should be “*tempered by the reality of the evidence against him*”. The FA therefore contended that the only substantial mitigation was to be found in MS’s expressions of apology and his acknowledgement that his comments were improper, in his expression of remorse as to the offence caused to Mr Brooks, and in his cooperation with the investigation<sup>2</sup>.
24. The FA also addressed the question of MS’s previous disciplinary record, during which the Regulatory Commission considered there were four relevant entries covering the previous five full seasons. They were as follows:
- (i) E3 Misconduct Charge – Fulham FC v AFC Bournemouth, 23 April 2022, EFL Championship – Accepted Standard Penalty of £2,000 fine;
  - (ii) E3 Misconduct Charge – Manchester United FC v Fulham FC, 19 March 2023, FA Cup – Denied/Proven – 2 Match suspension and £20,000 fine;
  - (iii) E3.1 Misconduct (Media Comments) – Manchester United FC, 19 March 2023, FA Cup – Admitted - £20,000 fine;
  - (iv) E3.1 Misconduct Charge (Media Comments) – Newcastle United FC v Fulham FC – 16 December 2023, Premier League – Admitted - £80,000 fine.
25. Of particular relevance is the fact that on two previous occasions MS had been charged and sanctioned for comments he made in the media.
26. The first of those two examples given by The FA was what MS had said in a post-match interview given by MS on 19 March 2023. In a Regulatory Commission’s written reasons of 6 April 2023, in respect of a charge which MS admitted had implied bias and / or questioned the integrity of a Match Official and / or brought the game into disrepute, a £20,000 financial penalty was imposed.

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<sup>2</sup> There was no suggestion that the apology and expressions of remorse were anything other than sincere.

27. More recently<sup>3</sup>, following a post-match interview on 16 December 2023, the Regulatory Commission, giving written reasons on 29 January 2024 for a similar charge, sanctioned MS with a financial penalty of £80,000 and gave him a formal warning as to his future conduct, and ordered him to pay the costs of the Regulatory Commission. Two passages in that Decision of the Regulatory Commission in January 2024 can usefully be quoted here. They read:

*“74. ‘Of course, should Marco Silva face further such misconduct proceedings in the future, the fact that there are now two such instances of misconduct on his record is likely to render their cumulative effect as a very significant or perhaps serious aggravating factor’.*

*[...]*

*80. ‘The Commission notes that should Marco Silva appear before a Regulatory Commission in the future facing similar misconduct charges, with his documented history of such offending media comments, that sporting sanction will inevitably become increasingly necessary and proportionate’.*”

28. On the basis of those submissions, in the case under appeal, The FA submitted to the Regulatory Commission with regard to a financial penalty as follows:

*“...the Commission is invited to impose an immediate financial penalty which is commensurate with the seriousness of MS’s Misconduct [REDACTED]. In view of MS’s previous Misconduct, in order to ensure a sufficient deterrent is set, it is submitted that any financial penalty should exceed £80,000 (the sanction imposed for MS’s second relevant breach of FA Rule E3.1).”*

29. The FA also submitted that the imposition of a sporting sanction was appropriate. However, it further submitted that:

*“Given the amount of time that has elapsed since MS’s last relevant breach of FA Rule E3.1, The FA recognises that the Commission may consider there is a basis to suspend part or all of a sporting sanction. Should the Commission determine that it is appropriate to impose a suspended sporting sanction, The FA respectfully requests that this is imposed on the proviso MS does not commit any further breaches of FA Rule E3.1 arising from media comments until the end of the 2026/27 season. In the event MS does commit a further breach, the suspended penalty would be activated and become an immediate sporting sanction to be served consecutively to any additional sanction imposed.”*

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<sup>3</sup> This is the “greater than two year period” to which we have referred already.

30. And, further, in its concluding submissions to the Regulatory Commission, it was said that:

*“The FA respectfully invites the Commission to impose a suspended sporting sanction and an immediate financial penalty, [REDACTED] The FA invites the Commission to suspend the sporting sanction on the condition MS does not commit any further breaches of FA Rule E3.1 relating to media comments prior to the conclusion of the 2026/27 season. Any sanction imposed must meet the gravity of the breach and serve as a deterrent to MS and others from making comments of this nature to ensure respect for Match Officials is adequately upheld.”*

### **The Decision of the Regulatory Commission**

31. The Regulatory Commission began by setting out the relevant rule and also set out the guidance issued by The FA to Participants at the beginning of the season in relation to media comments. The decision went on to record the Parties’ submissions on sanction before introducing its decision by saying the following (we summarise):

- (i) First, it attached no significant weight to the issue about MS’s command of the English language. Clearly, the Regulatory Commission was correct to do that and, as we have said, the point has not been pursued on this appeal.
- (ii) Second, it made the point that MS is a highly experienced manager who (to put it colloquially) should have known better. It rejected the contention that the words spoken were at the “*lower end of the spectrum*”. The Regulatory Commission felt that naming the VAR Official on two occasions and the clear inference of bias, together with the elements of sarcasm and calling into question the Official’s integrity, was a serious matter and were properly to be regarded as<sup>4</sup> “*a highly aggravating factor to be considered when contemplating the appropriate sanction to be imposed.*”. Again, we accept that the Regulatory Commission was fully entitled to take that view.

32. Nor did the Commission consider MS’s disciplinary record to be a significant mitigating factor. Rather, it decided, at paragraph 24, that it was an “*aggravating factor*”, given that

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<sup>4</sup> See paragraph 23 of the Decision.

this would be the third occasion on which MS had been sanctioned for comments to the media calling into question the integrity of Match Officials.

33. The Commission also agreed with The FA's submission that any credit awarded to MS for his admission of guilt should be "*tempered by the reality of the evidence against him*"<sup>5</sup>. And it is evident that the Commission did not consider that the expressions of apology and expressions of remorse carried much weight<sup>6</sup>.
34. For those reasons, the Commission decided that the appropriate fine was £120,000<sup>7</sup>, reduced for reasons of mitigation, including the "*admitted pleas*", by 25% to £90,000. It also imposed an immediate suspension of one Match<sup>8</sup>, rejecting the submission that it ought to be suspended.
35. In doing so, the Commission quoted the relevant section from Part A of paragraphs 43 and 44 of the Disciplinary Regulations in relation to suspension of penalty. These provide as follows:

*"Suspended Penalty*

43. *Save where any Rule or regulation expressly requires an immediate penalty to be imposed, and subject to paragraphs 44-46 below, the Regulatory Commission may order that a penalty imposed is suspended for a specified period or until a specified event and on such terms and conditions as it considers appropriate.*
44. *When considering imposing a suspended penalty, a Regulatory Commission must:*
  - a) *Determine the appropriate penalty for the breach, irrespective of any consideration of it being suspended; and*
  - b) *Consider whether there is a **clear and compelling reason(s)**<sup>9</sup> for suspending that penalty; if so*
    - i. *Set out what the clear and compelling reason(s) are; and*

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<sup>5</sup> This is a quotation from The FA Submission.

<sup>6</sup> Though they did not suggest they were anything other than genuine.

<sup>7</sup> This figure, based on The FA submissions [REDACTED] being what we shall refer to as the 'starting point' for assessing the level of fine before allowing for mitigation.

<sup>8</sup> Called the "*standard touchline*" suspension.

<sup>9</sup> Our added emphasis

- ii. *Decide the period of the suspension, or event, until which the penalty will be suspended; and*
- iii. *Upon what other terms or conditions, if any, the penalty will be suspended.”*

36. The Commission noted that the reason that The FA had advanced for suspending the sporting sanction was only that:

*“Given the amount of time that has elapsed since MS’s last relevant breach of FA Rule E3.1, The FA recognises that the Commission may consider there is a basis to suspend part or all of a sporting sanction.”*

37. However, the Commission did not suspend the sporting sanction, essentially because of the four previous proven E3 Misconduct Charges on MS’s record, two of which were for inferring bias against Match Officials, and because it rejected the proposition that the elapsed time since MS’s last relevant breach of FA Rule E3 was ‘*a clear and compelling reason to suspend any element of the sanction*’<sup>10</sup>.

### **Provisions Governing the Appeal**

38. We have already explained that this Appeal Panel had the advantage of detailed legal submissions and of hearing oral submissions from both parties. Nevertheless, it is important to recognise that a Fast Track Appeal is not a rehearing. Rather, we are limited to conducting a review of the Regulatory Commission’s decisions.

39. The Grounds of Appeal available to Participants are set out in paragraph 6 of the Appeal Regulations<sup>11</sup>. Paragraph 18 of those Regulations provide that an Appeal Board has the power to:

- (i) allow or dismiss the appeal;
- (ii) increase or decrease the penalty awarded or sanction originally imposed;
- (iii) make any such further or other orders as it considers appropriate.

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<sup>10</sup> See paragraph 36 of the Decision. This was the justification put forward by The FA.

<sup>11</sup> Following paragraph 43 of the Fast Track 2 Regulations.

40. The Grounds of Appeal available to the Parties (which vary according to whether it is The FA or a Participant who is appealing) can be found in the Fast Track Regulations themselves.

*“GROUNDS OF APPEAL*

- 5 *Save where otherwise stated, the grounds of appeal available to The Association shall be that the body whose decision is appealed against:*
- 5.1 *misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or*
- 5.2 *came to a decision to which no reasonable such body could have come; and/or*
- 5.3 *imposed a penalty, award, order or sanction that was so unduly lenient as to be unreasonable.*
- 6 *Save where otherwise stated, the grounds of appeal available to Participants shall be that the body whose decision is appealed against:*
- 6.1 *failed to give that Participant a fair hearing; and/or*
- 6.2 *misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or*
- 6.3 *came to a decision to which no reasonable such body could have come; and/or*
- 6.4 *imposed a penalty, award, order or sanction that was excessive.”*

41. As Mr De Marco KC reminded us, there is a difference between the grounds of an appeal that may be invoked by The FA and those available to Participants. In the latter case, there is what may be considered an additional or alternative Ground of Appeal which is that the penalty, award, order or sanction imposed was “*excessive*”.

42. There is now a considerable body of jurisprudence about the nature and standard of such a review and how the Appeal Board should consider any challenge made to a Decision of the Regulatory Commission. An Appeal Board’s assessment is not determined by what we might have done had we been the first instance tribunal. Instead, we must apply the familiar tests<sup>12</sup> of whether there was significant procedural error or unfairness and / or the decision was irrational or unreasonable, and, in the case of a Participant’s appeal,

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<sup>12</sup> Set out, for example, in *The FA v Jurgen Klopp*, Appeal Board Written Reasons, 11 November 2022; and in *Wilfred Zaha v The FA*, Appeal Board Written Reasons, 17 February 2019.

whether the penalty etc. was “*excessive*”<sup>13</sup>. And it is, of course, for the Regulatory Commission to decide how to balance aggravating and mitigating factors.

43. The difference in approach between an appeal brought by The FA as opposed to a Participant is therefore that the former has a higher bar to cross in challenging a Regulatory Commission’s decision than a Participant who can additionally argue that a penalty or sanction was “*excessive*”. Having said that, we agree with the submission made by The FA that in deciding whether something was “*excessive*”, the right approach is to follow that of the Appeal Board in Zaha, which considered the definition of “*excessive*” in the following way:

*“In the light of the above, the question that we asked ourselves in determining this appeal was whether the Sanctions were excessive, in the sense of being materially more than was necessary or proportionate in the circumstances of the case.”*

44. That also follows from the proposition we consider to be trite law to the effect that, when considering an appeal by any party, the decision of the Regulatory Commission should be allowed a “*generous and significant margin of appreciation*”<sup>14</sup> and an Appeal Board should not interfere just because it might have preferred to have imposed a slightly lesser sanction<sup>15</sup>.

### **MS Submissions on Appeal: The Fine**

45. In summary, Mr De Marco KC submitted that the fine of £90,000 was plainly wrong because, from a starting point of £120,000<sup>16</sup>, a reduction to £90,000 represented a reduction of no more than 25%. As such, he submitted, the Regulatory Commission failed to attach any adequate weight to all elements of mitigation, but particularly in failing to make the “*conventional*” deduction of one-third for a plea of guilty.

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<sup>13</sup> There not being any issue here about failing to give a fair hearing or any real issue about misapplication or misinterpretation of the Rules / Regulations.

<sup>14</sup> Please see paragraph [20] of *Klopp*.

<sup>15</sup> See, for example, *Zaha* at paragraph [30].

<sup>16</sup> [REDACTED]

## **FA Response on the Issue of the Fine**

46. The FA had submitted to the Regulatory Commission that “*in view of MS’s previous misconduct, in order to ensure a sufficient deterrent is set, it is submitted that any financial penalty should exceed £80,000 (the sanction imposed for MS’s second relevant breach of FA Rule E3.1)*”<sup>17</sup>.
47. In the appeal hearing, The FA repeated its submission that the extent of any credit awarded to MS for his admission of the charge should take account of the strength of the evidence against him which, it had submitted previously and continued to submit to us, left him with little or no alternative to making that admission. The FA also submitted that whilst the one-third reduction for an early admission should be considered as a conventional starting point, it could not constitute an automatic right to such a reduction, given that the imposition of the sanction is of itself an overall exercise of discretion, as emphasised by the Regulatory Commission in *The FA v Birmingham City FC and Cambridge United FC*<sup>18</sup>.
48. The FA therefore submitted that the Regulatory Commission was entitled to take the view it did of the strength of evidence against MS and of the weight that it should attach to an early admission of guilt. It further submitted that, bearing in mind MS’s disciplinary record, and particularly the fact that he was fined £80,000 on the previous occasion and given a formal warning, a sanction in excess of £80,000 was a reasonable one, given that the starting point of £120,000 was

*“an entirely reasonable and proportionate finding given (i) the latest Charge was the third time the Appellant was being sanctioned for a breach of FA Rule E3.1 arising from media comments; [REDACTED] [REDACTED] [REDACTED] [REDACTED]*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

<sup>17</sup> See paragraph 6.5 of The FA’s Reply in the Regulatory Commission papers.

<sup>18</sup> Regulatory Commission, Written Reasons, 22 September 2025.

<sup>19</sup> Here, we are quoting from paragraph 32 of The FA’s Submissions on Appeal.

## **Discussion and Decision on the Issue of the Level of Fine**

49. In our view, Mr De Marco KC has engaged in a skilful parsing of the Decision of the Regulatory Commission, but we do not accept that his detailed textual analysis demonstrates that the overall decision as to the level of fine was one that was irrational, unfair, unreasonable or materially excessive.
50. We accept that it would perhaps have been preferable had the Regulatory Commission explained rather more fully why it considered it appropriate to depart from the conventional deduction of one-third for early admission and / or what weight it attached to other mitigating factors. However, we also observe that this should not be a purely mechanistic process, which could lead to a result that might be considered to be unduly lenient. On the contrary, whether it is appropriate to make a full, one-third, deduction for one element of mitigation (early admission of guilt/plea of guilty) must always be decided in the context of whether the penalty imposed – in this case, a fine – is a reasonable one.
51. The Regulatory Commission explained what weight it gave to the early admission and to what it characterised as aggravating factors. Perhaps the most conspicuous of those aggravating features, in the view of the Regulatory Commission, was MS's previous disciplinary record. It led it to conclude that the level of fine needed to be more than the fine for the previous (and similar) breach of £80,000, imposed in January 2024 (although we recognise that no sporting sanction was imposed at that time). Hence, it reduced what it had taken as the 'starting point' of £120,000 and reduced that to the level of fine it imposed which was £90,000.
52. In the end, our role in deciding on whether the fine imposed was indeed unreasonable or excessive is to stand back and consider whether, in the context of that previous record and the levels of fine previously imposed, and taking account of mitigating factors, a fine of £90,000 was obviously far too high.
53. The short answer is that we do not think it was and, indeed, we would suggest that the reasonable observer would be surprised if the fine imposed in this case were not greater

than the fine previously imposed, particularly bearing in mind the warning MS received at the time.

54. We comment that the minute textual analysis to which this decision was subjected faces the difficulty that the ‘starting point’ for the fine of £120,000 is in itself somewhat arbitrary, not being a kind of entry point or recommended penalty of universal application to all participants. [REDACTED]

[REDACTED] But we also repeat that whatever figure one takes as a starting point cannot always be subjected to a process of deductions of conventional proportions for recognised elements of mitigation, such as the standard one-third mitigation for early admission of breach or guilt. That risks ending up with a figure which would, on the Appellant’s analysis, be significantly less than the most recent penalty he received for a similar offence of a fine (of £80,000) and stern warning (albeit with no sporting sanction). Such a lesser penalty might well be considered much too low, and we certainly consider a penalty of £90,000 to have been reasonable.

55. In our view, the Regulatory Commission was entitled to impose the level of fine that it did, even if, in terms of strict analysis of that penalty taken in isolation, it insufficiently failed to allow for mitigating factors, most significantly the early admission<sup>20</sup>.

56. For those reasons, we dismiss the appeal under this head. However, the fact that the Regulatory Commission was not able to allow fully for all those mitigating factors in setting the level of fine is something that, at the very least, it should have taken into account when deciding on any other sanction which, in the present case, means in relation to the sporting sanction, the other element of the appeal.

### **The Issue of the Sporting Sanction**

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<sup>20</sup> Enabling Mr de Marco KC to contrast the level of mitigation for a guilty plea (of 25%) in the case of *The FA v Ivan Toney* in May 2023 where the Regulatory Commission held that “*the full credit of one-third is not appropriate because the player chose to contest important issues*”, whereas MS’s admission was full and at an early stage of the disciplinary process.

57. The question on appeal is whether or not it was reasonable for the Regulatory Commission to decide that the sporting sanction should take immediate effect rather than being suspended, as The FA had submitted in advance of the original hearing.
58. Taking The FA's submissions on appeal first, The FA contended that it was open to the Regulatory Commission to disregard The FA's recommendation for a suspension of the sporting sanction<sup>21</sup>.
59. The FA also submitted that the Regulatory Commission was entitled to take a different view from The FA which had accepted that a 'compelling justification' existed in the fact that a significant amount of time had elapsed since MS's last relevant breach of FA Rule E3<sup>22</sup>.
60. Mr De Marco KC submitted that the failure to suspend the sanction was an obvious error, not simply because it overrode the recommendation made by The FA (which, in our view, would not be decisive, although it might be a material consideration), but also because it failed to allow or to explain how that starting point of an immediate sporting sanction could be mitigated without it being suspended.
61. Since it was not suspended, Mr De Marco KC argued, it logically followed that all elements of mitigation had been disregarded by the Regulatory Commission. Indeed, the only "*clear and compelling reason*"<sup>23</sup> that it evidently did consider as a potential reason was The FA's proposition to which we have referred (at paragraph 6.6 of its Response to Reply document), to the effect that:

*"Given the amount of time that has elapsed since MS's last relevant breach of FA Rule E3.1, The FA recognises that the Commission may consider there is a basis to suspend part or all of a sporting sanction."*<sup>24</sup>

62. We accept that the mere fact that someone can identify mitigating factors outweighing aggravating factors may not appear to amount to a "*clear or compelling reason*" for

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<sup>21</sup> The FA submitted to this Appeal Board that the "*rationale for this was that suspending a sporting sanction on such terms may provide the Appellant with a deterrent not to reoffend, given his previous disciplinary record*".

<sup>22</sup> See paragraphs 34 to 36 of the Regulatory Commission's Written Reasons.

<sup>23</sup> We repeat, this is the language of paragraph 44 of the Disciplinary Regulations, Part A.

<sup>24</sup> See paragraph 35 of the Regulatory Commission's Decision.

suspending a sporting sanction. That kind of language might, we suggest, more comfortably seem to have in mind (for example) exceptional personal or professional circumstances which would be seriously affected if a sporting sanction were imposed immediately.

63. Having said that, mitigating factors are potentially applicable to all aspects of a penalty or sanction a Regulatory Commission considers imposing. Yet the only consideration of which the Regulatory Commission here took account was the point about MS's disciplinary history, of which they evidently, and understandably, took a dim view.
64. We accept that they were entitled to their view of his record – which is one which this Appeal Panel happens to share. But there were other substantial elements of mitigation, most particularly in relation to the early admission of guilt and sincere expressions of remorse and apology, for which allowance should have been but was not made in deciding on whether to suspend the sporting sanction. Yet they were not mentioned by the Regulatory Commission in its explanation of why it did not suspend the sanction.
65. In our view, given that there was substantial mitigation that could be, and was, advanced on behalf of MS, quite apart from whatever approach one might take to his disciplinary record, we think that the only reasonable decision would have been to treat that mitigation as being of itself a clear and compelling reason to suspend the sanction. We also take the view that this would be at least as effective a deterrent as the imposition of an immediate sanction, rather than one that was suspended
66. Accordingly, we allow this separate ground of appeal and, as our short ruling has already indicated, direct that the sporting sanction should be suspended until the end of the 2026/27 season.
67. Mr Silva is additionally warned as to his future conduct.
68. Pursuant to Regulation 17 of the Fast Track Appeal Regulations, the decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

69. The Appeal Board make no order as to costs. However, should either Party wish to make submissions to suggest that an alternative order should be made as to costs, the Appeal Board shall give due consideration to this.

**WILLIAM NORRIS KC** (Independent Specialist Panel Member - Chair),

**JEREMY SUMMERS** (Independent Legal Panel Member)

**MICK KEARNS** (Independent Football Panel Member)

22 April 2026