This is a redacted version of the confidential decision and reasons also dated 5 December 2016 provided to the parties.

In the matter of a Regulatory Commission of The Football Association

Between:

The Football Association

and

(1) Leeds United Football Club Limited
(2) Massimo Cellino
(3) Derek Day

Decision and Reasons of the Regulatory Commission

Introduction and background

1. Leeds United Football Club Limited, Mr Massimo Cellino and Mr Derek Day have all been charged with misconduct under Football Association rule E. The charges, which we set out fully below, relate to the July 2014 transfer of the player Ross McCormack from Leeds United to Fulham FC ("the McCormack Transfer"). There is no suggestion that either Mr McCormack ("RM") or Fulham FC was involved in any wrongdoing. However, it is clear that on the Leeds side there were breaches of the *FA Football Agents Regulations* ("the Agents Regulations") which were then in force.

2. Leeds United ("LUFC") denied the two charges against the club until 9 September 2016, when it changed its plea to admission of both charges.

3. Mr Day admitted the three charges against him in June 2016, though the FA, in its capacity of prosecutor of these charges, does not agree the factual basis on which Mr Day has made that admission. Establishing the correct factual basis may be significant for deciding the appropriate penalty for Mr Day's admitted breaches, so we include findings on that issue in this decision.

4. Mr Cellino has throughout denied the single charge against him.

5. Accordingly, the tasks of this Regulatory Commission (Nicholas Stewart QC, chairman, Mr Gareth Farrelly and Mr Paul Raven) are:

   (a) to decide whether or not the charge against Mr Cellino is proven;

   (b) to determine the correct factual basis on which the question of penalty for Mr Day's admitted breach should be approached; and

   (c) then to decide on the penalties to be applied for admitted or proven breaches.

   This decision deals with the charges and the penalties and includes our reasons. We are unanimous on every point.

The charges (by FA letters 12 May 2016)

6. The charge letter against Leeds United Football Club Limited stated:

> Leeds United FC ("LUFC") is hereby charged with misconduct pursuant to Football Association Rule E1(b).
>
> It is alleged that LUFC has breached the following FA Football Agents Regulations ("the Agents Regulations") in relation to the Transaction involving the transfer of Ross McCormack ("the Player") from LUFC to Fulham FC ("FFC") on 8 July 2014 (hereinafter referred to as "the Transaction"):
>
> - **Regulation C.2**
> - **Regulation J.1**
>
> *(The Regulations referred to are those as applicable during Season 2014/15).*
>
> Regulation C.2 provides:

"*A Club, Player or Authorised Agent must not so arrange matters as to conceal or misrepresent the reality and/or substance of any matters in relation to a Transaction or Contract Negotiation*."

It is alleged that LUFC concealed and/or misrepresented the reality and/or substance of matters in relation to the Transaction by entering into an arrangement where a scouting contract with Derek Day was created and/or signed in order to facilitate the payment of Barry Hughes ("BH"), an Unauthorised Agent, for his performance of agency activities in relation to the Transaction.

Regulation J.1 provides:

"*A Club must not at any time use the services, either directly or indirectly, of an Unauthorised Agent in relation to any Agency Activity. A Club must not directly or indirectly make any payments to any Unauthorised Agent in respect of any Agency Activity*."

It is alleged that:

- LUFC used the services of an Unauthorised Agent, namely BH, in relation to Agency Activity in the Transaction; and/or
- LUFC directly or indirectly made payment to an Unauthorised Agent, namely BH, in respect of Agency Activity in the Transaction.

7. The charge letter against Mr Massimo Cellino stated:

You are hereby charged with Misconduct for a breach of Football Association Rule E3(1) in relation to the Transaction involving the transfer of Ross McCormack ("the Player") from LUFC to Fulham FC ("FFC") on 8 July 2014 (hereinafter referred to as "the Transaction").

FA Rule E3(1) provides:

"*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…"*

It is alleged that you acted in a manner which is improper and/or brings the game into disrepute in that:

1. With your consent, connivance or authorisation, Leeds United FC ("LUFC") used the services of an Unauthorised Agent, namely Barry Hughes ("BH"), in relation to Agency Activity in the Transaction; and/or
2. With your consent, connivance or authorisation, LUFC directly or indirectly made payment to an Unauthorised Agent, namely BH, in respect of Agency Activity in the Transaction; and/or
3. With your consent, connivance or authorisation, LUFC concealed and/or misrepresented the reality and/or substance of matters in relation to the Transaction by entering into an arrangement where a scouting contract with Derek Day was created and/or signed in order to facilitate the payment of BH, an Unauthorised Agent, for his performance of agency activities in relation to the Transaction.

8. The charge letter against Mr Derek Day[1] stated:

[1] Dated 12 May 2015 but that was a slip as it was also 2016.

You are hereby charged with misconduct pursuant to Football Association Rule E1(b)

1. It is alleged that you have breached the following FA Football Agents Regulations (the "Agents Regulations") in relation to the Transaction involving the transfer of Ross McCormack ("the Player") from Leeds United FC ("LUFC") to Fulham FC ("FFC") on 8 July 2014 (hereinafter referred to as "the Transaction"):

- **Regulation C.2**
- **Regulation H.13**

(The Regulations referred to are those as applicable during Season 2014/15)

2. It is also alleged that you have breached **FA Rule F.3** in failing to comply with a requirement under FA Rule F2 in relation to the investigation by The FA into the Transaction.

Regulation C.2 provides:

"*A Club, Player or Authorised Agent must not so arrange matters as to conceal or misrepresent the reality and/or substance of any matters in relation to a Transaction or Contract Negotiation*."

It is alleged that you concealed and/or misrepresented the reality and/or substance of matters in relation to the Transaction by entering into an arrangement where you signed a scouting contract with LUFC in order to facilitate payment from LUFC to Barry Hughes ("BH"), an Unauthorised Agent, for his performance of agency activities in relation to the Transaction;

Regulation H.13 provides:

"*An Authorised Agent, or an Authorised Agent's Organisation must not pass, either directly or indirectly, any remuneration of any nature in relation to Agency Activity to any Unauthorised Agent or any other person, regardless of which party carries out the Agency Activity, save as permitted under Regulation G9. This does not affect the ability of an Organisation to pay its unlicensed employees or staff pursuant to their employment or other contracts or any other parties for purposes unrelated to Agency Activity*."

It is alleged that you passed, directly or indirectly, remuneration to an Unauthorised Agent, namely, BH, in relation to Agency Activity carried out in relation to the Transaction.

FA Rule F2 and F3 provides:

"2. *In carrying out its functions under Rule F1, The Association shall have the power to require of any Participant upon reasonable notice:*

(a) his or her attendance to answer questions and provide information at a time and place determined by The Association; and

(b) the provision to The Association of documents, information or any other material of any nature held by the Participant; and

(c) the procurement and provision to The Association of documents, information or any other material of any nature not held by the Participant but which the Participant has the power to obtain.

It is for The Association to determine the nature and extent of any material required for disclosure in accordance with (b) or (c).

3. *Any failure by a Participant to comply with any requirement under Rule F2 may constitute Misconduct under the Rules and The Association may bring a charge or such charges as it sees fit*."

It is alleged that you failed, upon being requested to do so, to provide to The FA:

i) Copies of un-redacted entries in a bank statement belonging to Shadow Brand;

ii) Invoices and/or documentation relating to the requested un-redacted entries; and

iii) Responses to specific queries posed in an email from Ian Ryder, of the FA, on 14 October 2015 to specific queries posed in an email from Ian Ryder, of The FA, on 14 October 2015 at 12:32 relating to any works completed by DD, Shadow Brands or Deadline Day for C or E..

Hearing & witnesses

9. The Regulatory Commission held a hearing at Wembley Stadium on Thursday 15 and Friday 16 September 2016 ("the Main Hearing"). The FA's case was presented by counsel Mr Christopher Coltart QC with Mr Tom Day. LUFC and Mr Cellino were both represented by counsel Mr Paul Harris QC (who has also been assisted on this case by junior counsel Mr Jack R. Williams) and Mr Day by counsel Mr Nick de Marco. The Commission's work has been greatly helped by the skilled and thorough presentation of the cases on all sides.

10. Mr Rob Smith of the FA Judicial Services Department acted as secretary to the Regulatory Commission at the September hearing.

11. The witnesses who gave evidence and were cross-examined at the hearing were:

Mr Massimo Cellino ("MC") – Mr Cellino is now and was already in July 2014 the President of LUFC, a director and the chairman of the board. He is and was also the owner of Leeds United Football Club Limited (whether entirely or with a controlling interest was not explored in evidence and it makes no difference which). There was no chief executive and it is clear that in practical terms Mr Cellino was performing that function as well.

Mr Derek Day ("DD") – Mr Day is a football agent. Under the system in operation in 2014, he was an Authorised Agent for the purposes of the FA Football Agents Regulations ("the Agents Regulations"). Those Agents regulations were superseded on 1 April 2015 by the FA Regulations on Working with Intermediaries and Mr Day is now designated an Intermediary. However, it is the Agents Regulations which apply to this case. Mr Day did not act as agent in the McCormack Transfer but he

became involved as a party to a scouting contract dated 22 September 2014 ("the Scouting Agreement") which, as we shall explain, stemmed from the McCormack Transfer but was a sham designed to mislead the FA as a cover-up of irregular payments made by LUFC.

Mr Graham Bean ("GB") – Mr Bean, though not charged with any offence under the FA Rules, played a central part in the preparation and signing of the Scouting Agreement. Between 28 May 2014 and 25 September 2014 he was engaged by LUFC, through his company Football Factors Limited, as a consultant. In practical terms, though not formally, he was the LUFC club secretary. He was the whistleblower in this case and his evidence is crucial. We say more below about his part in this whole matter.

We note here that on 26 October 2016, several weeks after the Main Hearing and five days after a further hearing on 21 October 2016 for submissions on penalties, Mr Bean wrote to the FA asking for the Regulatory Commission to be notified that he would be withdrawing all his assistance and evidence relating to that hearing. That was his ill-judged reaction to the FA's rejection of his claim for a fee of £1,800 for acting as a witness in this case. The Commission has never understood this to mean that Mr Bean was suggesting that his evidence had not been correct. The purported withdrawal of his evidence was just part of his petulant reaction over his fee claim.

The Commission had that evidence already and it was not up to Mr Bean to withdraw it. It remains evidence in the case.

That notification by Mr Bean on 26 October 2016 arrived just as the Regulatory Commission was on the verge of issuing our final decision including penalties. However, Mr Bean's actions then instigated an application by LUFC, Mr Cellino and Mr Day for Mr Bean to be recalled for further evidence including cross-examination. Unavailability of counsel meant that the application could not be heard until Monday 28 November 2016. Pending resolution of that application the Regulatory Commission was no longer in a position to finalise and issue our full decision. We dismissed the application by a unanimous reasoned decision issued to the parties on

Monday 5 December 2016 so have now been able finally to issue this full case decision with reasons.

Ms Fay Greer – Ms Greer is the Financial Controller of LUFC, as she has been since before July 2014. It is not suggested that she has personally done anything wrong. Her brief evidence has been helpful largely towards clearing up an issue raised about a £117,500 transaction involving LUFC which we discuss below.

Mr Ian Ryder – Mr Ryder is employed by the FA as its Integrity and Anti-Corruption Manager. He interviewed Mr Cellino, Mr Day and Mr Bean in the course of 2015 and transcripts of those three interviews are included in the nearly 500 pages of written material before this Commission. It was Mr Ryder who made a decision not to bring any misconduct charge against Mr Bean but charges were then brought against Leeds United FC, Mr Cellino and Mr Day by the three separate charge letters from the FA dated 12 May 2016.

Mr Barry Hughes

12. With Mr Cellino, Mr Bean, and Mr Day, it is Mr Barry Hughes ("BH") who is the fourth of the four principal participants in the arrangements for the Scouting Agreement. His involvement is central to these charges.

13. It is accepted by all parties to these proceedings that BH was an Unauthorised Agent, which was a defined term in the Agents Regulations. Precisely because he had no such authorised capacity there is no question of BH's being subject to FA Rules or the FA's disciplinary jurisdiction. It is clear that BH had engaged in agency activity on behalf of LUFC in connection with the McCormack Transfer. It was also accepted by LUFC and Mr Cellino, and not seriously contested by Mr de Marco on behalf of Mr Day, that BH did receive at least something over £100,000 for those agency services, money which was paid to him indirectly through Mr Day and through the mechanism of the Scouting Agreement.

14. There was never going to be any serious possibility that BH would give evidence or even be interviewed by the FA. He has always been outwith the jurisdiction and investigatory powers of the FA (and, noting that he is based in Glasgow, there has been no suggestion that he has ever had any authorised status in relation to the Scottish Football Association either).

15. This Regulatory Commission would always exercise great caution in saying anything negative about someone not within the jurisdiction of the FA who has not given evidence and not taken any other part in the proceedings. However, we have no reason to doubt unequivocal newspaper reports of BH's previous convictions for a mortgage fraud and a nightclub attack (reports which are in the evidence placed before us in these proceedings). We noted that both in his interview by Mr Ryder and in his evidence to this Commission, DD was resistant to being drawn into any negative comment about BH and under cross-examination he was distinctly uncomfortable with any questions about BH. We conclude that Mr Hughes is a man to be approached with caution in any financial or business dealings.

16. Events in 2014 which led up to the signing of the Scouting Agreement can be summarised as follows:

    30 June: RM signs an entirely legitimate 12 months representation contract with Mr Mark Donaghy ("MD"), who was an authorised football agent operating in Glasgow in a business known as Arena Sports Management.

    1 July: Mr Cellino writes to "Barry Hughes/Mark Donaghy" at Arena Sports Management, starting the letter "Dear Barry. I refer to discussions that have taken place between us recently regarding the future of Ross McCormack" and indicating firmly that RM is not for sale.

    8 July: A further and entirely legitimate representation contract is signed between MD, RM and Fulham FC Limited by which the successful completion of RM's transfer will lead to total agent's fees of £875,000 exc VAT for MD, with those payments relieving RM of his obligation to pay a 5% agent's fee to MD under their 30 June 2014 representation contract.

8 July: RM signs for Fulham FC and on the same day LUFC and Fulham FC sign a transfer agreement for a total fee of £10.75m.

8 July: The Agent Declaration Form AG1 required by the FA under the Agents Regulations is signed by MD, by MC and also on behalf of Fulham FC. This form, lodged with the FA as required, states expressly that LUFC has not used an agent – which is not true, as we shall see.

8 July: Fulham FC signs the FA's required form ADF1 confirming (correctly) the amounts which that club is paying to an Authorised Agent in respect of the McCormack Transfer.

17. Up to this point everything is apparently in accordance with the applicable regulatory requirements. Then things become murkier:

22 July: An invoice with this date is sent to MC from BH for £250,000, headed "Ross McCormack Transfer" and expressed as "For consultancy services provided and as requested helping to procure a guaranteed agreed transfer of £10.75m". We comment here: On the face of it, and that was also the reality, that was an invoice coming from an Unauthorised Agent for football agency services; and for LUFC to have used BH's agency services and then to pay that invoice would constitute clear separate breaches of FA rule J.1 (as set out in the LUFC charge letter).

8 August: On behalf of LUFC (and on MC's instructions) GB writes to BH rejecting his claim, stating MC's understanding that no fees were to be claimed from LUFC and that if BH disputed this he was requested to provide documentary evidence in the form of a written and signed contract.

8 August: Solicitors for BH write to LUFC saying that if the £250,000 plus interest is not paid within 7 days, court proceedings will be started.

13 August: GB replies on behalf of LUFC to BH's solicitors, again rejecting liability and saying: "The transfer of Ross McCormack was structured in accordance with the

Agent Regulations and agreed with all parties to enable Mr Hughes to be remunerated by the player whom he represents and/or Fulham FC". We comment here: As BH was an Unauthorised Agent, Fulham FC would have been in breach if it had paid BH. But Fulham FC had never used BH's services, never agreed or intended to pay him, and never did.

18. One thing to note about that letter 13 August 2014 from GB is that it implicitly but clearly accepts that BH had been engaged in agency activities, though asserting that it was on behalf of RM and not LUFC.

19. That is where things stood until a crucial meeting which took place at LUFC's offices on or close to Thursday 18 September 2014 ("the September meeting"). There is no clear agreement or evidence about the precise date although the surrounding email correspondence makes slightly more sense if the meeting took place no later than 18 September. We find the probable date was 18 September but it does not affect our main conclusions if it was on 19 September, which is the latest date anyone has suggested.

20. GB's evidence was that he was called up to MC's office. There he found MC and another man he did not recognise who turned out to be BH (to whom GB had only previously spoken on the telephone). MC told GB that BH had to be paid £250,000 (clearly by LUFC, not MC personally). Knowing that MC had already refused to pay BH's invoice for that amount, GB was surprised and asked "what for?" MC said he had promised BH that money for work he had done on the McCormack Transfer. GB then explained to MC that the payment had not been part of the agreement on the McCormack Transfer and could not be paid. GB did then suggest that they should contact the FA and explain that there had been an oversight, but both MC and BH were adamant that should not be done.

21. We accept that account as a sufficiently accurate description of what was said on that occasion. We also accept that GB raised the question of an outstanding loan of some £65,000 due from RM to LUFC and suggested that it should be netted off against the £250,000 which MC was insisting should be paid to BH. The idea was that BH

would be left to collect that £65,000 direct from RM and that LUFC would pay only the balance of the £250,000 to BH.

22. It should be noted that despite his initial resistance, and apparently continuing misgivings, within a very short time at that same meeting GB became willing to cooperate in finding a way to pay BH in accordance with MC's instructions. This was despite GB's telling MC that the money could not properly be paid within the FA Rules. The reason he gave MC was that the documentation on the McCormack Transfer had included nothing about a payment to BH so it was too late for the payment to be made within the FA Rules.

Mr Graham Bean

23. As a general principle, it is only fair to avoid as far as possible negative findings in relation to people who have not themselves been charged with disciplinary offences and have therefore not presented any defence. However, as GB has been the principal witness for the FA as prosecutor of these charges, we should make it clear that the Commission fully recognises the unedifying part which he played in these matters. Whatever his initial reluctance when he first joined the September meeting, he was actively and knowingly instrumental in setting up the deceptive Scouting Agreement. When in March 2015 he had supplied the FA with a batch of documents on which these charges eventually came to be based, his main motivation was to get back at Mr Cellino, who had peremptorily sacked him from his position with LUFC on 25 September 2014 (for reasons unrelated to any transfer or agent issues) and towards whom GB had become distinctly hostile. Moreover, even though he is not being charged in relation to these events, he still makes and will want to continue to make his living in football, including representing clients in front of FA Regulatory Commissions and Appeal Boards. When giving evidence he therefore did still have his own back to cover, as by his own account he was knowingly and actively involved in the sham arrangements, particularly the Scouting Agreement which is at the heart of these charges.

24. We also see that when interviewed by Mr Ryder on 9 October 2015, GB had the twin aims of saying as much as he could to provide material for disciplinary charges against Mr Cellino while not unnecessarily exposing himself to the risk of charges against him (though he must have known that he was seriously running that risk).

25. The clarity of GB's thinking also appeared to the Commission to be questionable. He told us that his initial intention when the Scouting Agreement was signed was that it would not be sent to the FA, or at least not straight away, and that he had in mind that withholding it from the FA might lead to its becoming invalid. It is very hard to fathom how he thought that invalidity was going to come about, how that would leave things between MC and BH if it did and where in the end that would leave everyone involved as far as the FA Rules and Agents Regulations were concerned.

26. Nevertheless, with all the aspects of GB's involvement in the actual events and some indications that despite his long involvement in football he does not always fully know what he is talking about, we accept his evidence on the key point: By the end of the September meeting MC, BH and GB all well understood and agreed what the Scouting Agreement was for, how it was going to work and that it was a false document to hide from the FA that LUFC had been in breach of the FA Rules in connection with BH's role and the documentation relating to the McCormack Transfer.

27. In particular, just because GB bears extreme animosity towards Mr Cellino that does not mean he is dishonestly inventing accusations against him. We do not accept GB's evidence that it was MC who first suggested a scouting contract, but we do not think he was telling us a deliberate lie on that point. The same goes for our rejection of his claim that he did tell MC that BH was not an Authorised Agent, which he did not mention in his interview by Mr Ryder. GB would now like to think he had told that to MC at the September meeting but we do not believe he had.

28. In general we find GB's account of MC's involvement and motivation in these matters, including in particular MC's knowledge of the purpose and effect of the Scouting Agreement, to be convincing. It matches what we see in the documents and, importantly, it matches what we can clearly see about MC's dominant role in the affairs of LUFC. We have been utterly unconvinced by MC's claims that he was an

innocent participant in a scheme which was devised and driven by GB and which he, MC, thought was all above board. GB's account, for all the unsatisfactory features of his involvement in this matter, is more reliable than Mr Cellino's.

The problem at the September meeting: Getting round the FA Rules

29. A key point which we do accept from GB is that he did make it clear to MC at the September meeting that BH could not be paid without LUFC being in breach of the FA Rules. GB clearly did not want LUFC to pay BH. To have warned MC of a breach of the rules would have been one way of trying to discourage MC from going ahead with LUFC's making the payment. We find it comfortably more than probable that GB did give such a warning, even if it did not stop MC from making the payment through the sham Scouting Agreement.

30. As we have found, GB did not tell MC that BH was not an Authorised Agent and that for that reason there would be a breach of the FA Rules if LUFC paid BH for work done on the McCormack Transfer. Another problem over the FA Rules which GB also said he did warn MC about on 18 September was that the documentation already sent to the FA following RM's signing for Fulham on 8 July 2014 – particularly form AG1 signed by MC among others as a declaration of full and truthful information to the FA - had made no mention of BH or LUFC having engaged an agent at all. We doubt that GB explained any of this in the clearest of terms but we are nevertheless confident that the one message that GB did get across clearly to MC was that if he paid BH, LUFC would be in breach of FA Rules. If MC did not get that message at the September meeting, what did he think the Scouting Agreement was all about? The consequences of these findings are discussed below in relation to the charges against MC.

31. Whether in September 2014 GB did appreciate himself that BH was not, or might very well not be, an Authorised Agent is not certain. When GB was interviewed by Mr Ryder on 9 October 2015, and was still himself at risk of being charged with misconduct, it would not have been in GB's interests to admit that he had known. But we do not speculate further about GB's knowledge of BH's agent status, or lack of status. There is simply no reliable evidence that GB or anyone else told MC in

September 2014 of any concerns that BH was not or might not be an Authorised Agent; and no evidence from which we can safely conclude that MC probably did know or suspect that he was not.

32. Nevertheless, we conclude that at the September meeting both MC and GB knew that a payment of fees to BH in relation to the McCormack Transfer would be a breach of the FA Rules. BH must have known that too, even if he had not known before the meeting.

33. There were only the three of them at the September meeting: MC, BH and GB. With their different interests and their differing degrees of enthusiasm or reluctance, as the meeting progressed they were all looking for some way to pay BH his money. At some point BH suggested that it could be paid to DD or his business, Shadow Brands. One of them suggested it could be done by way of a scouting agreement. GB says it was Mr Cellino. MC said in his evidence at the hearing that it was GB, though we read what he said in his interview with Mr Ryder (page 18 of the transcript: 24/166) as MC's saying there that the suggestion had come from BH. Overall we find it was probably GB, as he had the most experience of football and the different sorts of agreement including scouting contracts (and he had signed a scouting agreement on behalf of LUFC as recently as 12 August 2014). It is not a crucial issue anyway. Of the three people present at the September meeting, it is only MC who is charged in these proceedings. Accordingly, while we find that the suggestion of a scouting agreement did not come from him in the first place, that still leaves the question of how much he did know and understand when he signed the Scouting Agreement dated 22 September 2014.

The Scouting Agreement signed 22 September 2014

34. MC told us that he relied entirely upon GB in connection with the preparation and signing of the Scouting Agreement and that he signed it without reading the contents. He even claimed in cross-examination by Mr Coltart that he hadn't read the Scouting Agreement so as to understand that it was made with DD.

35. We reject MC's claims of ignorance and innocence in relation to the purpose and content of the Scouting Agreement. We do accept that he did not read through it before signing and would have paid very little attention to its detailed provisions. But it is clear that he knew from the September meeting that it was to hide from the FA that LUFC was paying the £250,000 claimed by BH for his work on the McCormack Transfer (including, as part of that payment, the £65,000 due from RM which was in effect being informally assigned by LUFC to BH). Whether or not MC noted and remembered the name Derek Day, he knew that the Scouting Agreement was being prepared to hide from the FA the involvement of BH altogether, so that BH was not to be named in the document.

36. Mr Cellino is Italian. His English is imperfect and he genuinely needed his interpreter at several points in his oral evidence. We accept that in September 2014, only a few months after he had moved to England on his purchase of LUFC, he would not have been comfortable with legal and other technical documents in English or discussions in English over business and legal matters. But we do not consider that any difficulties he had with English prevented him from grasping all the matters mentioned in the previous paragraph. Moreover, we are confident that he was always more than comfortable dealing with figures. We are sure that when he signed the Scouting Agreement he knew full well that it provided for three staged payments totalling £185,000 to be made ostensibly to DD but in reality to BH. Those payments of £65,000, £60,000 and another £60,000 had been negotiated between DD acting on behalf of BH and GB acting for LUFC but must have been referred by GB to MC for approval. MC's hands-on approach to the running of LUFC and the sums involved meant that GB would not have risked agreeing those figures without MC's express approval. LUFC would be paying but MC would have seen it as his money.

37. The arithmetic of the Scouting Agreement was quite simple: A total of £250,000 was to be paid: £65,000 by what amounted to an informal assignment to BH of the benefit of the outstanding RM loan, and the balance of £185,000 by those three stage payments. As between LUFC and RM, the paperwork for the £65,000 consisted of an email from Ms Greer to RM stating "Further to the agreement made with your advisors and Mr Cellino, please now find attached a letter confirming that your debt has been removed". That letter, dated 28 September 2014 and signed by MC, put it

as: "Following recent discussions with your advisors I have come to the decision to write off the loan that you have with Leeds United Football Club Limited. The total value to be written off is £65,045.89."

38. MC would have us believe that part of the agreement reached with BH and DD between the September Meeting and the signing of the Scouting Agreement was that an entirely separate claim by Arena Sports Management Limited ("Arena") against LUFC for £117,500 was released. It does appear that BH has a connection with Arena (though the Commission cannot see exactly what it was) so to that extent BH could have had an interest in bringing a claim by Arena into the mix. However, we reject that assertion by MC, which appears to be an attempt by him to show that the Scouting Agreement was part of an overall legitimate arrangement and was not simply a subterfuge to cover up improper payment of BH's £250,000 fee.

39. The £117,500 was a claim by Arena for services provided in 2013 by Mr Donaghy on earlier matters relating to RM and another LUFC player Marius Zaliukas. A statutory demand had already been issued on 20 May 2014 for the then balance of £97,500 but had never been met. Several months after the Scouting Agreement had been made, a solicitors' letter dated 14 April 2015 was sent to LUFC, demanding £117,500 and threatening an imminent winding-up petition. LUFC offered no resistance but paid the full £117,500 via the FA on 5 May 2016. MC could offer no sensible explanation why LUFC simply paid up if that claim had been released, as he claimed, in September 2014. He told us that solicitors had advised making that full payment in 2015 but would give no further details. It is a compelling inference that such advice would have been given precisely because there was no question of the debt having been extinguished in September 2014. On 18 September 2014 Ms Greer had reported to GB by email that the amount then due to Arena Sports Management Limited was £117,500, which she suggested "could be taken into consideration when agreeing the deal with BH" but there is not a shred of any document to indicate that the suggestion was followed up. We are sure it was not.

40. MC's evidence about that £117,500 is telling, as it showed him to be capable of a deliberate untruth to this Commission which he cannot have believed himself. The point is too stark to be explained away as confusion or faulty recollection.

Mr Derek Day's involvement in the Scouting Agreement and payments

41. We turn to consider Mr Day's involvement – in the first place his communications with GB between 18 and 22 September 2014.

42. DD emailed GB on 18 September 2014 @ 22:19: "Just following up on our conversation today as the money Ross owes the club. The last communication had it pegged at just over £65k but today we discussed the it (sic) being £68k." Ross was Mr Ross McCormack.

43. On 21 September 2014 @ 20:46 DD emailed GB and said: "As discussed on Saturday, the original agreement discussed between MC and BH last week was for two payments, one now and one in Jan 2015 however I spoke with BH over the weekend and have attached a compromise between that and the schedule you sent me on Saturday. He is happy to move to three payments to help you out and fully understands the reasoning. It will still be a 12 month contract but with a 6 month payment schedule."

44. Over those few days after the September meeting GB and DD had drafted a scouting agreement and he and DD were negotiating its final terms. That 21 September email responded to a 20 September email from GB proposing payment in four quarterly instalments - hence DD's suggested three payments being described as a compromise.

45. What stands out from DD's 21 September email is that it is BH who is the real party to the agreement with LUFC and that DD is acting on his behalf. DD's 18 September email is entirely consistent with the essential structure of the agreement between MC and BH for deduction of the £65,000 from the sums payable by LUFC to BH so that the Scouting Agreement would provide for payments totalling the balance of £185,000 due to BH.

46. The Scouting Agreement in its final signed form was between DD (defined as the "Authorised Agent") and LUFC. It was expressed to be for a period of one year. The

"Services" stated to be provided by DD were to "assist and pro actively engage in identifying and securing the services of players for the Club for the term of the contract". We do not need to set out a detailed analysis of the Scouting Agreement. Most of its thirty clauses were standard provisions suitable for a genuine scouting contract for "Services" as defined. However, because its real purpose was to achieve payment of BH's £250,000 fee the clauses dealing with payment did not fit happily with other clauses such as clauses 4 and 7, though we do not need to enter into detailed explanation here. Moreover, the last of the three instalments to make up the £185,000 was to be paid on 22 February 2015, which was only 5 months into the 12 month terms of the agreement.

47. Throughout his interview by Mr Ryder on 8 September 2015 DD claimed that the Scouting Agreement had been a genuine agreement for his services as expressed in that document. He denied that it was no more than a vehicle to facilitate payment of money to BH for the McCormack Transfer. He also denied that he had paid any significant sums to BH or to Mark Donaghy.

48. DD's position changed with his admission of the charges against him, which did come quickly after the charges had been laid by the FA on 12 May 2016 – in practice, as soon as DD and his lawyers had been able to review his position.

49. It is clear that substantial sums received by DD from LUFC were passed on by him to associates of BH.

50. The first payment due under clause 5 of the Scouting Agreement was £65,000, which with 20% VAT added was £78,000. That sum was paid by LUFC to the FA and on 9 October 2014 the FA transferred that £78,000 into a bank account of Shadow Brands, which was a trading name of DD for his agency work. There is no dispute that the Shadow Brands bank account was DD's account under his control.

51. Redacted bank statements produced by DD for that Shadow Brands account show the £78,000 coming in and then the following payments out:

- 9 Oct £10,000 to A

- 15 Oct £20,000 to B

- 17 Oct £30,000 to C

52. While there was a sum of £24,000 going into the same account on 30 September and then out to D on 3 October, the sums paid to A, B and C are otherwise much larger than other sums going out of the account. It also plain from the bank statement that without the receipt of £78,000 on 9 October 2014 there would have been nowhere near sufficient funds to make the payments to B and C.

53. In his evidence before this Commission, DD was adamant that the payment of £10,000 to A had no connection with BH or the matters under consideration in these proceedings. While we should hesitate before accepting the truth of any evidence from DD, on balance we accept that particular point.

54. However, DD expressly refused to answer questions about the payments to B and C. He would not identify them and would not say whether those particular payments had anything to do with BH, although he did accept that payments to BH were going to be made by him.

55. DD's counsel, Mr de Marco, realistically accepted that in the absence of explanation the Commission was entitled to infer that the payments were made to BH. We do conclude, comfortably beyond the applicable threshold of probability, that those payments of £20,000 and £30,000 were made for the benefit of BH.

56. The second payment due under the Scouting Agreement was £60,000 on 22 November 2014[2], which with 20% VAT was £72,000. That payment was made by LUFC to the FA and on 18 December the sum of £72,000 was paid by the FA to the same Shadow Brands bank account. On the next day, 19 December 2014, there was a transfer of £66,000 out of that account to a transferee E. Mr Ryder for the FA has

[2] The date 22 November 2015 stated in the Scouting Agreement for the second instalment was plainly a slip and meant 22 November 2014.

investigated and convincingly shows by his main witness statement dated 9 May 2016 (with its exhibits) that E was connected with BH.

57. DD refused to answer one way or the other when it was put to him in cross-examination that the C to whom £30,000 had been paid by Shadow Brand in October 2014 was connected to BH. In all the circumstances it is comfortably probable, to say the least, that C was so connected.

58. The Commission is comfortably satisfied, beyond the required balance of probability, that C the transferee of the £30,000 in October 2014 was connected with BH and specifically that both that payment and the payment of £66,000 on 19 December 2014 were made for the benefit of BH.

59. The third and last payment due under the Scouting Agreement was £60,000 due on 22 February 2015. That payment, with 20% VAT making it £72,000 in total, was made by LUFC to the FA and then paid out by the FA to a different business account in the name of Deadline Day. That is another trading name of DD and there is no dispute that the Deadline Day bank account was also DD's account under his control. The redacted Deadline Day bank statements disclosed to the FA by DD do not show any large payments which are clearly linked to that receipt of £72,000. Although we do see transferees F, G and H, there is no reliable indication of what was done with the £72,000 and no specific evidence that any of it was passed directly or indirectly to BH.

60. The lack of evidence of what happened to that £72,000 is not crucial to our main conclusions anyway. The Commission will give DD the benefit of its considerable doubt and will take it that BH agreed to allow that last payment of £60,000 received by DD (after deduction of £12,000 VAT) to remain in DD's hands as his own money. But that would have been a matter between DD and BH and we do not consider there was any agreement by LUFC that such an amount would go to DD as his money.

61. The Commission notes here that the total VAT element of £37,000 received by DD through Shadow Brands or Deadline Day should in the normal course have been paid to HMRC, less deductible input tax. If the payments of £20,000 and £30,000 in

October 2014 and £66,000 on 19 December 2014 are all deducted from the total of £185,000 (exc VAT), that leaves £69,000 not shown to have been paid out by DD for the benefit of BH. If we had concluded that the £10,000 paid to A in October 2014 was also for the benefit of BH, that would have left £59,000 apparently still in DD's hands. Arithmetically, this would fit DD's counsel's submission that some £60-70,000 of the total of £185,000 had been retained by DD for his own benefit.

62. Given the lack of candour from DD and his refusal to produce unredacted bank statements, the Commission has misgivings about a positive finding that DD did retain something of the order of £60-70,000 for his own benefit. After all, that conclusion is drawn from the fact that on the evidence (and accepting on balance, as we do, that the £10,000 to A was unconnected to BH) we can only identify transfers out of the Shadow Brand and Deadline Day bank accounts of £116,000 made for the benefit of BH. To assume that the evidence before us gave the complete picture would be a rash and unrealistic assumption.

63. Nevertheless, acting only on the evidence before us, we proceed on the footing that only £116,000 of the money he received under the Scouting Agreement was paid out by DD for the benefit of BH; and that the balance of £69,000 was retained by DD for his benefit. At the same time, we do not overlook that the £65,000 loan due from RM was also used as part payment of the overall sum of £250,000 which MC had agreed to pay BH. Accordingly, in round numbers the split of the £250,000 comes out as £180,000 for BH and £70,000 for DD.

64. While this is our finding about what actually happened with the money paid by LUFC under the Scouting Agreement, we also find that when the Scouting Agreement was made none of those involved had any intention or expectation that DD would actually carry out scouting activities to justify anything like £60-70,000. When we say none of those involved, we mean LUFC, MC, GB, BH and DD. DD did try to persuade us that he had performed some worthwhile scouting services for LUFC under the Scouting Agreement but we find that evidence flimsy and unconvincing. We accept that he did do some slight scouting work and did have a hand in bringing one particular player Lee Erwin to LUFC's notice (and Erwin did sign for Leeds). But we find that such work was done with a view to developing useful links with LUFC

as a potentially good source of earnings and not in return for any part of the payment which LUFC had agreed to make under the Scouting Agreement. We also note that some of the claimed scouting work which he described to us, in connection with a player called Nady, was in November 2015, which was nearly two months after the expiry of the 12 months' period of the Scouting Agreement.

65. It is possible that when the Scouting Agreement was signed some agreement had already been made between DD and BH for some of the money to be paid by LUFC under the Scouting Agreement to be retained by DD for his own benefit. The Commission does not speculate and does not make any such finding. There is no evidence that LUFC, MC or GB had agreed or had in mind that any of the money DD received under the terms of the Scouting Agreement would be retained or used by him for his own benefit. It is common sense that, if they thought about it all, they might have supposed that DD was going to get some reward from BH for going along with the sham arrangements to enable BH to get his money for work on the McCormack Transfer. But that would have been entirely a matter between BH and DD. It was no part of any agreement or understanding by LUFC, MC or GB that DD was going to perform any services for LUFC or that LUFC would be under any obligation to DD to enable him to retain any money for himself.

66. Despite our misgivings about GB's evidence we accept his clear assertion that, as far as he was aware, the Scouting Agreement was exclusively for money owed to BH in relation to the RM transfer and not for any other services that BH or DD provided to LUFC. In our view, if the Scouting Agreement had been made with any intention of any of those involved that part of the money was payable to DD for genuine scouting services, GB would have known that. If he had known that, the Commission believes he would have told us.

67. Our conclusion that the Scouting Agreement was never intended to contain an element of payment to DD for genuine scouting services is given support by MC's interview with Mr Ryder and others on 7 May 2015. Although we have found MC a dishonest witness and it is clear that much of what he was saying in that interview was deliberately misleading, he was accepting that the Scouting Agreement was to settle outstanding agents' fees. At no point in his interview did he suggest that in

September 2014 he was asking for or agreeing to pay anything for actual scouting activities.

68. Although we are firm in our view that the Scouting Agreement was made with the intention of all concerned that it was entirely a vehicle for payment to BH, it would not make any serious difference if there had been an understanding that part of what LUFC was paying was for DD's scouting services. The principal aim of the Scouting Agreement was to pay BH his £250,000 agency fees and, even if there had been some cut agreed for DD by engaging him for scouting services as a reward for his going along with that principal aim, his culpability (and the same goes for the culpability of MC and GB) would have been for all practical purposes no less anyway.

Mr Derek Day's failure to make disclosure to the FA

69. We can deal fairly briefly here with the admitted charge against DD of breach of FA rule F3. DD persistently refused the FA's request that he provide them with unredacted bank statements and with invoices and other documentation relating to the three payments listed in paragraph 51 of this decision and the £66,000 mentioned in paragraph 56. In his 8 October 2015 to Mr Ryder, DD stated: "At this time I am not prepared to provide you with un-redacted copies of my bank statements detailing the requested four transactions set out below[3] or provide invoices in relation to the transactions". In paragraph 32 of his witness statement he said that all the redacted payments except the £10,000 payment to A were invoiced payments but he has never provided any of those invoices (which of course may not exist anyway). His 8 October 2015 email also stated: "Even with the redacted information it is clear that there were no payments made to Barry Hughes which was central to your questioning into alleged breaches of the FA's regulations". The same email concluded: "I feel I have provided you with enough information for you to see that no payments were made to Barry Hughes and that I have carried out, and continue to carry out, work under the Scouting Agreement with Leeds United."

[3] Which were those four payments we have mentioned in this paragraph and in paragraphs 51 and 56 of this decision.

70. That was all thoroughly and deliberately misleading. Moreover, as Mr Ryder wrote in a 14 October 2015 email to DD, it was for the FA to determine what material was relevant to an investigation. That correct approach was then further rejected by DD in his email response to Mr Ryder on 16 October 2015.

71. DD did express two linked concerns about disclosure of material: first, that the redactions and other non-disclosed material were commercially sensitive; secondly, that information about this case had been leaked to the media even before charges had been brought. We are not impressed with the first point, as the key points of redaction related to what we have found was a cover-up of payments being made for the benefit of BH rather than to some separate commercially sensitive transactions. As to the second point, DD was entitled to some concern, as the Scottish press in particular had obtained information leaked by someone involved in this case. DD believed it was GB. In a draft decision circulated to the parties on 11 October 2016 we stated that we had insufficient evidence to make any finding about the source of the information. However, on the application mentioned in paragraph 11 evidence was included which showed that since GB had leaked information about these proceedings to the *Daily Record*, which published a story on 29 October 2016. The Commission can and does treat that as evidence for this final confirmed decision and we now find that on balance of probability Mr Bean was also responsible for earlier leaking to the press, as Mr Day suggested. However, we still do not believe that DD's concerns about those leaks played a significant part in his decisions to withhold information requested by the FA.

72. We now summarise our main conclusions on the charges against each of the three respondents.

Charges against Leeds United Football Club Limited: Conclusions

73. LUFC changed its plea on 9 September 2016 by its solicitors' letter to the FA making an unqualified admission of both charges against the club.

74. It will be clear from the findings set out above that the evidence supports all the elements of the charges set out in the FA's charge letter against LUFC dated 12 May 2016.

75. As to the charge under Regulation J.1, LUFC acted by its agent MC in engaging BH in the first place to negotiate on the club's behalf on a transfer fee for RM. It is clear that the club either:

    - had no procedure for ensuring compliance with the Agents Regulations by checking that anyone engaged on agency services for the club was an Authorised Agent; or

    - if it did have any such procedure, it had no reliable system to ensure that all officers (from the President/chair downwards) and responsible staff were made aware of the need for such checks and of the risks of engaging an Unauthorised Agent.

76. The unqualified admission of the charge under Regulation C.2 is an admission that Leeds United FC acted dishonestly.

77. In relation to the Scouting Agreement, the club acted by its President/chairman MC and by GB as its club secretary (his position in reality though not his formal title). Their dishonesty was the club's dishonesty for the purposes of the charge under Regulation C.2.

Charge against Mr Massimo Cellino: Conclusions

78. The single charge against Mr Cellino required the FA to prove that MC knew that LUFC was acting improperly in one or more of the three ways specified as numbered allegations 1 to 3 in the 12 May 2016 charge letter against him (see paragraph 7 above). We find that charge proven.

79. Mr Cellino is not charged here with a strict liability offence. However, to make this charge stick it was enough for the FA to prove his knowledge sufficiently to support any one of those three allegations. Each allegation, if proven, was enough on its own to support the charge that he acted in a manner which was both improper and brought the game into disrepute.

80. Our finding is that Mr Cellino did not know that BH was an Unauthorised Agent. There is no evidence that anyone ever told him BH was or even might be an Unauthorised Agent. On the evidence we are also not able to say that he was reckless or deliberately shut his eyes to the question whether or not BH was an Authorised Agent – which would have been enough to constitute knowledge of that matter. Accordingly, while it is hardly impressive that the President/chairman of a Championship club had so little evident grasp of the need for rigour in relation to agency activities for the club, allegations 1 and 2 are not proven against Mr Cellino. On each of those allegations, MC's knowledge that BH was an Unauthorised Agent was an essential element on which the FA's evidence has fallen short.

81. However, the evidence does clearly prove allegation 3. By contrast with allegations 1 and 2, we find that it was not an essential element of that allegation that MC knew that BH was an Unauthorised Agent. It is true that the allegation says expressly that the Scouting Agreement was "to facilitate the payment of BH, an Unauthorised Agent, for his performance of agency activities in relation to [the McCormack Transfer]". However, the essential thrust of allegation 3 is MC's knowing participation in the deceptive Scouting Agreement by using it to pay BH for agency activities. Proof was required that MC knew that LUFC was concealing and/or misrepresenting the reality and/or substance in order to facilitate payments to BH. That proof has been achieved. The evidence is clear that MC knew that there was a need to conceal from the FA that payments were being made to BH for agency activities in relation to the McCormack Transfer. He approved and implemented the Scouting Agreement deliberately to achieve that concealment. MC knew that he had agreed (on behalf of LUFC) to pay BH £250,000 for agency activities. He knew, when he signed the Scouting Agreement, that it was to deceive the FA into believing the £185,000 was being paid entirely for scouting activities by someone else (DD) altogether (and he also knew that £65,000 of payment to BH was going to be done by using the outstanding debt due from RM and was not mentioned anywhere at all in documentation to be submitted to the FA). MC's consent, connivance and authorisation are clear. He is in breach of FA Rule E3(1) as charged with acting in a manner which was improper and brought the game into disrepute.

82. It is fundamental that a party charged with an offence must always be told clearly and fairly what is alleged against him and what has to be proved to make the charge stick. If we had felt there was any realistic risk that a fair reading of allegation 3 might have misled Mr Cellino and his lawyers into understanding that it was an essential ingredient of all those allegations 1 to 3 that the FA should prove that MC had known BH was an Unauthorised Agent, we should have dismissed the charge against MC. But we do not. Moreover, although we do not rely on this observation at all to reach that conclusion, we do note that MC's counsel's understanding of the case against MC accords with our analysis of allegation 3. In counsel's written outline submissions for the hearing, he correctly contended that "authorisation" by MC required *mens rea* – that legal concept requiring, in this case, MC's knowledge that what he was authorising would be a breach of the FA Rules by LUFC. Counsel's submission then continues:

> "However, MC emphatically did not "authorise" LUFC to commit any breach of the Rules, because he did not know that BH was an Unauthorised Agent or that the paperwork that GB proposed and then drafted for such payment was in breach of the Rules."

Counsel clearly recognised (note the "or") that the case he had to meet on MC's behalf rested on either of two separate elements: (1) MC's knowledge that BH was an Unauthorised Agent; or (2) MC's knowledge that the paperwork for the payment was in breach of the Rules; and that proof of either would be enough to support the charge.

83. We have found that MC did not know BH was an Unauthorised Agent. However, we have also found that MC did know that the paperwork (meaning the Scouting Agreement) was in breach of the FA Rules. He did not need to know which particular rule or rules. He knew, as we have found he was told by GB, that to disclose to the FA that payments were being made by LUFC to BH would have revealed LUFC's breach of the FA Rules in connection with the McCormack Transfer. That was the reason for using the deceptive mechanism of the Scouting Agreement in the first place. Moreover, and centrally to allegation 3, even without any actual knowledge of any of the applicable FA Rules and regulations, he must be taken to know that he was bound by FA Rule E3(1) not to act in any manner which was improper or which brought the game into disrepute. That follows from the basic principle that ignorance

of the law (or in this case, the FA Rules) is no excuse. It was blindingly obvious to MC that authorising and implementing the Scouting Agreement as a means of misleading the FA was an improper act. That is enough to establish the charge against Mr Cellino, though it is equally obvious that, as alleged in the second limb of the basic charge, he knew that his actions brought the game into disrepute.

84. It follows that the charge of misconduct by MC under FA Rule E3(1) is proven.

Charges against Mr Derek Day: Conclusions

85. Given DD's admission of the charges against him, the Commission has then to decide what penalty or penalties are appropriate.

86. It is first necessary to set out the Commission's principal findings on DD's conduct in relation to his admitted offences. The FA contends that in making his admission of the charges he has downplayed his culpability in significant ways which the FA does not accept.

87. The Commission makes these findings in relation to DD, all at least on balance of probability and based on the evidence including common sense inferences from the evidence:

(1) When DD entered into the Scouting Agreement, he knew that its purpose was to facilitate large payments by LUFC to BH and to conceal from the FA that any payments were being made by LUFC to BH.

(2) He also knew that if the Scouting Agreement had not had that purpose, no scouting contract would then have been made with him by LUFC (i.e. leaving aside any possibility, as to which the Commission makes no finding, that at some future time LUFC and DD might make such an agreement in circumstances completely unrelated to the events with which this case is concerned).

(3) When DD entered into the Scouting Agreement, he knew and intended that by far the bulk of the £185,000 total payments (at least £100,000 and probably significantly more) were to be paid on directly or indirectly to or for the benefit of BH.

(4) He also knew there was a further sum of about £65,000 then due from RM to LUFC which was to be transferred in some way or other to or for the benefit of BH.

(5) He knew that the money being paid by LUFC to BH by means of the Scouting Agreement was for work done by BH work in connection with the McCormack Transfer: see his email to GB 18 September 2014 22:19 enquiring about the level of RM's outstanding debt to LUFC, which DD said in his oral evidence was an enquiry made at BH's request. That makes it improbable that DD did not come to know by the time the Scouting Agreement was signed that the payments to BH were connected to the McCormack Transfer.

(6) Out of money paid under the Scouting Agreement by LUFC through the FA to DD's bank account in the name Shadow Brands, DD made or authorised payments of £20,000 on 15 October 2014, £30,000 on 17 October 2014 and £66,000 19 December 2014 all of which he knew and intended were made to or for the benefit of BH.

(7) Although DD may have retained as much as £60/£70,000 for his own benefit out of the total of £185,000 paid to him by LUFC under the Scouting Agreement, he never provided scouting services to LUFC anywhere near that value during the 12 months period of the Scouting Agreement.

(8) That retention of £60/£70,000 for DD's own benefit (if that is what happened, as the Commission finds in the absence of clear contrary evidence) was as a result of some agreement or understanding between DD and BH and not as a result of any agreement between him and LUFC, MC, GB or anyone else connected with LUFC (including any sort of side agreement between LUFC and DD in connection with the Scouting Agreement).

(9) As DD knew when he entered into the Scouting Agreement, LUFC did not actually require him to provide any scouting services and it was no part of any agreement among LUFC, MC, GB and BH in September 2014 that he should do so.

(10) The payments made to BH by DD as mentioned in subparagraph (6) above were not made by DD as payment to BH for having got DD into the Scouting Agreement or as payment for anything else provided by BH to DD. They were payments that BH required DD to make to BH. DD made them knowing that he DD had no entitlement to retain that money for his own benefit.

88. We do not find against DD that:

(1) He knew in September or at any relevant time in 2014 or 2015 that BH was an Unauthorised Agent.

(2) He knew what work BH had done for LUFC beyond knowing in general terms that he had done something in connection with the McCormack Transfer for which Leeds had agreed to pay BH £250,000.

Procedure for deciding penalties

89. The conclusion is that all three respondents are guilty of breaches of the FA Rules and/or the FA Agents Regulations as charged: Leeds United Football Club Limited and Mr Derek Day by admission of the charges and Mr Massimo Cellino by this Regulatory Commission's findings on the evidence after he had pleaded not guilty.

90. The Regulatory Commission notified that conclusion and our reasons to the parties on 11 October 2016. All parties were given the further opportunity of making submissions on penalties after having an opportunity of considering our conclusion and reasons. The parties made written submissions during the week ending Friday 21 October 2016. The Commission had directed on 14 October 2016 that such submissions and any further hearing in the LUFC/Cellino cases should be dealt with together but separately from submissions and any further hearing in the Day case. LUFC and Mr Cellino chose not to have a further hearing and in their cases the question of penalties was dealt with on written submissions. In Mr Day's case his counsel and the FA's counsel made written submissions followed by oral submissions at a videoconference hearing with the Regulatory Commission on Friday 21 October, attended also by Mr Day personally. It followed from the direction given on 14 October 2016 that neither Leeds nor Mr Cellino had been invited to take part in that hearing, and they did not.

91. The Regulatory Commission then informed the parties that we should issue a single overall decision, with our reasons, on the charges and the penalties. There was no objection by the parties to that course, although the proceedings in the Leeds/Cellino

cases will otherwise continue separately from the Day proceedings (in particular, for the purposes of any appeal) until any further order.

Penalties: The Regulatory Commission's approach

92. The Regulatory Commission has the following powers under Regulation 8 of the Regulations for Football Association Disciplinary Action:

> *8 PENALTIES*
>
> *8.1 The Regulatory Commission shall have the power to impose any one or more of the following penalties on the Participant Charged:*
>
> *(a) a reprimand and/or warning as to future conduct;*
>
> *(b) a fine;*
>
> *(c) suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of matches;*
>
> *(d) the closure of a ground permanently or for a stated period;*
>
> *(e) the playing of a match or matches without spectators being present, and/or at a specific ground;*
>
> *(f) any order which may be made under the rules and regulations of a Competition in which the Participant Charged participates or is associated, which shall be deemed to include the deduction of points and removal from a Competition at any stage of any Playing Season;*
>
> *(g) expulsion from a Competition;*
>
> *(h) expulsion from membership of The Association or an Affiliated Association;*
>
> *(i) such further or other penalty or order as it considers appropriate.*

93. We disregard (d), (e), (g) and (h) in this case, which are all clearly inapplicable or inappropriate. However, all the other available penalties under Regulation 8 have been considered. Apart from the specific types of penalty in (a) to (c) and in (f), the terms of (i) give a very wide discretion to the Regulatory Commission so as to achieve the purpose of the FA Rules and regulations governing the conduct of the Participants.

94. The parties have cited the following published decisions of FA Regulatory Commissions and Appeal Boards concerning disciplinary penalties for football agents and clubs in relation to agency activities: *The FA v Phil Smith & Wycombe Wanderers* (Regulatory Commission 26 April 2014 and 23 May 2014, Appeal Board 11 July 2014); *The FA v Abu Mahfuz & Sunderland Athletic FC* (Regulatory Commission 25 May 2014); *The FA v Kleinman & Levack* (Regulatory Commission 16 February 2015, Appeal Board 19 May 2015); *The FA v Arsenal FC & Middleton*, 22 October 2015). This is a small number of cases with widely varying facts.

95. The Regulatory Commission has given careful consideration to every one of those cases. No one has suggested that they are binding precedents, which they clearly are not. We do accept the principle that penalties for particular offences must be broadly in line with any clearly established range of penalties for truly comparable cases, but we see no such established range which should inhibit us from imposing the penalties on which we have decided in this case. Fair and proportionate penalties should be imposed in each case based on its own particular facts and circumstances, and that is what we have done here.

96. The Regulatory Commission has taken into account all the information and all the submissions put before us. That includes giving due weight, where appropriate, to the particular circumstances of the corporate and individual respondents and how they might be affected by penalties imposed by this Regulatory Commission. However, we also make clear that by far the main factor in deciding the fair penalties is the nature and circumstances of the offence committed and the part played by each person in those offences.

97. Before turning to the penalties for each of the three respondents, we briefly note the positions of Mr Barry Hughes and Mr Graham Bean. All parties recognise that BH is entirely outside the jurisdiction of the Football Association and for that matter the Scottish Football Association. No one has suggested that his immunity has any mitigating effect on the penalties for any of the three respondents charged. It plainly does not. As to GB, it is no part of this Regulatory Commission's task to express any opinion on the decision not to charge GB and certainly not any view on the likely outcome if he had been charged. His involvement can have a bearing on the relative

responsibilities and degrees of culpability of the three respondents who have been charged (a matter we have already discussed above). But although we can easily understand how those who have been charged may feel it is unfair that they are being punished while GB has not even been charged, it is irrelevant to the determination of the penalties for their own breaches.

98. LUFC/Cellino have submitted expressly through their counsel that "it is relevant to any sanction that one party centrally involved in the wrongdoing (GB) has altogether escaped punishment". We disagree: As far as penalties for their breaches are concerned, it has no more relevance than the fact Mr Barry Hughes is free of any disciplinary comeback.

99. We record that the members of the Regulatory Commission have read every word of every submission made in relation to penalties and mitigation and weighed them all (as we did on the charges in the first phase of these proceedings). We are not going to inflict a line-by-line analysis of every point on the parties or on anyone else interested in this case, but the absence of specific mention of any point does not mean that it has been overlooked.

Ms Massimo Cellino - Penalties

100. We have considered all the points of mitigation made on behalf of MC in his counsel's written submission on penalties. A summary of those points and our views is:

(1) We take full account of our own finding that MC did not know that BH was an Unauthorised Agent and was not reckless or wilfully blind on that point. But his knowing and deliberate culpability for the sham Scouting Agreement is clear.

(2) To suggest that MC was not the controlling mind behind the principal breach, but that it was GB, is simply unrealistic. We are not going to repeat our findings above. MC was the boss, he called the shots, while leaving the details and the legwork to others, and he knew that this was a sham arrangement to deceive the FA and cover up breaches of the FA Rules. Whatever influence GB might or might not have had, MC indisputably had the power to say yes or no to going ahead with the entire dishonest arrangement. He said yes.

(3) MC's counsel submits that MC arranged for GB to act as a consultant "precisely because MC wanted to ensure that LUFC complied with the relevant football rules which were new to him due to his short time in English football". It is said that MC placed GB in a position of trust and was dependent upon him and that GB abused that trust yet has not been charged. But if MC genuinely wanted to ensure that LUFC complied with the rules, he would not have gone ahead with the Scouting Agreement when he knew (as he did) that it would be a breach of the rules. Moreover, it was not some technical breach. It was, as MC knew, a sham to present a dishonest picture to the FA.

(4) It is true that GB also had a responsibility to ensure compliance with the FA Rules but to describe the role of GB as "more serious than that of MC" completely glosses over the salient fact that MC was the chairman of LUFC and GB, though technically a consultant, was in practical terms in the position of an employee. It was he who was following MC's orders, even though the right thing would have been to refuse.

(5) Overall, MC's attempt to shuffle responsibility from himself on to GB does him no credit in a matter where his credit is plunging already.

(6) While the Regulatory Commission accepts that MC had no real idea of the relationship between BH, DD/ Shadow Brands and Mark Donaghy/Arena Sports Management, it makes no difference to MC's culpability. Whatever the precise set-up as far as all those people were concerned, we simply refer back to our clear findings about his conduct in relation to BH's fees, the Scouting Agreement and knowing breach of the FA Rules.

(7) It is said that MC/LUFC would not have used an Unauthorised Agent had they known that BH was unauthorised, so if GB had done his job properly there would never have been a breach of the FA Rules and none of this would have happened. That is about as weak a point as any made on behalf of LUFC/MC in this case. The Regulatory Commission will suppress its scepticism that MC himself would have rejected out of hand the possibility of dealing with an Unauthorised Agent and will assume he would have done. But by the time he got to the September meeting, the situation was as it was and he dealt with in a blatantly dishonest way in breach of the FA Rules.

(8) We give credit for MC's previously clean disciplinary record, we acknowledge his last-minute expression of regret in his counsel's 20 October 2016 submission and

recognise the recent positive steps taken at LUFC (which we consider further when we come to the penalty for LUFC).

(9) We do not give credit for MC's claimed assistance to the FA in its investigations. He did attend a two-hour interview with the FA on 7 May 2015 but he lied on material points at that interview and in his evidence at the hearing before the Regulatory Commission.

(10) His counsel says that MC was not the main beneficiary of the wrongdoing and that there was no financial victim. What seems to have happened is that in return for his agreed fee of £250,000 BH had worked successfully in some way that we do not know to get LUFC a very good transfer fee for the player RM, so that LUFC did benefit from the initial agreement made with him by MC. But the point is not whether MC benefited or whether or not there was an identifiable financial victim. This was a serious and deliberate undermining of the FA's regulation of football agents. Then as now that was a key and notoriously problematic area of football activity, presenting enormous challenges for the football authorities both domestically and internationally.

(11) MC says that GB has pursued a bitter personal vendetta against MC and both LUFC and MC have already suffered reputational damage. We have already sufficiently stated our findings on GB's attitude toward MC. As to LUFC/MC reputations, we are not going to offer any repair by mitigating what we otherwise find to be the fair penalties. It is now up to them to repair their reputations.

101. We regard Mr Cellino's misconduct as very serious indeed. He was and is the chairman of a major professional football club which has known glorious success (and may do again). He actively and knowingly perpetrated, with others, a dishonest sham to mislead the Football Association and deliberately disguise breaches of the rules by Leeds United FC in connection with a £10 million plus player transfer. It was not a simple spur-of-the-moment decision. His role was central. He was unquestionably the man in charge at Leeds United. Knowing that what was being planned was in breach of the rules, there was time to cool off and rethink before Mr Cellino signed the Scouting Agreement. But he went ahead knowing it was a sham.

102. It is apparent from the points we have examined in the previous paragraph that there is very little that can be accepted in mitigation and that the attitude MC has adopted throughout these proceedings and in attempted mitigation does him no credit.

103. We order the following penalties against Mr Massimo Cellino, in summary:

(1) £250,000 fine.

(2) With effect from 1 February 2017, he will be suspended for 18 months from being a director or shadow director of Leeds United Football Club Limited or any other company whose activities include any ownership (whole or partial) or operation of any football club playing at any level in the National League System. (The deferral until 1 February 2017 is to allow a short transitional period to make the necessary legal and practical arrangements.)

(3) By 30 April 2017 he is to attend and complete to the satisfaction of the Football Association an education programme covering the duties and responsibilities of an owner and director of an English professional football club including duties and responsibilities under the FA's rules and regulations (the details of such training course to be provided to Mr Cellino by the FA). On this point, we refer to paragraph 133 below.

Leeds United Football Club Limited - Penalties

104. LUFC and MC submit that the penalties for each of them should take account of the penalties imposed on the other.

105. It is said that the charges against both parties are based upon exactly the same facts. That is broadly correct, though there is the difference in the result that LUFC has pleaded guilty to the breach of J.1 of the Agents Regulations by using and paying for the services of an Unauthorised Agent whereas those admitted charges are not part of our findings of breach against MC. What we have said in paragraph 75 should also be noted here. The club LUFC and the individual MC are separate Participants under the FA's jurisdiction and each had their own obligations to observe the FA's rules and regulations. The facts relevant to penalty include the positions of each: The club LUFC is to be held responsible for the actions of its officers,

employees and other agents. Mr Cellino is to be held responsible for his personal actions.

106. It may be unusual for the FA to bring charges against both a club and its executives for related breaches of the rules but it is neither unprecedented nor objectionable in principle. It is complained that the FA has not provided any explanation for pursuing both LUFC and MC. The Regulatory Commission does not see why the FA should have offered any explanation. By bringing charges against both LUFC and MC, the FA was making clear that it alleged breaches by each of them, and it has succeeded in making good those allegations.

107. It is said that there is a risk of unfair double jeopardy if the charges are completely divorced for sanction purposes. We do not see "double jeopardy" as the appropriate label but we do accept that we should not completely divorce the charges for sanction purposes. We do have regard to the fact that in substance, though not actually, LUFC's money is largely MC's money. In setting the level of fine, we have in mind that if charges had been brought only against the club LUFC, so that it would have been held solely responsible for every aspect of the charges including every aspect of Mr Cellino's dishonest conduct, we should have imposed a higher fine than the £250,000 which we are ordering against LUFC. Correspondingly, if only Mr Cellino had been charged, on the footing that as the owner of LUFC he was to be made to carry the can of any financial penalties arising out of all these disgraceful events, he could realistically have expected a higher fine. This does not mean that we accept that LUFC and MC are to be treated as one. What we have said in paragraph 105 makes clear that we do not.

108. That is also an answer to the LUFC/MC submission that as all the charges against them arise out of the same course of conduct/dealings, a "global" sanction order is appropriate. In support they cite the Regulatory Commission decision of *The FA v Phil Smith and Wycombe Wanderers Football Club* (20 May 2014). That was a case in which the same three charges were brought against the club and the agent. That Regulatory Commission did say expressly that it was making a "global" sanctions order against both the Participants. However, while it imposed single combined penalties for all three charges, rather than separately for each charge, the

penalties against the club and the agent were separate and different. We are also going to impose a single penalty for the two separate charges against LUFC, but whatever precisely is meant by "global" sanctions we are going to order penalties against LUFC and Mr Cellino which in each case reflect their responsibility and culpability for their breaches as charged. That earlier Regulatory Commission decision turned on its own facts. In any case we are confident that our approach is correct in principle and in practice.

109. LUFC/MC make the further submissions that it is disproportionate and counterproductive to levy a substantial fine upon an already impecunious club, mentioning also that LUFC is a Championship club and that any penalty must be a proportionate punishment to clubs of that level and income. We are not at all sure what is suggested by the word "counterproductive", unless it is being said that a substantial fine would do more harm than good to the game of football and the effectiveness of the FA's regulation of agents (a suggestion we should reject). We have been given very little evidence of LUFC's claimed impecuniosity and stress that we can only act on evidence together with facts so well-known to a Regulatory Commission that we do not need evidence. So of course we know that Championship clubs do not enjoy anything like the riches of Premier League clubs. Leeds United has been out of the Premier League for 12 years, has since been in and out of League One and is not riding high in the Championship (though as we write it had just got as far as the quarter-finals of the EFL Cup, though no further as it turned out). We also know that clubs such as Leeds United are likely to have at least some players whose annual wages run into hundreds of thousands of pounds, with a total player wage bill running to several million pounds a year, that they sometimes buy and sell single players for millions of pounds and that in any year they are likely to pay at least hundreds of thousands of pounds to football agents. Accordingly, despite the dearth of specific information about LUFC, the financial context of clubs at LUFC's level offers a useful context and perspective.

110. We are informed in counsel's submissions on penalty, and accept, that LUFC is in substantial debt, including a debt to a former owner of LUFC secured in the sum of £16.95 million. However, we do not know any more than that and have not been given financial statements of LUFC or any other information; and it is outside our

task to go trawling for additional information. What we do know is that the McCormack transfer was for a fee of £10.75 million and that Mr Cellino was prepared for LUFC to pay (as of course it did pay) £250,000 for agency services of BH on that single transaction. We know that the McCormack transfer was considerably bigger than a typical transaction for LUFC. We are not matching the fine to BH's fees – the figure of £250,000 is coincidental. The point is that the level of financial activities of a club like Leeds is such that a fine at the level of £250,000 for such a serious offence cannot be regarded as unfairly disproportionate. Much lower would become an almost insignificant item, or at least a not strongly punitive and deterrent element, in the overall scheme of things for a club at its footballing and financial level.

111. Reflecting the point mentioned in paragraph 98 above, LUFC also submit that any unfairness of the penalty against the club would be aggravated by the fact that GB has not been charged by the FA for any offence. It asks that to the extent that the Regulatory Commission has found LUFC liable for GB's dishonesty, we should entirely discount GB's portion of fault from any sanction on LUFC for the breach of Regulation C.2. However, while we see that as a club LUFC was badly let down by both MC and GB, it must be held responsible for the actions of its human agents. As we have already made very clear, it is the dishonest decisions and actions of its President/Chairman MC which were the main driver of LUFC into participation in the dishonest sham arrangements. GB irresponsibly allowed himself to be a tool in those arrangements and was knowingly part of the dishonest sham. But through MC and GB the club became a knowing participant and is to be held fully responsible.

112. The Regulatory Commission has considered but decided against any sporting sanction (for example, a points deduction). The fact that its particular breaches did not relate directly to sporting matters is not a decisive reason against sporting sanctions, though it does mean here that there should be clear reasons why non-sporting sanctions are an inadequate penalty. We do not see such clear reasons and in our view a substantial fine is sufficient to mark these offences.

113. In deciding the level of fine, we give full recognition to recent improvements made by LUFC: It has created the new position of Chief Executive Officer and has appointed to that post Mr Ben Mansford, a qualified lawyer who has also worked as a

Licensed Agent. It is also actively searching for a suitable person to fill another new position of Club Secretary (a post which LUFC say did not previously exist, even if it was in reality a significant part of GB's responsibilities). While those are obviously welcome improvements, they are only minor points in judging the penalty for these breaches committed by LUFC in 2014.

114. We note LUFC's previously clean disciplinary record, a matter to be given some slight weight in its favour. We also give very slight weight to its admission of the charges on 9 September 2016, which was less than a week before the hearing started on 15 September 2016. For reasons already indicated above in our discussion of Mr Cellino's position we reject LUFC's submission that "LUFC and its officials (including MC) fully cooperated with The FA, at all times, in investigation and prosecuting the Charges".

115. We accept that there is no need to add an element of specific deterrence directed at LUFC itself. That is not so much because of its assurances that the improvements made at the club will ensure that the mistakes (as LUFC labels them) will not happen again as because it must know that with these breaches now on the club's record, any further breaches would risk very severe penalties. However, it is important that the penalties against LUFC are sufficiently strong to deter all clubs from similar breaches. We are not making a calculated addition for that purpose but we are consciously avoiding any softening of the penalty which might weaken its force as a deterrent to all clubs.

116. There are various guidelines applicable to penalties for other types of breach of FA Rules and regulations. Some of those guidelines indicate very much lower penalties for Championship clubs than for Premier League clubs. This Regulatory Commission is not bound by any guidelines and does not regard those other guidelines as applicable by analogy. We are to exercise our judgment on the penalties for these offences by these Participants**.**

117. The Regulatory Commission dismisses LUFC's proposal that any financial sanction should be suspended. We see no realistic justification for such a weak form of penalty. The combined breaches by LUFC require a substantial immediate fine, and £250,000 is fair.

118. We also consider that the improvements made by LUFC in its own management structure would be usefully supplemented by an order which will ensure as far as possible that directors of LUFC improve their knowledge and understanding of their duties and of the regulatory system applicable to clubs, intermediaries (as football agents are now designated under the *FA Regulations on Working with Intermediaries* ("the Intermediaries Regulations") which replaced the Agents Regulations from 1 April 2015. The FA already has experience of arranging education programmes for Participants as required for Aggravated Breaches of FA Rule E3(1).. There is no practical reason why the FA would not be able to arrange a training programme for football club directors. It may well be that LUFC could itself build on the recent improvements in this way but rather than leave that as a voluntary step for LUFC, the seriousness of the breaches in this case justifies an order that the club should cooperate with the FA. Moreover, while strictly this order is part of the overall penalties for LUFC's misconduct, the overall effect should be seen as beneficial to LUFC. The specific order is set out at the very end of this decision, where we set out all the penalties.

Mr Derek Day - Penalties

119. We have already set out in some detail our findings on Mr Day's participation in the sham Scouting Agreement. We accept that the main drivers of the arrangements were Mr Cellino, willingly aided by GB despite his initial short-lived reluctance, and BH. It is also clear that GB was far more experienced than DD in football matters generally. Both MC and BH were forceful personalities. It is clear that neither GB nor DD was tough enough to stand up to them and refuse to become involved in what they both knew was a dishonest scheme.

120. However, while recognising all that, we come back to the fact that DD was an Authorised Agent, a status which gave privileged rights and opportunities in a potentially very profitable line of business. In return an Authorised Agent accepts being bound by the FA Rules. The FA's system of regulation of football agents which was in force through the Agents Regulations up to 31 March 2015 was

designed to protect players, clubs, Authorised Agents themselves and others (one clear effect being to protect and enhance the benefits of being an Authorised Agent). The purpose of the Intermediaries Regulations is the same. While the Regulatory Commission does not go quite as far as the FA's submission that Mr Day's misconduct in this case was right at the top of the scale, that is only because we can unfortunately see room for even worse cases which will need to be dealt with if and as they arise.

121. For an Authorised Agent to be a knowing and active participant in deliberate sham arrangements designed to deceive the FA in its regulatory capacity is very serious misconduct. While the Appeal Board decision in *The FA v Kleinman & Levack* (21 April 2015) is no more to be treated as a precedent because the chairman of this Regulatory Commission was also the chairman of that Appeal Board, we unanimously endorse the following statement of principle in that decision: It can only be in the most exceptional circumstances that an agent or intermediary who has sought to mislead the Football Association by a dishonest breach of the regulations will not receive an immediate suspension.

122. The question is therefore whether there are such exceptional circumstances here. In considering this question, it should be stressed that any such exceptional circumstances must relate mainly to the circumstances of Mr Day's misconduct and not to his own personal circumstances unrelated to the commission of the offence. That does not mean that we completely disregard what we have been told about his personal circumstances and the effect that potential penalties may have upon him and his family. We give due weight to everything put before us. But the penalty must adequately reflect the seriousness of the offence. The circumstances of the offence are much more significant than the particular current circumstances of the offender.

123. It is relevant that in September 2014 that DD was inexperienced. He had only been a football agent less than a year. However, that is not a big point in mitigation. Leaving aside that football agents worth their salt are expected right from the beginning to be tough enough to stand up for themselves and their clients, the moment you become an Authorised Agent you have accepted the rules; and it did not take experience to know that active involvement in a dishonest scheme of this nature was a

very serious offence which undermined the integrity of the regulatory system to which he had signed up.

124. We know that any immediate suspension (as opposed to one which itself suspended on conditions) is likely to be seriously damaging to Mr Day's business and to his financial position. The members of the Regulatory Commission also know particularly, without the need for specific evidence in this case, that agents' (now, intermediaries') representation contracts with players are liable to automatic termination if the agent/intermediary is suspended for however short a time. Whatever developments there have been in Mr Day's football agent business since September 2014, it is unrealistic to suppose that Mr Day did not know then that if found out and charged for his part in the Scouting Agreement arrangements, he was at very serious risk of an effective suspension and that the financial consequences could be very heavy. If they are heavier in their practical impact than he might then have contemplated, that was a risk he took.

125. Taking full account of everything put before us about Mr Day's circumstances and the potential effect of an immediate suspension, we do not find exceptional circumstances to justify relieving him of that type of penalty.

126. We do not need to add anything as a deterrent to Mr Day himself or others. As we judge that an immediate suspension is required to mark the seriousness of Mr Day's offence, that should itself act as a deterrent for others who might be tempted into similar misconduct.

127. We order an overall suspension of Mr Day as an intermediary for a period of 18 months, with 11 months of that suspension being itself suspended for two years and only to come into effect if before 6 December 2018 he commits a further breach of the FA Rules and regulations. The 7 months immediate suspension will start on 6 December 2016 and will therefore end on 5 July 2017.

128. Mr Day will also be fined £75,000. We have found that he retained some £69,000 for his own benefit. His submissions on penalty referred to his work for Leeds and expenses incurred under the Scouting Agreement, claiming that once that money was deducted from the £69,000 there was little if anything left. We reject that

view. We have found no clear evidence of services and expenses which would make any serious dent in the £69,000. At the videoconference hearing on 21 October 2016 we were told that the player Erwin had gone to LUFC on a free transfer, which we were invited to infer was therefore a significantly valuable service provided to LUFC by DD. While the Regulatory Commission is prepared to accept that specific piece of information, even though not strictly supported by evidence, we nevertheless have only the vaguest picture of the Erwin transfer, DD's role and the money involved; and we are not going to speculate.

129. We do not reach the figure of £75,000 by detailed arithmetic, which would be the wrong approach, but some broad assessment is fair. On the evidence before us, we have concluded that the net financial benefit to DD from the payments made under the Scouting Agreement was £69,000. If we do allow a £5,000 deduction for DD's work and expenses on actual scouting work during the period of the Scouting Agreement, which is generous given that there is no solid evidence to support such work and expenses, he has still had a benefit of £64,000 in round terms. We presume that income tax would have been paid somewhere along the line, whereas this fine will not be a deductible expense for income tax purposes. Mr Day has therefore had some net benefit of tens of thousands of pounds from the sham transaction at the heart of this case. In a real sense, therefore, the true fine is less than half of the £75,000. An overall fine of £75,000 is therefore not at all harsh to mark such a serious offence. The relatively modest level of what we describe as the true fine is only because we see the immediate 7 month suspension as the main penalty and do not find it necessary to add a very large fine to the likely severe (though indeterminate) financial impact of that suspension.

130. We have been given sparse information about DD's financial circumstances. We are told, without solid supporting material, that even a fine of the order of £10,000-15,000 would be difficult for him to pay and would seriously affect him and his family. Obviously his 7 months' suspension as an intermediary is likely to make things much harder for him and even without more solid evidence we accept that a fine of £75,000 will probably be very hard indeed to meet. However, we also need to set a level of fine with regard to the financial level of the activities in the course of which his offences were committed. There is also the fair principle that it was up to

Mr Day to think about the potentially heavy consequences before he committed the breach: see *FA v Kleinman & Levack* Appeal Board decision (21 April 2015).

131. The Regulatory Commission has taken account of DD's previously clean disciplinary record, though also noting that it was only a short time into his career as a football agent before he sullied that record by these offences. In the light of his persistently false version of his own participation, continuing into his oral evidence at the September hearing, we give no credit for his early plea of guilty. While it is true that information provided by DD has been useful to the FA in piecing together what happened, that information had to be largely dragged out of him and he continued right up to and throughout the September hearing both to give a distorted version of the truth and to be resistant to giving full information and answering questions about BH and payments to BH.. Accordingly, while we make due allowance for all possible reasons behind DD's reluctance to give the whole picture, his predicament stems from his own serious misconduct in the first place. He was justified in his complaints and concerns about leaks to the media but we do not see that as having any significant bearing on his responsibility for his misconduct as charged or on the question of penalties.

132. We therefore do not see DD as entitled to credit for assisting the FA. However, although he has admitted the breach of FA Rule F3, particularly by failing to provide full unredacted bank statements, we do wrap up the penalty for that breach together with the penalties for his breaches of FA Rules C.2 and H.13. While refusal to provide information to the FA in breach of rule F3 is a far from trivial matter, in the particular circumstances of this case we see no need to impose a separate penalty and regard that breach as also sufficiently punished by the suspension and the single fine of £75,000.

Regulatory Commission order

133. The order of this Regulatory Commission is:

(A) Leeds United Football Club Limited, as a single combined penalty for its admitted breaches of Regulation C.2 and J.1 of the FA *Football Agents Regulations*:

(i) is fined £250,000;

(ii) must cooperate fully with the Football Association so as to ensure that as soon as practicable:

- every current director of Leeds United Football Club Limited; and
- on his or her appointment at any time before 1 July 2017, every future director

of Leeds United Football Club Limited attends and completes to the satisfaction of the Football Association an education programme covering the duties and responsibilities of an owner and director of an English professional football club including duties and responsibilities under the FA's rules and regulations (the details of such training course to be provided to Leeds United Football Club Limited by the FA).

(B) Massimo Cellino, for his proven breach of FA Rule E3(1):

(i) is fined £250,000;

(ii) with effect from 1 February 2017, will be suspended for 18 months from being a director (as defined in section 250 of the Companies Act 2006) or shadow director (as defined in section 251 of that Act) of Leeds United Football Club Limited or any other company whose activities include any ownership (whole or partial) or operation of any football club playing in any competition sanctioned by the Football Association;

(iii) with immediate effect and until the expiry of his suspension under (ii) above, must not exercise any shareholder voting rights or any other rights or powers which he has in relation to Leeds United Football Club Limited in favour of the appointment of any person connected with him (as defined in section 252 of the Companies Act 2006), though he is not required to take any steps to remove any existing director so connected with him; and

(iv) before 30 April 2017 or such later date as agreed with the Football Association is to attend and complete to the satisfaction of the

Football Association an education programme covering the duties and responsibilities of an owner and director of an English professional football club including duties and responsibilities under the FA's Rules and regulations (the details of such training course to be provided to Mr Cellino by the FA); and if he has still failed to attend and complete such a programme by the end of his suspension under (ii), that suspension and the consequential order under (iii) above will continue until he has done so.

(C) Derek Day, as a single combined penalty for his admitted breaches of Regulations C.2 and H.13 of the Football Agents Regulations and FA Rule F3:

(i) is fined £75,000;

(ii) with effect from 6 December 2016, for a period of 18 months will be suspended from all Intermediary Activity and his registration under the *FA Regulations on Working with Intermediaries* will be suspended PROVIDED THAT the last 11 months of this suspension will only take effect if he commits any misconduct under FA Rule E.1 before 6 December 2018 which is admitted or found proven in proceedings before an FA Regulatory Commission and then either not appealed by him or upheld by an FA Appeal Board. (This 11 months part of the suspension, if it does come into effect, is part of the penalty for Derek Day in these proceedings. It is not part of any penalty for any future misconduct, which will be entirely a matter for the Regulatory Commission and any Appeal Board dealing with that misconduct).

(D) All three Participants forfeit their £100 personal hearing fees.

(E) The costs incurred in relation to the holding of this Regulatory Commission shall be paid:

- One-half by Massimo Cellino;

- One-quarter by Leeds United Football Club Limited;
- One-quarter by Derek Day

134. The order of this Regulatory Commission, as it stands, only applies to England. Worldwide extension of these sanctions (in practical terms, the suspensions and related provisions in the cases of Mr Cellino and Mr Day) requires a request by the Football Association to FIFA under Article 136 of the FIFA Disciplinary Code (2011 edition). That extension would be necessary to cover Scotland, which is a separate football jurisdiction under the Scottish Football Association (and similarly for Wales and Northern Ireland). The making of such a request to FIFA is for the FA and not for the Regulatory Commission. We note only that under Article 136, where the infringement (breach) is serious, it is mandatory for the FA to make that request to FIFA. The infringements (breaches) in this case are plainly serious so that an FA request to FIFA under Article 136 must follow. It will then be for FIFA to decide whether or not to approve the requested worldwide extension.

Nicholas Stewart QC
Chairman

Gareth Farrelly

Paul Raven

5 December 2016