

In the matter of Commission proceedings brought by the Premier League Board under the Premier League Rules against Hull City Tigers Limited

DECISION

Introduction

1. This is the unanimous decision of the Commission comprising John Machell QC (Chairman), Daniel Alexander QC and Steve Stride appointed pursuant to Rule W.21 of the Premier League Rules (“**the Rules**”).
2. The decision relates to a Complaint dated 9 March 2017 made by the Board of the Football Association Premier League Limited (respectively, “**the Board**” and “**the Premier League**”) against Hull City Tigers Limited (“**the Club**”) pursuant to Rule W.23.
3. The Club was a member of the Premier League during the 2016/17 season. The Club was promoted from the Football League at the end of the 2015/16 season, but relegated at the end of the 2016/17 season.
4. The Complaint concerns a particular aspect of the Club’s ticketing arrangements for the 2016/17 season, namely, whether the Club has breached Rule R.8 by failing to make concessionary ticket prices available for senior citizens and junior supporters.

The constitution of the Premier League and the Club’s status

5. The Premier League is a company. Each of the teams that play in the Premier League competition in a particular season is a shareholder in the company. The relationship between the Premier League and the clubs is governed (inter alia) by Articles of Association (which we have not seen) and the Rules.

6. Rule B.15 provides:

“Membership of the League shall constitute an agreement between the League and Club (both on its own behalf and on behalf of its Officials) and between each Club to be bound by and comply with:

B.15.1. the Laws of the Game;

B.15.2. The Football Association Rules;

B.15.3. the Articles;

B.15.4. these Rules;

B.15.5. the statutes and regulations of FIFA”

7. Rule RA.7 provides that: *“These Rules shall be governed by and shall be construed in accordance with English law. Strictly without prejudice to the arbitration and other dispute resolution provisions of these Rules, disputes relating to these Rules shall be subject to the exclusive jurisdiction of the English courts.”*

8. At the end of a season, each demoted club ceases to be a member of the Premier League and transfers its one share to a promoted club: Rule B.6. So, the Club acquired a share in the Premier League on promotion prior to the 2016/17 season and has now transferred that share to one of the promoted clubs which will play in the Premier League in the 2017/18 season.

The disciplinary and dispute resolution provisions

9. The Rules contain detailed provisions relating to the operation of the sporting and business aspects of the Premier League and the clubs themselves, including dispute resolution provisions that are set out in Sections W, X, Y and Z.

10. Section W is headed *“Disciplinary”*. Rule W.1 gives the Board power to *“inquire into any suspected or alleged breach of these Rules”* and Rule W.3 provides:

“The Board shall have power to deal with any suspected or alleged breach of these Rules by either:

W.3.1. issuing a reprimand; or

W.3.2. imposing a fixed penalty or other sanction where such provision is made in these Rules;

or

W.3.3. exercising its summary jurisdiction; or

W.3.4. referring the matter to a Commission appointed under Rule W.21; or

W.3.5. referring the matter to The Football Association for determination under The Football Association Rules.”

11. Although Section W is headed “Disciplinary”, it needs to be noted that the scope of the provisions within Section W are not limited to matters that might be regarded as concerning on or off field behaviour or conduct of players or club officials. Section W relates to any suspected or alleged breach of any of the Rules, including as in this case, rules regulating the commercial conduct of the clubs.
12. Section X contains an arbitration agreement that applies to all disputes that arise between the Premier League and the clubs or between the clubs themselves: Rule X.2. We raised the question during the oral hearing on Monday 17 July whether it would have been open to the Board/the Premier League to pursue the complaint otherwise than under the provisions in Section W. It seems to us that, in fact, the Premier League could itself have pursued the complaint by way of arbitration under Section X, but we do not consider that anything ultimately turns on that.

Rule 8

13. Rule R.8 states:

“R.8 Concessionary ticket prices must be made available by each Club for:

R.8.1 senior citizens; and

R.8.2 junior supporters.”

14. R.8 has not previously been the subject of authoritative interpretation. It was first introduced for the 2000/01 season and was approved at the Premier League’s Annual General Meeting held on 9 June 2000. At the time, a new section of the Rules entitled “Customer Charter” was to be included for the 2000/01 season within which Rule R.8 was captured and since its inclusion in the Rules the wording of Rule R.8 has barely changed. The wording of Rule R.8 in the 2000/01 Rules was as follows (the Rule was J.6 at the time): *“Concessionary prices must be available to senior citizens and junior supporters.”*
15. Rule R.8 was introduced following the recommendation of the Government’s “Football Task Force” which was established in 1997 and dissolved at the end of 1999. The Football Task Force was set up to investigate and recommend measures to deal with the public’s concerns on issues including ticket prices and the increasing commercialism in the game. The task force included organisations such as the Football Association, the Premier League and the Football Supporters

Association, as well as respected individuals from football. There is, in our view, no serious doubt that Rule R.8 intended to lay down a requirement to be followed by all clubs on a matter of access to live football which was regarded as important. It also reflected the practice of numerous clubs at the time.

The Complaint, the appointment of the Commission and the procedure

16. The Complaint was made by letter to the Club dated 9 March 2017 attaching a signed Form 28. The complaint was made in respect of the Club's ticketing policy, which is described in greater detail below.
17. The essence of the complaint was that no concessionary ticket prices were being offered at all and was elaborated in the following terms:

"In the Board's view, the Club's ticketing strategy, under which a consistent price is charged for all tickets (dependent on the zone in which the ticket is located), regard less of the age of the purchaser, does not comply with the Rule R.8 requirement to offer concessionary ticket prices for senior citizens and juniors. The position of the Board is that this requirement should be interpreted in a straight-forward manner; meaning that each Club should operate a system where a junior or senior supporter pays less for his/ her ticket than the general admission price in the same area of the stadium."
18. Following the Complaint, the Commission was appointed by the Board pursuant to Rule W.21.
19. The Club's written answer was served on 27 March 2017.
20. A directions hearing was held by telephone on 11 April 2017 and on 26 April 2017 directions were given by the Chairman of the Commission.
21. An oral hearing took place on 17 July 2017. The Premier League was represented by Max Duthie and Edwina Haddon of Bird & Bird, solicitors and the Club was represented by Matthew Bennett and Jennifer Norris of Centrefield, solicitors. Mr Duthie and Mr Bennett made oral submissions and Mr William Bush and Mr Ehab Allam gave evidence on behalf of the Board and the Club respectively.

22. We note that the Club accepts that, in principle, the Board can commence and pursue disciplinary proceedings against a club that was formerly a member of the Premier League in relation to any breach of the Rules that occurred whilst the relevant club was a member of the Premier League.
23. The Club does not, therefore, contend that it has ceased to be bound by the Rule as a result of its relegation and that, consequently, the Commission has no jurisdiction to determine the Complaint.
24. In our view, the Club was right not to advance such a contention. Rule W.23 provides that the parties to proceedings before a Commission shall be the Board and the Club, Manager, Match Official, Official or Player allegedly in breach of the Rules. “Club” is defined in the Rules as an association football club “*in membership of the League*” and there is no reference in rule W.23 itself to a “*Relegated Club*”, which is a term defined in the Rules. But it is obvious that the contract constituted by the Rules (at least for some purposes) continues to bind a club notwithstanding that it has ceased to be a shareholder of the Premier League and we do not think that it can have been intended that the Board could not pursue a complaint against a club after its relegation, at least in a case (like the present) where the Complaint is based on matters occurring whilst the club was a member of the Premier League. Our view in that regard is supported by Rule W.28 in which there is an express reference to proceedings in which the Respondent is a Relegated Club. In our view, therefore, the provisions of Section W continue to apply notwithstanding the Club’s relegation.

The Club’s response to the Complaint

25. The Club denies that it acted in breach of Rule R.8. It advances two contentions, which we explain in more detail below.
26. First, it contends that the Board is barred from pursuing the Complaint in relation to the 2016/17 season by waiver or estoppel.
27. Secondly, it contends that its ticketing scheme was compliant with Rule R.8.

The Club’s ticketing scheme

28. The Club’s ticketing scheme in respect of the 2016/17 season is explained in Mr Allam’s witness statement. Mr Allam is the Vice-Chairman of the Club, a role which he has held since 2010. His role is wide-ranging and involves ensuring the effective practical and financial management of

the Club on a day to day basis, both on and off the football pitch. Along with the Club's Chairman, he is ultimately responsible for taking decisions regarding the Club's infrastructure and its commercial and sporting activities including ticketing policy.

29. The scheme for 2016/17 can be summarised as follows:

- a) There were two parts to the ticketing scheme: the membership scheme and match day tickets.
- b) The membership scheme was a newly devised scheme that involved supporters paying a monthly fee to become a member of the club entitling them to various benefits, including the right to attend home league matches.
- c) For the purpose of calculating the monthly membership fee, the stadium was split into four zones: zone 1 being the cheapest and zone 4 being most expensive. The membership fee within each zone was the same and there was no discount, within a zone, for junior supporters or senior citizens.
- d) A long-term subscription was not required and supporters were free to join or leave the scheme at any time over the course of the year on two months' notice.
- e) Supporters could also purchase tickets on the match by match basis, the price of which depended upon the area of the ground in which seat was located. No discount for junior supporters or senior citizens was given in relation to particular seats or seats within particular areas of the ground.
- f) For match day tickets, priority was given to junior supporters and senior citizens in that tickets in zone 1 were only available to those supporters (and any adults accompanying them) for the first week after tickets went on sale.

30. The rationale for the overall scheme is set out in paragraphs 27 to 46 of Mr Allam's witness statement. It is clear to us from reading those paragraphs and listening to Mr Allam giving evidence that he genuinely and honestly believes that the scheme is in the best interests of both the Club and the community. In particular, the thinking that lay behind this scheme was that, if lower prices were available to all in parts of the stadium, that would enable juniors and seniors to attend matches more easily and would enable adults to do so as well without the need to discriminate between them. This was, in his view, important for a number of reasons including

prevention of fraud or, more accurately, a reduction of the cost of preventing fraud (by adults using junior or senior tickets) providing better access to supporters who came from a less prosperous part of the country and improving the atmosphere in the stadium. There is no doubt that this is an innovative approach. No other Premier League club has adopted it and it has been controversial among fans of the Club, with some adverse comments in surveys about the approach to concessions.

31. We are not in a position to comment on whether it is or is not a good scheme overall or whether it would deliver desirable policy objectives. Our role is limited to considering whether the case advanced by the Premier League that it does not comply with the specific requirements of R.8 has been established.

The issues

32. There are, it seems to us, three issues:
 - a) Is the Board prevented by waiver/estoppel from pursuing the Complaint?
 - b) What is the proper construction of Rule R.8?
 - c) Did the Club breach Rule R.8?

Is the Board prevented by waiver/estoppel from pursuing the Complaint?

33. The Club's case on waiver/estoppel is usefully set out in detail in paragraphs 25 to 61 of its Skeleton Argument.
34. In essence, the Club contends that the Board gave a number of clear indications that, despite being on notice of the Membership Scheme coming into force from June 2016 (and having received significant advance notice of the scope of the same from as early as January 2015), it did not intend to bring a complaint against the Club under Rule W.25 in relation to the application of the ticketing policy for 2016/17.
35. The law in relation to estoppel/estoppel is not in dispute. For the Board to have waived its right to bring the Complaint or to be estopped from pursuing it, the Club must establish that:

- a) the Board made a clear or unequivocal promise or representation by words or conduct that it did not intend to bring a Complaint in relation to the ticketing policy for 2016/17.
 - b) the Club relied on the promise or representation; and
 - c) it is now inequitable for the Board to pursue a Complaint in relation to the 2016/17 season.
36. We make two preliminary points. First, there is no question of any limitation period expiring and so delay by itself is of no relevance. Secondly, it does not matter, in our view, what were the reasons for any delay on the part of the Premier League before the Complaint was made. What matters is whether the Premier League made a clear or unequivocal promise or representation which the Club relied on such that it is now inequitable for the Board to pursue a complaint.
37. The first contact between the Club and the Premier League in relation to what became the ticketing scheme took place in January/February 2015. In the event, the Club was relegated at the end of the 2014/15 season and so played in the football league in the 2015/16 season. The matter arose again in the early part of 2016 in anticipation of possible promotion. By the end of May 2016 (by which time the Club had secured promotion), the issue as to whether the Club intended to offer concessionary priced tickets had crystallised. In an email dated 31 May 2016 Cathy Long of the Premier league asked James Mooney of the Club: *“Do you have any concessionary tickets at all? That’s the main question and potentially the thorny issue!”*
38. On 15 June 2016 James Mooney emailed Cathy Long stating that: *“As per our new membership scheme, no concessions would be available, instead we have significantly reduced the price of adult tickets to try and make football more affordable for all...”*
39. On 28 June 2016 Mr Bush wrote to Mr Alam stating inter alia:
- “While we appreciate that the Club has sought to prioritise reducing average ticket prices across the board, I am afraid that the Club’s currently proposed policy still appears to be in breach of Premier League Rule R.8, which makes clear that reduced ticket prices ‘must’ be offered to senior citizens and junior supporters. This means that the tickets must be offered at a cheaper rate than general admission tickets, rather than simply in advance of those tickets becoming available to the general public.*

... If the Club is unable to demonstrate compliance with Rule R.8 before its tickets go on sale, the matter would be dealt with in accordance with Section W (Disciplinary) of the Premier League rules, with the Premier League Board either exercising a summary jurisdiction to sanction the Club or referring the matter to a Commission to determine whether there has been a breach and, if so, what sanction should be applied.”

40. Mr Allam responded on behalf of the Club by letter dated 5 July 2016. The letter states (inter alia): *“I refute the claim that we have breached the Premier league rule as we are offering concessionary pricing to seniors and juniors and therefore fully compliant.”*

41. There was no response to that letter until 20 January 2017. Mr Bush explained in his evidence why that was so, but, as we have said above, we do not consider that the delay (if that is how it is properly characterised) matters. In our view, there can be no question of the content of Mr Bush’s letter, even if coupled with the lack of response to Mr Allam’s letter of 5 July 2016 and the fact that there was no reference of the Complaint to a Commission, constituting a promise or representation that a complaint would not be pursued in relation to 2016. Mr Bush’s letter makes no such promise and contains no such representation and we can see no basis for treating the fact that (contrary to the suggestion in Mr Bush’s letter) the matter was not dealt with by the Board exercising a summary jurisdiction or referring the matter to a Commission as a clear or unequivocal promise or representation.

42. On 20 January 2017 Jamie Herbert of the Premier League wrote to Mr Allam stating (inter alia):

“As you know, the Premier League’s view last summer (expressed in Bill Bush’s letter to you of 28 June 2016) was that the proposed ticketing policy did not comply with Rule R.8. Notwithstanding this view, there were specific reasons why no action was taken against the Club at that time, not least the fact that owing to the Club’s promotion from the Championship, the proposed policy was only formally notified to us in June 2016, providing limited time for steps to be taken to remedy the situation (or for your contrary interpretation of Rule R.8 to be tested before a Commission).

Rule R.8 remains in place for Season 2016/17 and the Premier League Board has no plans to amend it for Season 2017 /18 (nor has any other Premier League club proposed that the Rule be amended). We expect that with the advent of the new year the Club is now (or will be soon) considering its ticketing policies for Season 2017 /18. With that in mind we thought it prudent to write to you now to seek your assurance that Rule R.8 is being considered by the Club and that the Club intends to amend its current policy to ensure compliance with Rule R.8, with appropriate

concessionary ticket prices being made available next Season. We are obviously aware that the Club's interpretation of Rule R.8 differed from the Premier League's last summer and the Club elected to proceed with its membership policy, notwithstanding that on the available facts the Premier League considered it to be prima fade in breach of its Rules. If the Club remains of this view and does not intend to take any action to amend its current policy, please can you confirm that is the case as soon as possible so that we can consider what steps we wish to take."

43. In our view, this letter does not constitute a clear or unequivocal promise or representation that the Board would not pursue a complaint in respect of the ticketing policy for the 2016/17 season. It is true that the focus of the letter is on the arrangements for 2017/18, but the letter contains no express statement that no complaint would be pursued in relation to 2016/17 and in our view it does not carry such a statement implicitly. It may well have been that, had the Club responded by indicating that it intended to change its ticketing arrangements for the 2017/18 season in a way that complied with the Premier League's reading of Rule R.8, the Board would have decided to take no action in respect of the 2016/17 season. That would have been a matter for the Board; but, in any event, the Club did not respond in that way and, as we say, we do not consider that the letter contains a clear or unequivocal promise or representation in relation to pursuit of a complaint in respect of the 2016/17 season.
44. Mr Allam responded on 30 January 2017 repeating that the Club was compliant with Rule R.8 and asking for a full explanation as to the assertions that it was not.
45. Mr Herbert wrote again on 8 February 2017 proposing an expedited *ad hoc* arbitration to resolve the issue. Again, the focus was on the ticketing arrangements for the 2017/18 season, but, as with the letter of 20 January 2017, we do not consider that it contains an express or implied promise or representation that a complaint would not be pursued in respect of the 2016/17 season.
46. The proposal for an *ad hoc* arbitration was rejected by the Club by an email from Mr Allam dated 8 February 2017 and Mr Herbert wrote again on 27 February 20017. Again, we do not consider that Mr Herbert's letter contains an express or implied promise or representation that a complaint would not be pursued in respect of the 2016/17 season. The Complaint was then made on 8 March 2017.
47. We, therefore, reject the Club's case that the Board is barred from pursuing the Complaint by waiver or estoppel.

48. Our decision in relation to whether there was a promise or representation is sufficient to dispose of the Club's case in relation to waiver/estoppel; but we would briefly add that we do not consider that the Club relied on any promise or representation. We are not convinced that the Club (through Mr Allam) had any belief that the Board had made such a promise or representation and we do not consider that the evidence supports any contention that it acted any differently as a result of any such belief or understanding. Certainly, we can see nothing inequitable in the Board pursuing the Complaint in the way that it has.
49. We make three further points.
50. First, the Club's response to the Complaint describes this issue as one relating to the Commission's jurisdiction. We do not think that that is right. The Commission's jurisdiction is founded in the Rules. The waiver/estoppel argument is properly treated as an argument to the effect that the Club has a substantive law defence to the Complaint, rather than an argument that the Commission has no jurisdiction to determine the Complaint.
51. Secondly, if it is said by the Club that, even if it cannot establish waiver or estoppel, the Commission should not determine the Complaint in the Board's favour because of the events that took place after the Premier League was first on notice of the ticketing policy, then that is a contention we reject. Even if it is right in principle to say that a Commission has power to dismiss a Complaint simply because to proceed with it would be unfair on a club (as to which we express no view), we do not see any proper basis for finding that determining this Complaint on its merits would be unfair on the Club. On the contrary, it seems to us entirely appropriate in all the circumstances to decide whether the Club's ticketing policy in the 2016/17 season was or was not compliant with Rule R.8. It is true that the Premier League took no steps actually to stop the ticketing practice for the 2016/17 season, but it made its position that there was a breach of Rule R.8 clear and the Club had no proper basis for thinking that the Board had promised not to bring a complaint in relation to 2016/17.
52. Thirdly, although we have rejected the Club's case on waiver/estoppel, we note at this stage that we do consider that the way in which matters have developed and the stance adopted by the Premier League, in particular, the focus on 2017/18 in the correspondence from 20 January 2017 is potentially relevant to whether a sanction, and, if so, what sanction, should be applied to any breach by the Club of Rule R.8.

What is the proper construction of Rule R.8?

Introduction

53. Rule R.8 is not drafted in detailed terms and a cursory reading leads to various obvious questions:
- a) Do the tickets for all seats in the stadium need to be offered on concessionary terms or only some? And, if some, how many?
 - b) By how much does a ticket have to be discounted for senior citizens or junior supporters?
 - c) How old does a supporter need to be to count as a senior citizen?
 - d) How young does a supporter need to be to count as a junior?
54. The Club contends that a further issue arises: what is meant by “*Concessionary ticket prices*”?
55. It is clear that the Rules form part of the contract between the Premier League and the clubs, and that (subject to the point raised below) the Rules fall to be interpreted in accordance with ordinary English contractual law principles.
56. Interpretation is the ascertainment of the meaning which the relevant document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract: see *Chartbrook Limited v Persimmon Homes Limited* [2009] 1 AC 1101 at [14]; *Arnold v Britton* [2015] AC 1619 at [14] to [21]; and *Wood v Capita Insurance Services Limited* [2017] 2 WLR 1095 at [8] to [15].
57. If a contractual provision is ambiguous, then the role of the court or tribunal is to choose between the competing constructions and to give effect to the meaning that the court or tribunal considers represents the objective intention of the parties ascertained from the terms of the document read in the light of the admissible background.
58. In some circumstances, the court or tribunal can make that choice by resort to the *contra proferentem* maxim: i.e. the words of a contract are to be construed against the person relying on it or responsible for the document. It is probably fair to say that the authorities do not speak with one voice as to when the maxim applies and, in particular, when it is decisive. But,

even if a difficulty about a point of construction arises, it does not follow that there is a doubt or ambiguity of a type to which the *contra proferentem* rule may be applicable. If conventional canons of construction are capable of resolving the issue, they should be applied. See *PNPF Trust Co Ltd v Taylor* [2010] EWHC 1573 (Ch) at [182]. See also *Morris v Blackpool Borough Council* [2014] EWCA Civ 1384 at [53]. We also note that this approach was taken by the Appeal Committee of British Swimming in the case of David Roberts (decision dated 15 June 2012). At paragraph 33 the Panel said:

“[the principle that] if a doubt or ambiguity cannot be resolved by the preceding principles of construction the document must be construed against the person (in this case British Swimming) putting it forward – is a last resort which is rarely needed. Construction of this Selection Policy is far from straightforward but we have been able to reach a conclusion without going to that last resort.”

59. A similar type of point arises in criminal or other types of case involving the imposition of penalties:

“It is a principle of legal policy that a person should not be penalised except under clear law, or in other words should not be put in peril upon an ambiguity; so the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which subjects a person to any detriment where the legislator’s intention to do so is doubtful, or penalises him in a way which was not made clear by the legislation in question.”

Halsbury’s Laws vol 96 para 1158.

60. We accept that the proceedings before us can, in a sense, be described as “disciplinary”. The proceedings are brought by the Board pursuant to the provisions of a section of the Rules headed “Disciplinary” and the remedies or sanctions set out in Rule W.54 are of a kind that one would expect to see in a disciplinary context. Moreover, the remedies include remedies that can fairly be described as penal in the sense that they are designed to punish wrongdoing without necessarily compensating another party for a loss or disadvantage caused by the wrongdoing.
61. Nevertheless, the Rules contain contractual provisions of a kind that go beyond those that can be said to comprise regulatory obligations in a classic sense. The Rules contain contractual provisions imposed for the mutual commercial benefit of the Premier League and the clubs and

it is clear that Section W permits the reference to a Commission of any suspected breach of the Rules, whether of a classic disciplinary kind or not. Some of the rules are also designed to operate in the wider public interest. R.8 is an example.

62. Whether in these circumstances, it might, in another case, be appropriate to determine a difficulty of construction in favour of a club by reference to the *contra proferentem* rule or the legal policy set out in paragraph 59 above is not an issue that we regard as straightforward. But given the clear view we have reached below, it is not a difficulty that we need explore any further.
63. As distilled at the hearing and in its skeleton argument, the Club's central arguments are as follows:

The impact of Rule R.6 and R.8 in its context

64. First, the Club contends that Rule R.8 is to be interpreted as requiring clubs to establish a reasonable ticketing policy which takes into consideration their own particular circumstances, the purpose and spirit of the Rule and the other relevant Rules including, in particular, Rule R.6. We reject that argument. We agree that, in deciding how to comply with Rule R.8, a club must take into account and comply with Rule R.6, which provides:

“A Club's ticketing policy should:

R.6.1. provide general information to the public about ticket availability and pricing, giving the earliest possible notice of any changes and the reasons therefore;

R.6.2. aim to promote greater accessibility by the adoption of flexible and imaginative ticketing schemes;

R.6.3. facilitate wider access to League Matches by the public by allowing for a broad range of ticket prices, the more expensive effectively subsidising the cheapest;

R.6.4. allow for a reasonable reduction in the price of tickets for seats with a restricted view of the goalmouth;

R.6.5. adopt a system of concessionary ticket prices tailored to the needs of the local community;

R.6.6. give details of the availability of seating for disabled spectators and their carers and the pricing policy in relation thereto;

R.6.7. set out particulars of any membership, loyalty, bond, debenture or similar scheme;

R.6.8. make available a method of payment for season tickets by instalments at competitive rates of interest;

R.6.9. promote the availability of tickets by reserving a reasonable proportion (at least five per cent.) of them for sale to non-season ticket holders;

R.6.10. deal with the return and distribution of unwanted tickets;

R.6.11. include the following provisions in respect of abandoned League Matches:

R.6.11.1. abandonment after spectators admitted to the Stadium but before kick-off - free admission to the rearranged League Match;

*R.6.11.2. abandonment after kick-off - half price admission to the rearranged League Match;
and*

R.6.12. refer to the obligations set out in Rules R.7 to R.12, below.”

65. The fundamental objection to this part of the Club’s argument is, however, that it ignores the specific obligation under Rule R.8 to make concessionary ticket prices available. It is not enough for a club to implement a reasonable ticketing policy or to offer concessionary terms in general. A club must offer concessionary ticket prices.

“Ticket”

66. Secondly, the Club contends that the membership scheme is not a “ticket” at all and so does not fall within the scope of Rule R.8. We reject that contention. It seems to us that the membership scheme, which entitles subscribers to sit in seats in the stadium, is clearly one that involves “tickets”. But even if we are wrong about that, the argument does not assist the Club. First, match by match tickets are clearly tickets. Secondly, in any event, Rule R.8 is mandatory: concessionary tickets prices must be made available. If the Club offer no tickets, then it breaches Rule R.8.

The relevant comparison

67. Thirdly, the purpose and effect of Rule R.8 is that a club is obliged to protect the right of senior and junior supporters to have access at all times to tickets which are discounted as against the maximum ticket price charged by the relevant club for its match tickets.
68. It seems to us that the language and purpose of Rule R.8 are clear and we do not consider that any real difficulty of construction arises. The purpose of Rule R.8 is to ensure that clubs provide tickets to juniors and seniors at prices that are less than those payable by non-senior adults. That is clearly what is meant by the use of the language “*concessionary ticket prices*”. It is true that Rule R.8 does not state expressly against what the price payable by a junior or a senior is to be compared. But it seems to us that that is obvious: the comparison has to be against the price that would be payable for the seat or a seat in the same part of the ground by a non-senior adult. That is the ordinary meaning of a concessionary price. A reasonable reader of Rule R.8 would

understand the idea of a concessionary price to be one that involves a price comparison for the same goods or services and not one that involves a comparison with the price of something else (i.e. not against the seat being bought, but a seat in a more expensive part of the ground).

Concessionary booking period

69. Fourthly, we do not accept the related argument that because juniors and seniors are entitled to purchase tickets earlier than others this amounts to offering “concessionary ticket prices”. Rule R.8 relates specifically to pricing not to terms generally and a construction which enabled clubs to offer no concessionary prices provided that they offered the same prices to juniors and seniors during an advance booking period would not comply with either the wording or the purpose of Rule R.8.
70. In our view, therefore, on its proper construction, Rule R.8 requires a club to make available tickets for senior citizens and junior supporters at a price lower than the price payable by non-senior adults for those seats or seats in the same part of the ground.

Flexibility of interpretation

71. Although it is not strictly relevant to the issues we have to decide, we should perhaps say something briefly about the questions we have identified in paragraph 53 above since the potential flexibility of interpretation of Rule R.8 generally is relied upon by the Club as supporting a flexible interpretation of the requirement that “concessionary ticket prices” must be provided.
72. It is true that Rule R.8 does not state expressly how many tickets must be made available at concessionary prices. It seems to us that there are two possibilities: first, that all tickets must be offered at concessionary prices or, secondly, that a reasonable number of tickets must be offered. Given the way in which the opening words of the Rule are drafted and the absence of an express reference to the obligation being applicable to all tickets, it seems to us that, properly construed, Rule R.8 is more naturally construed as requiring a reasonable number of tickets to be provided on concessionary terms.
73. What is meant in this context by “reasonable” gives rise to a further question.
74. Reasonableness in this context can mean something absolute that is ascertained by a court or tribunal on an objective basis. For example, in a contract for the sale goods, if a price is not

agreed by the parties, the court will imply a term that the price payable is a reasonable price and, in the event of dispute, the court will determine what is the reasonable price.

75. Alternatively, where a term imposes an obligation on a party to do something or make a decision that is “reasonable”, the term may be construed as one that imposes an obligation on the party to act in good faith and in a way that a reasonable party would act. Or, to put the point around the other way, a party acts in compliance with such an obligation provided that it acts in good faith and it does not act in a way that no reasonable party would act. This will usually mean that the party will comply with the contract provided its decision or action is within the reasonable range of decisions or actions; rather than being measured against an absolute objective standard. See *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661.
76. It is not, however, necessary for us to decide this point for the purposes of the present case. There are reasonable arguments on both sides. In favour of the view that the obligation in respect of the number of concessionary tickets to be made available involves a reasonableness obligation of the latter kind is the fact that it is undesirable for a regulator such as the Premier League to be required to second-guess what clubs consider to be reasonable. That is, a club complies with its obligation under Rule R.8 provided that it acts in good faith in deciding how many discounted tickets to make available and the number of those tickets is no less than those that a reasonable club would make available. Similarly:
- a) in relation to pricing, the obligation is satisfied provided that the discount is no less than the discount that a reasonable club would provide;
 - b) in relation to age, the obligation is satisfied provided that the decision as to the appropriate age cut-off for juniors and seniors is a decision that a reasonable club would make.
77. This approach would give the clubs considerable latitude in determining their ticket policies in the light of the provisions of Rules R.6 and R.8, but leaves open the possibility that the Board may challenge a concessionary ticketing policy on the basis that it is a policy that no reasonable club would adopt.
78. However, we would prefer to leave for argument in another case (should such arise) whether the Board or Commission is required by the terms of the Rules to conduct more intensive scrutiny and to consider whether, in fact, a given club’s provision of concessionary prices is or is not reasonable. Adopting such an approach would enable the Board to take a broader view as to

whether certain clubs were doing enough to provide concessionary ticket prices, as compared with others, or by reference to an objective standard.

79. There is a further reason why it is not appropriate to reach a concluded view on this issue. In this case, both the Board and the Club are agreed that Rule R.8 has considerable “play” in it, albeit that there is a dispute as to whether that flexibility extends as far as contended for by the Club. We have not heard argument from others (for example, supporters’ organisations or clubs who operate a more generous concessionary ticketing pricing policy) as to whether the scope for limiting concessionary prices to juniors and seniors in the way that some clubs do is as great as the parties agree is the case here, either as to substance or as to the right approach to review by the Board or a Commission. The approach to specific contractual regulatory rules of this kind is a potentially difficult question. It lies at the intersection of private and public/regulatory law and may require a context-specific answer. It is potentially of wider importance than merely this case. Without full argument on the point and a better understanding of the impact of competing approaches to the application of this and other Premier League rules which may have the effect of giving individual clubs and the regulator respectively more or less leverage (which may or may not be desirable) it would not be right to express a concluded view in this case.
80. For present purposes, it suffices to say that such flexibility as there may be in the application of the rule in other respects does not extend as far as permitting a club to offer no concessionary ticket prices at all.

Did the Club breach Rule R.8?

81. Although we accept that Mr Allam honestly and genuinely believed the ticketing policy to be in the best interests of the Club and the local community and we accept that Mr Allam personally believed that the ticketing policy to be compliant with Rule R.8, the policy was not, in fact, compliant. This is not a case in which the issue is whether the number of tickets offered at concessionary prices was reasonable. The Club did not offer any tickets at concessionary prices within the true meaning of Rule R.8. In our view, a ticketing policy which provides no element of favourable price discrimination with respect to the same seat for any juniors or seniors in any part of the stadium is outwith any reasonable construction of the rule and that, as a result, the Club acted in breach of Rule R.8 during the 2016/17 season.
82. The Club argued that, provided that its ticketing policy complied with a reasonable construction of Rule R.8, the Club did not act in breach of the rule, even if we take the view that the interpretation advanced by the Board is correct. The Club placed reliance on the fact that the

Board bears the burden of proving the complaint on the balance of probability. We cannot accept the submission that it is sufficient for the Club to have acted in compliance with a reasonable interpretation. The Club acted in breach of Rule R.8 unless it acted in a way that was consistent with the proper interpretation. It is not in dispute that the Club did not act in accordance with the interpretation we have decided is the correct one. In any event, we do not accept that the Club's construction is a reasonable one.

General observations

83. Finally, since they were touched on in argument, we make two concluding observations.

Good faith

84. First, the Premier League accepted that the Club had acted in good faith and emphasised the positive contribution made by the Allam family to the Club.

85. Conversely, we do not accept the suggestion that the Premier League sought to tailor its interpretation of the rule to catch the Club but not others. In our view, the Premier League also acted in good faith in pursuing these proceedings including as to the timing of bringing it, although we accept that the Board could have brought it more quickly. The Club was given reasonable notice that the Premier League regarded the Club as being in breach of the rule after the Club made its intentions clear. It was not obviously unreasonable to provide some opportunity in the autumn of 2016 to see whether the matter might resolve itself in the light of a potential purchase of the Club. Nor was it obviously unreasonable for the Premier League to investigate whether other clubs' policies may also need examination before commencing these proceedings. That investigation revealed that, while there was considerable difference in provision, no other club provided no concessionary ticket prices at all. Having said all of that, whether it is fair and appropriate for a sanction to be imposed, given the chronology of events, is a separate matter and one that the Commission will need to consider in the light of further submissions.

Policy considerations with respect to Rule R.8

86. Secondly, as we have noted, Rule R.8 delivers multiple policy objectives in a specific way. Some of these objectives are in the interest of the clubs to ensure that all maintain the standards required. Others are in the interest of fans and to promote the health of top-flight football as a spectator sport of wide appeal. These objectives include, but are not limited to, (i) widening participation in the live viewing of Premier League football, (ii) taking account of the specific

financial and other circumstances of certain groups of fans, against the background of the high prices of many Premier League tickets, (iii) making it easier for long-standing fans to continue to enjoy matches despite a lower retirement income, and (iv) making it easier for adults to take children to matches and for juniors to attend alone. The Commission understands why these objectives are regarded as important and they are likely to be widely shared by those who care about football, its future and its past.

87. These objectives can, doubtless, be achieved in a number of ways but Rule R.8 has prescribed particular requirements for doing so. Moreover, price discrimination in favour of groups which ordinarily have lower income is conventional in many contexts. Whether it is desirable for the Premier League and the clubs collectively to provide greater or lesser flexibility for clubs to deliver these or other objectives other than by the specific mechanism of Rule R.8 (as the Club suggests should be the case, even if it is not now) is not an issue for this Commission to determine. We express no view on it. It is not, in any event, something which an individual club member of the Premier League, such as the Club, may unilaterally decide for itself, if it wishes to comply with the Premier League rules.

Decision: The Commission finds that the Club acted in breach of Rule R.8 in the 2016/17 season because it did not make available any concessionary ticket prices for senior citizens or junior supporters.

20 July 2017