

Mr David Phillips QC, Ms Alison Royston, Mr Ken Brown
7 June 2019

BETWEEN -

THE FOOTBALL ASSOCIATION

Complainant

and

ARSENAL FOOTBALL CLUB PLC

Respondent

WRITTEN REASONS

INTRODUCTION

1. The FA has charged Arsenal with misconduct contrary to FA Rule E20(a) and (b). The allegation is that at its home match against Manchester United FC on 10 March 2019 Arsenal failed to ensure that its spectators conducted themselves properly. The charge letter is dated 14 March 2019. The specific allegation is that after Arsenal had scored from a penalty an Arsenal supporter ran onto the pitch, came into glancing contact with a Manchester United player, and joined Arsenal players celebrating in the vicinity of the Manchester United goal before being detained and removed by Arsenal pitch security. Arsenal has denied the charge, relying on the *due diligence* defence provided by Rule E21.
2. Arsenal declined the offer of a personal hearing. However, as will be seen, both it and the FA have submitted detailed evidence (including two experts' reports) and full, closely reasoned written submissions. The Regulatory Commission met at Wembley on 7 June 2019 to determine the charge. Not only did we review and discuss the written material in

detail, we also viewed a variety of video footage of the incident. For the reasons that we explain below we find that Arsenal has established the *due diligence* defence and dismiss the charge.

THE INCIDENT

3. We take the following description of the incident from the report of Graham White, the FA Safety & Security Advisor, dated 3 April 2019.

3. The incident

I have studied the available footage of the match and perused the documents supplied by the club in defence of the charge.

The charge relates to a single incident of pitch incursion by one Arsenal supporter who enters the field of play in the 69th minute of the match after a penalty goal by the home team. The supporter enters from the East stand (North half), runs across the pitch making contact with a Manchester United player and joins celebrating Arsenal players towards the North/West corner.

The supporter enters from a gangway past two trackside stewards, one of whom makes an effort to apprehend him but fails. He then climbs over the LED advertising boards before continuing.

Four pitch incursion team stewards enter the pitch in pursuit. Two from the East stand, one from the West stand and one off picture from the direction of the South stand. Regrettably the initial reacting steward from the East stand stumbles and falls over the LED boards before pursuing.

Between entry and his apprehending by a steward, the supporters is on the pitch for 14 seconds. All four stewards reach the offender in 21 seconds.

THE CHARGE

4. The charge reads as follows -

Charge

You are hereby charged with misconduct for a breach of FA Rule E20 (a) and (b) in respect of the above fixture.

It is alleged that Arsenal FC ("the Club") failed to ensure that its spectator(s), and/or person(s) purporting to be its supporter(s) or follower(s):

- a) Conducted themselves in an orderly fashion; and/or
- b) Refrained from improper behaviour; and/or
- c) Refrained from encroaching onto the pitch area

5. The circumstances are summarised succinctly in the referee's Extraordinary Incident Report dated 10 March 2019 -

In the 69th minute of the game following a goal for Arsenal, a spectator from the home supporters section entered the field of play and pushed a Manchester United player before joining in the goal celebrations with the Arsenal players. He was quickly apprehended and escorted off the pitch by security before being arrested.

6. FA Rule E20 provides -

20 Each Affiliated Association, Competition and Club shall be responsible for ensuring:

- (a) that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) whilst attending at or taking part in a Match in which it is involved, whether on its own ground or elsewhere; and
- (b) that no spectators or unauthorised persons are permitted to encroach onto the pitch area, save for reasons of crowd safety, or to throw missiles, bottles or other potentially harmful or dangerous objects at or on to the pitch.

7. The *due diligence* defence contained in Rule E21, which is relied on by Arsenal, provides -

21 Any Affiliated Association, Competition or Club which fails effectively to discharge its said responsibility in any respect whatsoever shall be guilty of Misconduct. It shall be a defence in respect of charges against a Club for Misconduct by spectators and all persons purporting to be supporters or followers of the Club, if it can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged.

This defence shall not apply where the Misconduct by spectators or any other person purporting to be a supporter or follower of the Club

included a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassessment, sexual orientation or disability.

THE *DUE DILIGENCE* DEFENCE

8. The *due diligence* defence has been considered by Regulatory Commissions in a number of recent complaints made by the FA. The decisions of those Commissions do not create a strict legal precedent but it is plainly desirable that there should be a degree of consistency in the approach of separate Commissions. We have been referred to the decision of the Commission in the West Ham proceedings. Two aspects of the West Ham decision should be noted. First, the West Ham Commission had been referred to decisions in earlier proceedings against West Ham & Millwall, and against Reading. Second, the correct approach to the *due diligence* defence having regard to those earlier decisions was agreed between the FA and West Ham. Accordingly, although it is open to either the FA or Arsenal to invite us to depart from the approach taken in West Ham, that decision carries a degree of persuasive authority from which we should depart only if we were satisfied that it was right to do so.

9. In West Ham the Commission said (with the typographical error corrected) –

5. It is common ground that the burden of providing the *due diligence* defence rests on West Ham, and that the standard to which that burden must be discharged is the balance of probabilities. It is also common ground that the two limbs of Rule E21 are conjunctive. To bring itself within the rule West Ham must prove *circumstances over which it had no control and all due diligence*. Finally, it is common ground that, as stated in West Ham's Response –
When determining whether a Club has made out such defence, a Commission's enquiry cannot include a "descent into a counsel of perfection with the luxury of hindsight". A Club is not required to "eliminate the risks" of the events occurring "as that would nullify the due diligence defence".

47. The burden of establishing the Rule E21 due diligence defence lies on the club. The standard is to the balance of probabilities. The defence involves two conjunctive limbs. First, the club must prove that those responsible for security did not have control over the supporters whose conduct is complained of. Mr de Marco correctly draws a distinction between a club's players and employees (over whom it has control) and its supporters (over whom it does not have control). We agree that neither the club nor those responsible for security had control over the supporters.
48. The relevant question, therefore, is whether the club can show that those responsible for security had exercised all due diligence. The FA emphasises the word all, submitting that its use must have been intended to add to standard. We see the force of that argument. We consider that is sufficiently addressed in the construction advanced by Mr de Marco, which properly reflects what is intended by the provision. We consider that the defence requires the club to show that those responsible for security had taken all reasonable steps to discharge their responsibility. What constitutes reasonable steps is what was known, or should have been known, at the time. It is not to be judged with the benefit of hindsight. Nor does it require perfection. It does, however, require that all reasonable steps should have been taken. What is required is what would have been done by a prudent, conscientious person in the position of those responsible for security, acting on the knowledge and information that was reasonably available to him. ... A failure to use all due diligence by any one of the three would deny the club the due diligence defence.
10. In its written submissions dated 18 April 2019 the FA has advanced a different approach to the first limb of the *due diligence* defence, arguing that if the stewards had behaved differently the spectator could have been prevented from entering the pitch. Accordingly, the FA submits, Arsenal as a matter of fact had control over the supporter so that it cannot satisfy the first limb of the *due diligence* defence. The FA's argument is succinctly set out in paragraph 12 of its submissions –
12. Taking into account all of the above, The FA asserts that the initial entry point onto the pitch could have been prevented by the two trackside stewards operating the gangway in which the spectator gained access. Therefore, it cannot properly be said that the pitch incursion, at the initial entry point, occurred as a result of

circumstances over which the Club had no control.

11. Arsenal disputes this construction of the first limb of the *due diligence* defence. It relies on, and adopts the reasoning in West Ham. It puts its case in this way –
 10. The Regulatory Commission's reasoning follows a natural interpretation of the First Limb. Applying that same interpretation to the facts here, the First Limb is satisfied as follows:
 - (a) the '*incident complained of*' was a pitch incursion in the 69th minute of the Match;
 - (b) that incident was '*the result of*' a spectator entering onto the field of play; and
 - (c) the spectator entering onto the field of play constitutes '*circumstances over which the Club had no control*'.
 11. By contrast, attributing the incursion to the stewards' response would appear to create a strict liability offence, thereby rendering the conjunctive Second Limb of the Defence redundant. We respectfully submit that this was not the original intent behind FA Rule E21 and that the approach taken in the FA v West Ham Decision remains correct.
12. Decisions of Commissions in other proceedings do not create a precedent. It is open to either party to advance arguments that depart from the reasoning adopted in those earlier decisions. We have considered the FA's construction of the phrase *circumstances over which it had no control* with care. We can readily see the logic of the argument that if the stewards had acted differently the supporter might not have been able to reach the pitch, with the consequence that the stewards must have had the ability to control him and his access to the pitch.
13. However, the consequence of accepting that construction would, as Arsenal has argued, remove the *due diligence* defence of much of its force. It would effectively create an offence of strict liability because it would be a rare case in which stewards acting differently would have been able

to prevent the incident: and thus, on the FA's construction, would have had *control*. The consequence would be that even if the club were able to satisfy the second limb of the *due diligence* defence it would nevertheless be denied a defence.

14. We are satisfied that that is not the intention of the *due diligence* defence. Its purpose is to afford a club that has taken all proper steps to discharge its responsibility a defence to the charge. This should not be seen as a charter for irresponsible behaviour by clubs. The *due diligence* defence requires a club to demonstrate proper, responsible behaviour. The defence is not available where the club had control of the circumstances: so it does not extend to conduct by employees or those over whom the club has authority. The defence requires the club to demonstrate that it had exercised *all due diligence*. As the FA submitted and the Commission accepted in West Ham the word *all* imposes a heavy burden on a club.

15. We are therefore satisfied that the approach taken to the first limb of the *due diligence* defence by the Commission in West Ham was correct. We take the same approach in this case. As the Commission said in West Ham, there is a –

distinction between a club's players and employees (over whom it has control) and its supporters (over whom it does not have control).
...neither the club nor those responsible for security had control over the supporters.

ARSENAL'S RESPONSE BEFORE CHARGE: 13 March 2019

16. The FA wrote to Arsenal on 11 March 2019, seeking its explanation for the pitch incursion. Arsenal provided a detailed response on 13 March 2019. We do no more than summarise the salient parts of that response.

17. Arsenal emphasised the importance that it attached to security and safety. It sent the FA a copy of its Pitch Incursion Plan, its Ground Regulations, and relevant Ticket Terms & Conditions. The detail of the pre-match preparation and briefing was explained. Ms Cicco, Arsenal's Safety & Security Manager, recognised that the incident on 10 March 2019 at the Birmingham v Aston Villa match meant that there was an increased risk of copycat pitch incursion and reacted to that risk. She incorporated it into the pre-match briefing, showing footage of the incursion to the Steward Supervisors. She revised the Pitch Incursion Plan to provide for all eight Pitch Incursion Stewards to enter the pitch simultaneously.

18. Arsenal made the point that it had no advance warning of the incursion. This was a sole individual who appears to have been carried away by the scoring of the goal. The response was immediate: the pitch stewards apprehended and removed the individual quickly and effectively: the track stewards stood to face the crowd: the individual was arrested and, after the conclusion of the criminal proceedings, was to be banned from further matches. Arsenal reviewed the incident immediately after the match, reminded the Steward Supervisors of aspect of the Plan, and considered what revisions could be introduced.

ARSENAL'S RESPONSE AFTER CHARGE: 22 March 2019

19. After receipt of the charge letter dated 14 March 2019 Arsenal sent the FA a detailed response. Again, we do not set out the full detail of what was written.

20. Arsenal advanced the *due diligence* defence. In relation to the first limb it relied on West Ham, arguing that it had no *control* over a supporter.

We have already ruled that we consider that to be the correct interpretation of the of the first limb of the *due diligence* defence. In relation to the second limb it pointed to its extensive, dynamic procedures, reiterating the fact that the risk of incursion was identified and addressed before the match.

21. Arsenal relied upon the opinion of Jon Puttock, the Premier League's Policing and Security Consultant to whom on 4 February 2019 it had submitted its Pitch Incursion Plan for review. Mr Puttock was plainly satisfied and impressed by Arsenal's Plan, referring to what he described as Arsenal's *good practice*. In his email he wrote (amongst other things) –

Having had sight of your pitch incursion plan earlier this year I found that it clearly contained all the key elements that I would expect to see.

...it is clearly difficult if not impossible for any club to totally eradicate the risk of lone spectators entering the playing area. The measure of success for incidents like these is clearly how quickly the security team deal with the problem and mitigate the risk.

THE FA's CASE: 18 April 2019

22. We have already ruled on the FA's submission on the proper construction of the first limb of the *due diligence* defence. We do not repeat that analysis. In relation to the second limb the FA relies on Mr White's report, from which we quote at some length –

5. Comments

Whilst the actual numbers of trackside stewards are not provided by the club, I consider them sufficient when viewing the footage. There are generally no significant gaps around the pitch circumference.

Arsenal have a comprehensive documented pitch incursion policy, which appears to have been thoroughly briefed and communicated to match officials.

The footage demonstrates an initial reaction as per the pitch incursion plan at the time albeit the execution is marred by a mishap. (described above.) The

referee's report states the offender was, 'quickly apprehended and escorted off the pitch before being arrested.'

The pitch incursion stewards concerned are specially selected against relevant criteria, are equipped with appropriate footwear and trained in the role. They wear distinctive Hi-Viz bibs of a different colour from trackside stewards.

The pitch incursion team is specifically deployed to this task with no other duties. They are strategically positioned around the pitch side.

There were 8 pitch protection stewards deployed at this match. They are split into two teams of four. Initially four are briefed to react to an incident which is what transpired here. However a revised plan implemented pre-match by the Safety Officer instructed all 8 stewards to enter the pitch in the event of an incursion. There is no evidence that this occurred.

This resource has since been increased to 16 after review. This compares favourably with other similar clubs many of whom have reviewed resources and acted to increase resources.

The pre-match briefing to steward supervisors included reference to and footage of the pitch incursion incidents that day at Birmingham to reinforce the increased risk and extra vigilance required.

Arsenal have had their pitch incursion policy independently reviewed by the Premier League Safety & Security officer who considered it contained, 'all the key elements expected of good practice'.

Signage is widely placed around the stadium regarding pitch incursion and criminal sanctions.

Appropriate robust action has been taken by the police and club in regard to the offender.

6. Critique

The initial entry onto the pitch by the offender could have been prevented by trackside stewards. There are two stewards standing at the bottom of the gangway where the offender emerges but they leave a gap at the centre of the said gangway. One steward appears to be half facing the pitch rather than the crowd and appears not to see the offender until too late. The second does see the offender but fails to apprehend or delay the incursion. This footage is taken from across the pitch and is therefore a subjective view.

The point where gangways reach the pitchside barrier is one of the most vulnerable spots in the perimeter and should always be manned with vigilant stewards.

During the penalty (pre-incursion) all trackside stewards are seated and several are watching the pitch not the crowd. The seating of trackside stewards during a penalty may be club policy so as not to obstruct views, but appears to contradict the instruction to stand and face the crowd during on-pitch incidents.

Whilst all trackside stewards stand after the penalty in unison, several behind the North goal are distracted by the incursion and are facing the pitch not the crowd.

The initial pitch incursion steward team suffers a mishap as one falls over a LED board. The second could be perceived from the footage as lacking urgency in reaching the offender. The third reaches the offender first and the fourth comes from a long way from the incident. This suggests the strategic positioning could be better with pitch incursion stewards placed in corner positions or behind the goals where most incidents tend to occur or at least conclude. Arsenal have of course reviewed their policy since the incident and increased stewarding.

The supervision of the pitch incursion team appears to lie with the West stand VIP supervisor. It would be better to have a specific supervisor with no other duties controlling this crucial function.

I can see no evidence from the available footage that the second pitch incursion team of four stewards fulfilled their role of entering the pitch protecting players and match officials. If so this was contrary to the revised plan by the safety Officer.

At Paragraph 19 of the safety Officer's letter it is stated that the CCTV was reviewed post incursion, 'to determine how the steward's actions could have been improved.' However there is no concluding remarks to this action, which begs the question as to what Arsenal determined could be so improved?

8. Conclusions

This pitch incursion involved a single offender which is difficult to stop.

There are some potential improvements in the reaction of stewards as agents of the club albeit the response to the incursion is relatively swift.

The planning and preparation by the club was thorough albeit I have questioned the positioning of the pitch incursion stewards, the defined supervision of the pitch incursion teams and applaud the swift review and subsequent increase in steward numbers.

23. The FA has extracted from Mr White's report the features that it submits demonstrate that Arsenal has failed to meet the *all due diligence* test. Those are the factual issues that we must determine. We summarise the FA's submissions as follows.

- (1) The very fact that the supporter was able to make contact with a Manchester United player and the celebrating Arsenal players demonstrates that *all due diligence* had not been taken.

- (2) A pitch incursion steward can be seen to be *lacking urgency*.
- (3) Contrary to the revised pitch incursion plan only four of the eight dedicated stewards pursued the supporter onto the pitch.
- (4) Trackside stewards can be seen to be watching the pitch, not the crowd.
An additional criticism made by Mr White is-
- (5) Trackside stewards were seated during the penalty, instead of facing the crowd.

ARSENAL'S FURTHER RESPONSE AFTER CHARGE: 3 May 2019

24. As before, we do not reiterate the entirety of Arsenal's response, which included a detailed schedule addressing the complaints made about the stewarding response. We refer below in our analysis to what we consider to be the most pertinent passages. Arsenal produced further reasoning from Mr Puttock, who expressed his opinion from what could be deduced from the footage of the incursion. He also commented on the criticisms made by Mr White. The following is an extract from Mr Puttock's observations from which his opinion can be clearly seen –

In respect of the gap between the two stewards:

... The gangway in question is however covered by two trackside stewards with each positioned immediately to the left and right of the gangway. In fact, their proximity was so close that from the footage available it appears that one of the stewards did manage to make physical contact with the offender prior to him entering the field of play. The fact that they were almost able to apprehend the offender at this stage with such a short period of time and space within which to react I feel demonstrated that their positioning was appropriate.

In respect of one of these stewards half facing the pitch:

... it does appear that the steward in question is looking to his left immediately prior to the incursion albeit I would expect stewards to periodically observe other areas of the stadium pitch line close to their position to maintain broader situational awareness complimenting their role and stewarding of their specific area of responsibility.

The strategic positioning of stewards around the pitch:

Mr White himself comments that there appear to be sufficient trackside

stewards deployed by the club. The club deploy eight Pitch IncurSION Stewards split into two teams of four, each team with designated responsibility. The team with specific responsibility for apprehending and removing any offender are positioned at four locations, two on the East track and two on the West track. My view is that the strategic positioning of the four stewards for this role maximises their ability to collectively respond effectively to any area of the pitch in the event of an incursion providing equitable cover to both North and South areas in addition to other vulnerable areas including the centrally located manager/team dugouts. They are complimented by the second team that are strategically positioned at each corner of the pitch perimeter. Mr White correctly identifies that there is no evidence from the available footage that the second team enter the pitch as instructed for this particular fixture in the event of an incursion. The footage appears shows four pitch runners responding to the incursion. Three from the East Track and one from the West which would suggest that stewards from both teams were involved in responding albeit not all as per pre-match instruction. I'm not aware of this being a dynamic decision at the time by the steward team supervisor however am not sure what added value further pitch runners entering the field of play would have provided in this instance. ...

The fact that stewards were seated during the penalty until the goal was scored:

From the available footage the trackside stewards are clearly seated immediately prior to the penalty being taken. The instruction to trackside stewards is that they should always stand when a potentially contentious event occurs during the match (such as a goal being scored). This instruction appears to have been adhered to with the footage clearly showing all trackside stewards standing in unison immediately following the goal. The stewards were seated/crouched up to the point at which the penalty is taken clearly to prevent obstructing the view of spectators and minimising conflict. I believe that this was appropriate as the point at which the crowd dynamics significantly change is immediately following a goal as the case on this occasion. My view is that the stewards acted appropriately and as per pre match instruction.

25. Mr Puttock continued, making the following observations in relation to the *due diligence* defence –

If I was to consolidate pertinent points relative to the clubs defence demonstrating that they had taken 'all reasonable steps I would summarise as follows:

The FAs security advisor in his own submission makes the following observations:

That the pitch incursion involved a single offender which is difficult to stop.

Arsenal have a comprehensive documented Pitch Incursion Policy.
The Pitch Incursion Policy appears to have been thoroughly briefed and communicated to match officials.
The planning and preparation by the club was thorough.
Sufficient trackside stewards are deployed by the club.
The response to the incursion is relatively swift.
The referee report states the offender was quickly arrested and escorted off the pitch.

Other factors in addition to the above observations by the FAs safety and security advisor that I believe should be considered by the hearing are:

One of the trackside stewards appears to make some physical contact with the offender before he actually manages to enter the field of play. It's unfortunate that he escapes this initial attempt to prevent his incursion onto the field of play. I feel this is good evidence in respect of strategic positioning of the trackside stewards.

Within a matter of seconds four pitch incursion stewards are in pursuit on the pitch.

The offender was apprehended within 14 seconds of entering the pitch area.

The referee comments that the offender was quickly detained and escorted from the pitch. Equally the referees report does not express any concern for his safety or that of his match officials.

The pre-match stewards briefing by the GSO included reference to and footage of the incident at Birmingham that day to emphasise the risks of incursion and increase vigilance. (I have to say that I think this was an excellent decision by the Ground Safety Officer and clearly demonstrates the use of most recent information and intelligence by the club in revising and shaping existing plans and contingencies to meet changes in risk and threat).

DISCUSSION

26. Both parties have set out their cases forcefully and cogently. When analysing the respective arguments we remind ourselves of the standard to be applied in determining the *due diligence* defence. The burden of proof, to the standard of the balance of probabilities, lies on Arsenal. It must satisfy both limbs of the defence. We have already explained why we consider the first limb of the defence to have been met. The second limb requires it to demonstrate *all due diligence*. As was common ground in West Ham (with the typographical error corrected) –

When determining whether a Club has made out such defence, a Commission's enquiry cannot include a "descent into a counsel of perfection with the luxury of hindsight". A Club is not required to "eliminate the risks" of the events occurring "as that would nullify the due diligence defence".

Arsenal is not required to demonstrate perfection. But in order to establish the *due diligence* defence it is required to prove that it took all steps reasonably required to discharge its responsibilities. The question of what was reasonably required is to be determined by reference to what was known, or what should reasonably have been known, at the time.

27. It is against that regulatory background that we examine each of the heads advanced by the FA and Mr White. We note that this was a spontaneous incident. There is no suggestion that the incursion had been planned. It is not suggested that Arsenal had failed to react to intelligence that it was or should have been aware of. We have not overlooked the FA's letter dated 27 September 2018 to all club secretaries, giving a general warning of the need to guard against pitch incursions. That, however, was a general warning: it was not in any sense specific to this particular incident. Indeed, it expressed concern about *incidents in which spectators have run onto the field of play and have been unchallenged by safety and security staff for an extended period of time*, which was clearly not the case here. We are therefore dealing with an incident that could not reasonably have been foreseen – albeit the pitch incursion in the *Birmingham v Aston Villa* had put Arsenal on general notice.
28. **The very fact that the supporter was able to make contact with a Manchester United player and the celebrating Arsenal players demonstrates that *all due diligence* had not been taken.**

It is common ground between the parties that an isolated pitch incursion is very hard to prevent. We consider that it must follow from that that the fact of a pitch incursion, although capable of constituting evidence of

an absence of *all due diligence*, cannot in itself be determinative of the issue. It is one of the factors to be balanced. The circumstances in which the incursion took place are of greater relevance than the incursion itself. Those circumstances as a whole must be looked at. We recognise that the fact that the intruder was able to make contact with players on the field is not without significance. Similarly, the fact that the intruder was speedily and efficiently detained is relevant. We must look at the circumstances as a whole.

29. **A pitch incursion steward can be seen to be lacking urgency.**

We have viewed the video footage several times. We find it impossible to find as a fact that there was a lack of urgency – that is, as Mr Puttock has observed, a subjective assessment. It is not one that we feel capable of making from the video footage. We do note, however, the referee’s report that the intruder was *quickly apprehended*. That is not consistent with a lack of urgency.

30. **Contrary to the revised pitch incursion plan only four of the eight dedicated stewards pursued the supporter onto the pitch.**

The original pitch steward plan was of the eight steward four only would respond to a pitch incursion by entering the pitch in pursuit of the intruder. The remaining four would remain in reserve, ready to respond to any further incident. Before the match, reacting to the Birmingham v Aston Villa incident, Ms Cicco had revised the policy so that all eight pitch stewards would immediately enter the pitch. In the event, the revised plan was not implemented: only four stewards entered the pitch in pursuit of the intruder. This was a failure to implement properly the new plan. As such we can readily see that it can be categorised as a failure to exercise *all due diligence*. However, as Mr Puttock points out, there

is a real doubt whether the addition of four more stewards would have made any difference. The intruder was quickly and effectively detained by the four who went onto the pitch. We find that four additional stewards would not have made any difference. Accordingly, although the failure to implement the revised plan is a failure we find that it was not causative of any breach of Rule E20. In plain terms the incident was controlled and contained as effectively by four stewards as it would have been by eight.

31. **Trackside stewards can be seen to be watching the pitch, not the crowd.**

We consider Mr Puttock's analysis to be sensible. It is not reasonable to expect stewards to adopt a blinkered approach, looking only at the crowd in front of them. In order to discharge their function they need to be aware of what is happening in the wider sphere so as to be able to anticipate potential crowd reaction. The evidence from Mr Puttock is that one of the stewards was able to make contact with the intruder before he entered the pitch. We find that the fact that stewards may have been looking around was proper conduct, and that in any event, given that a steward made contact with the intruder, it was not causative of any breach of Rule E20.

32. **Trackside stewards were seated during the penalty, instead of facing the crowd.**

This criticism was made by Mr White but was not adopted by the FA in its submissions. We do not think that there is any merit in it. We consider it to be sound sense for the stewards not to obstruct the view of the penalty by standing, which we consider to be more likely to inflame rather than contain the crowd. It was entirely proper for the stewards to sit/squat during the penalty and to stand immediately after it had been taken. That was what was done: we consider it to be exemplary conduct.

CONCLUSION

33. We therefore consider that Arsenal has established the *due diligence* defence and dismiss the charge. We agree with Mr Puttock (with whom to a very great extent Mr White agrees) that Arsenal has maintained high standards. It reacted speedily and appropriately to the Birmingham v Aston Villa incident, has reacted properly and proportionately to this particular incident and overall has adopted a proactive, dynamic safety and security policy which in this case has met the *all due diligence* standard.

A handwritten signature in blue ink, appearing to be 'D. Phillips', with a long horizontal line extending to the right.

David Phillips QC
Alison Royston
Ken Brown

10 June 2019
(Revised for typographical errors 11 June 2019)