

THE SCOTTISH PREMIER LEAGUE LIMITED

DECISION

by

THE RT HON LORD NIMMO SMITH,

NICHOLAS STEWART QC

and

CHARLES FLINT QC

the Commission appointed by Resolution of the Board of Directors of The Scottish Premier League Limited dated 1 August 2012 in relation to RFC 2012 Plc (now in liquidation) and
Rangers Football Club

Summary

[1] For the reasons which are set out in detail below the Commission has unanimously decided:

- (1) Between the years 2000 and 2011 The Rangers Football Club Plc (now known as RFC 2012 Plc (in liquidation) and referred to in the decision as “Oldco”), the owner and operator of Rangers Football Club (“Rangers FC”), entered into side-letter arrangements with a large number of its professional players under which Oldco undertook to make very substantial payments to an offshore employee benefit remuneration trust, with the intent that such payments should be used to fund payments to be made to such players in the form of loans;
- (2) Those side-letter arrangements were required to be disclosed under the Rules of the Scottish Premier League (“SPL”) and the Scottish Football Association (“SFA”) as forming part of the players’ financial entitlement and as agreements providing for payments to be received by the players;

- (3) Oldco through its senior management decided that such side-letter arrangements should not be disclosed to the football authorities, and the Board of Directors sanctioned the making of payments under the side-letter arrangements without taking any legal or accountancy advice to justify the non-disclosure;
- (4) The relevant SPL Rules were designed to promote sporting integrity, by mitigating the risk of irregular payments to players;
- (5) Although the payments in this case were not themselves irregular and were not in breach of SPL or SFA Rules, the scale and extent of the proven contraventions of the disclosure rules require a substantial penalty to be imposed;
- (6) Rangers FC did not gain any unfair competitive advantage from the contraventions of the SPL Rules in failing to make proper disclosure of the side-letter arrangements, nor did the non-disclosure have the effect that any of the registered players were ineligible to play, and for this and other reasons no sporting sanction or penalty should be imposed upon Rangers FC;
- (7) As noted in the Commission's earlier decision made on 12 September 2012 there is no allegation that the current owner and operator of the club, The Rangers Football Club Limited ("Newco"), contravened the SPL Rules or could be held responsible for any breach by Oldco;
- (8) In all the circumstances the Commission has imposed a fine of £250,000 on Oldco.

The Commission's remit

[2] By Resolution of the Board of Directors ("the Board") of The Scottish Premier League Limited ("the SPL") dated 1 August 2012 we were appointed respectively as Chairman and members of a Commission in terms of a Notice of Commission, a draft of which was on that date approved by the Board, all in terms of section G of the Rules of the SPL ("the Rules"). SPL Rules G1.1 and G1.2 provide:

"G1.1 The Board and, where appointed by the Board, a Commission, shall have the power of inquiry into all financial, contractual and other arrangements within, between and/or amongst Clubs and Players and all matters concerning compliance with the Financial Disclosure Requirements and into all matters constituting or pertaining to any suspected or alleged breach of or failure to fulfil the Rules by any Club, Club Official and/or Player or any matter considered by the Board or, where appointed by the Board, a Commission, to be relevant to an Adjudication or an Appeal and every Club and Club

Official and Player shall be liable to and shall afford every assistance to the Board or, as the case may be Commission, as may be requested or required of it or him.

G1.2 Subject to Rules G1.3 and G1.4, the Board and, where appointed by the Board, a Commission, shall (i) have the power of determination as to whether there has been a breach of and/or failure to fulfil the Rules and in Adjudications and Appeals; and (ii) may exercise such of the powers set out in Rules G6.1 and G6.2 as it shall think appropriate.”

[3] Rules G1.3 and G14 are not relevant for present purposes. Annex B to the Rules sets out Rules of Procedure which govern the proceedings of this Commission and other bodies appointed in terms of the Rules (any such body being referred to as a “Tribunal”).

History

[4] Rangers Football Club was founded in 1872 as an association football club. It was incorporated in 1899 as The Rangers Football Club Limited. In 2000 the company’s name was changed to The Rangers Football Club Plc, and on 31 July 2012 to RFC 2012 Plc. We shall refer to this company as “Oldco”.

[5] The SPL was incorporated in 1998. Its share capital consists of sixteen shares of £1 each, of which twelve have been issued. Oldco was one of the founding members of the SPL, and remained a member until 3 August 2012 when the members of the SPL approved the registration of a transfer of its share in the SPL to The Dundee Football Club Limited. Each of the twelve members owns and operates an association football club which plays in the Scottish Premier League (“the League”). The club owned and operated by Oldco played in the League from 1998 until 2012 under the name of Rangers Football Club (“Rangers FC”). Throughout this period, Oldco was also a member of the Scottish Football Association (“the SFA”), the governing body of the sport in Scotland.

[6] When the SPL was first formed, a controlling interest in Oldco was held by David (from 2007 Sir David) Murray through the medium of Murray MHL Limited, part of the Murray Group of companies. On 6 May 2011 the controlling shareholding was acquired by Wavetower Limited, a newly incorporated company formed for the purpose of the acquisition, and controlled by Craig Whyte. Oldco experienced financial difficulties, and on 19 March 2012 the Court of Session made an administration order and appointed Paul John Clark and David John Whitehouse, both of Duff & Phelps Limited, as joint administrators, with effect from 14 February 2012 (the date of their original, invalid appointment). Oldco is now in liquidation; a winding up order was made by the Court of Session on 31 October 2012, and Malcolm Cohen

and James Stephen, both of the accountancy organisation BDO, were appointed joint interim liquidators.

[7] On 14 June 2012 a newly incorporated company, Sevco Scotland Limited, purchased substantially all the business and assets of Oldco, including Rangers FC, by entering into an asset sale and purchase agreement with the joint administrators. The name of Sevco Scotland Limited was subsequently changed to The Rangers Football Club Limited. We shall refer to this company as Newco.

[8] Newco was not admitted to membership of the SPL. Instead it became the operator of Rangers FC within the Third Division of the Scottish Football League (“the SFL”). It also became an associate member of the SFA. These events were reflected in an agreement among the SFA, the SPL, the SFL, Oldco and Newco, which was concluded on 27 July 2012.

The Notice of Commission

[9] The Notice of Commission sets out lists of players, referred to as “Specified Players”, and “Issues for Enquiry into and Determination by the Commission” (“the Issues”). The full terms of the Notice of Commission are set out in the Annex hereto. For the sake of clarity, we shall here simply summarise the Issues.

[10] The Issues may be divided into four main chapters, the first three of which relate respectively to the periods:

- 23 November 2000 to 21 May 2002 (period 1),
- 22 May 2002 to 22 May 2005 (period 2)
- 23 May 2005 to 3 May 2011 (period 3).

The division into those three chapters within that period 2000-2011 reflects changes in the Rules of the SPL and the SFA in force from time to time, as set out below. Broadly speaking, the Issues in the first three chapters allege that Oldco and Rangers FC breached the relevant Rules of the SPL, and also those of the SFA (breach of which constitutes a breach of Rules of the SPL), by failing to record “EBT Payments and Arrangements”, as defined below, in the contracts of service of the Specified Players and/or other Players and by failing to notify them to the SPL and the SFA. We also note one Issue in the third chapter (Issue 3(c) in the Notice of Commission, read together with the concluding words of Issue 3(b)), directed only against Rangers FC, alleging that the club was in breach of the Rules by playing ineligible players.

The fourth chapter alleges that during the period:

- 15 March 2012 to 1 August 2012 (period 4)

Oldco (then in administration) and Rangers FC, in breach of the relevant Rules of the SPL, failed to assist the SPL and to respond to requests for documents in relation to payments by Oldco to Rangers players. The Notice of Commission was served on Oldco, Newco and Rangers FC by letters dated 2 August 2012.

Aspects of the procedure prior to and at the hearing

The preliminary hearing

[11] After sundry procedure, we held a preliminary hearing on 11 September 2012 to consider certain issues that had been raised in correspondence on behalf of both Oldco and Newco. We had every reason to expect that there would be representation on behalf of each of them, but during the afternoon of 10 September letters were received from Michael McLaughlin of Messrs DWF Biggart Baillie on behalf of both Oldco and Newco stating that he had been instructed by each of them that it would not appear or be represented at the preliminary hearing and did not intend to take part in any further procedure.

[12] We nevertheless proceeded to consider the preliminary issues, and on 12 September 2012 we made the following decision:

“The Commission has considered all the preliminary issues raised in the list submitted by Newco and points raised in letters from solicitors acting for Newco and for Oldco. It has decided:

1. The Commission will proceed with its inquiry in the terms of the Notice of Commission and will now set a date for a hearing and give directions.
2. Oldco and Rangers FC, who are named in the Issues contained in the Notice of Commission and alleged to have been in breach of Rules, will continue to have the right to appear and be represented at all hearings of the Commission and to make such submissions as they think fit.
3. Newco, as the current owner and operator of Rangers FC, although not alleged by the SPL to have committed any breach of Rules, will also have the right to appear and be represented at all hearings of the Commission and to make such submissions as it thinks fit.
4. Written reasons for this decision will be made available in due course.”

[13] Once we had announced our decision on 12 September we proceeded, after discussion, to make the following directions:

“Further to the decision made today we make the following procedural orders:

1. We set a date for a hearing to commence on Tuesday 13 November 2012 with continuations from day to day as may be required until Friday 16 November 2012. We will also allocate Tuesday 20 and Wednesday 21 November 2012 as additional dates should any further continuation be required.
2. We direct that the solicitors for The Scottish Premier League Limited lodge any documents, additional to those already lodged, together with an outline argument and a list of witnesses by 4 pm on Friday 19 October 2012.
3. We direct that Oldco, Newco or any other person claiming an interest and wishing to appear and be represented at the hearing give intimation to that effect and lodge any documents together with an outline argument and a list of witnesses, all by 4 pm on Thursday 1 November 2012.
4. We direct that intimation of the aforesaid decision and of these directions be made to the solicitors for Oldco and Newco.”

The period between the preliminary and main hearings

[14] Written reasons were indeed made available, and we refer to them for their terms. They set out, in more detail than is required here, the events preceding the preliminary hearing. They also give reasons for disposal of certain of the preliminary issues which are no longer live. We decided, in brief, that:

- (1) While it was a member of the SPL Oldco was contractually bound to the SPL (and the other members) to comply with its Rules, and was liable to sanctions as provided by the Rules in the event of a breach;
- (2) It remained so liable even after it had ceased to be a member of the SPL;
- (3) Rangers FC was liable to sanctions as provided by the Rules in the event of a breach while it was owned and operated by Oldco; and
- (4) There were sanctions which could be imposed in terms of the Rules which were capable of affecting Rangers FC as a continuing entity now owned and operated by Newco.

We do, however, for convenience repeat in this decision some of the material from those written reasons which is relevant for present purposes. They concluded:

“We wish to emphasise that, as is plain from our decision and directions of 12 September, the door remains open for Oldco and Newco to appear and be represented at the hearing in November. We would invite each of them to reconsider, in light of what we have written above, the decision they took on 10 September not to participate in the proceedings.”

[15] Rod McKenzie of Messrs Harper Macleod LLP, the solicitors for the SPL, duly complied with paragraph 2 of the above procedural orders. No indication was given that Oldco or Newco

intended to appear at the hearing on 13 November. In the event, for unexpected reasons beyond the control of the Commission or the parties, it was not possible for the hearing to proceed, and by order dated 6 November the Chairman discharged it. A fresh date for the hearing was thereafter fixed for 29 January 2013 and following days. By order dated 7 December 2012 the Chairman directed that the solicitors for the SPL lodge any documents, additional to those already lodged, together with a further outline argument and list of witnesses, by 4.00 p.m. on Tuesday 15 January 2013. The order set out a list of questions to which the Commission wished to find specific answers in the further outline argument. After an extension of the deadline for lodging this, it was lodged on 17 January 2013.

[16] Meanwhile, no intimation was received on behalf of either Oldco or Newco that it wished to appear and be represented at the hearing. It came, therefore, as a surprise – but not an unwelcome one – that on 24 January 2013 Mr McLaughlin intimated that he had now received formal instructions from Oldco in respect of the hearing on 29 January, that his client would be represented at the hearing, that James Mure QC had been instructed on Oldco's behalf, and that they would both appear at the hearing. In addition to this intimation, a written note of argument for Oldco was lodged on 25 January.

The main hearing

[17] On 29 January 2013 the SPL was represented, as before, by Rod McKenzie of Messrs Harper Macleod LLP, and Oldco was represented by Mr Mure, accompanied by Mr McLaughlin. Mr Mure explained it was only recently that the liquidators had been able to take stock of the position, and to decide that Oldco should after all be represented. The Commission reviewed the procedure to date, together with the matters which had been decided at the preliminary hearing, and explained that it would not allow further argument on those matters. Mr Mure accepted this.

[18] The Commission also referred to paragraphs 3 and 4 of the list of preliminary issues which had been before it at the preliminary hearing, to the effect that the SPL was, by its conduct, barred from seeking the imposition of sanctions, or at least of a particular sanction, in the event of a breach or breaches of the Rules being established. For the reasons given at paragraph [53] of our earlier written reasons, we reserved these preliminary issues to be reconsidered, if necessary, at a later stage. Mr Mure informed us, however, that they were no longer to be argued, so we shall say no more about them.

[19] The reason why the decision, albeit belated, of Oldco to appear and be represented was not unwelcome was that from the outset the Commission was anxious that there be a proper contradictor, in order to assist us in our task of ensuring that the case for the SPL on both merits

and sanction was appropriately tested and that all contrary arguments were advanced. We were nevertheless concerned that Mr Mure was not instructed to appear for Newco as well as Oldco.

At paragraph [46] of our previous written reasons we stated:

“The Rules clearly contemplate the imposition of sanctions upon a Club, in distinction to a sanction imposed upon the owner or operator. That power must continue to apply even if the owner and operator at the time of breach of the Rules has ceased to be a member of the SPL and its undertaking has been transferred to another owner and operator. While there can be no question of subjecting the new owner and operator to sanctions, there are sanctions which could be imposed in terms of the Rules which are capable of affecting the Club as a continuing entity (even though not an entity with legal personality), and which thus might affect the interest of the new owner and operator in it.”

We reminded Mr Mure of this and invited him to consider with Mr McLaughlin, who has acted for Newco throughout, whether they should seek instructions to appear for it also.

[20] On 30 January, before he was called on to present his case in response to that of the SPL, Mr Mure informed us that Newco was now re-entering appearance and that he was instructed for it as well as for Oldco. We are glad that Newco reconsidered the decision taken on 10 September 2012 not to participate in the proceedings.

[21] The order of events at the hearing, after preliminary discussion, was straightforward. The Rules of Procedure of the SPL make provision in part 2 for hearing procedures, but in part 1 Rule of Procedure 1.4 provides:

“Notwithstanding these Rules of Procedure, a Tribunal shall have the power to regulate the hearing procedures adopted by it and in so doing any [*sic*] may deviate from the hearing procedures in part 2 of these Rules of Procedure as it considers appropriate and expedient so as to dispose of any matter before it justly and expeditiously.”

In exercise of the power conferred by this provision, we decided, after hearing submissions about the procedure, to call on Mr McKenzie first to present the case for the SPL, including at the outset the calling of the witnesses he had listed, on both merits and sanction. We next called on Mr Mure to present his case in response for both Oldco and Newco on both merits and sanction. We finally gave each of them an opportunity to reply on any new matter raised by his opponent. This adversarial procedure resulted in an excellent discussion, and we are grateful to both Mr McKenzie and Mr Mure for their assistance. In this Decision we take full account of each of their submissions, although we do not wish to overburden it by repeating them at length.

The approach to evidence

[22] Rule 2.6 of the SPL Rules of Procedure provides:

“A Tribunal shall not be bound by any formal rules of evidence and may accept evidence in any form. However it shall be entitled to accord to evidence such weight as seems to the Tribunal proper having regard to the quality of the evidence and the reliability and credibility of same.”

We are accordingly entitled in terms of this rule to proceed on the basis of hearsay evidence.

This is reinforced by the provisions of section 1(1) of the Civil Evidence Act 1995.

[23] Adopting this approach, the evidence available for our consideration includes that of witnesses, contemporaneous documents and the narrative of evidence and findings in fact made by the First-tier Tribunal (Tax) (“the Tax Tribunal”) in *Murray Group Holdings & others v The Commissioners for Her Majesty’s Revenue and Customs* (“HMRC”), Appeal No SC 3113-3117/2009. We shall discuss our approach to this evidence in the course of this decision. And we shall proceed on the basis of the facts which we hold to be established by the evidence before us, and on nothing else.

Standard and burden of proof

[24] As in all civil proceedings, the standard of proof of any matter of fact, and of any inference to be drawn from any fact or set of facts, is proof on the balance of probabilities; that is to say, that the evidence establishes that it is more likely than not that the fact or inference in question is the case. The burden of proof of the Issues rests on the SPL throughout.

[25] There was discussion during the hearing as to whether there is a burden of proof in relation to sanction, in the event that any breach of the Rules is established, and if so on which party it rests. In our view the burden lay on the SPL to prove (on the balance of probabilities) material factors which might affect sanction, such as whether a particular breach had given Rangers FC a significant competitive advantage. Subject to that, the question of sanction is a matter for the exercise of our discretion, in light of any relevant considerations advanced by either party.

Judgment reserved

[26] At the conclusion of the hearing we announced that we would take time to consider our decision, full reasons for which would be issued in writing in due course. This is now our unanimous decision and the reasons for it. All three members of the Commission have contributed to its preparation.

The Articles and Rules of the SPL and SFA: General

[27] It is now appropriate to quote some of the provisions of the Articles of the SPL.

Article 2 contains definitions which, so far as relevant are:

“Club means the undertaking of an association football club which is, for the time being, entitled, in accordance with the Rules, to participate in the League

...

Company means The Scottish Premier League Limited

...

League means the combination of Clubs known as the Scottish Premier League operated by the Company in accordance with the Rules

...

Member means a person who or which is the holder of a Share

...

Rules mean the Rules for the time being of the League

...

Share means a share of the Company and Share Capital and Shareholding”.

[28] Article 97 provides:

“97. Each Member shall be responsible for the discharge of the obligations and duties and shall be entitled to the benefits and rights accruing under and in terms of the Rules of and to the Club which it owns and operates.”

[29] It is also appropriate to quote certain of the SPL Rules. Rule I1 provides definitions of various terms in the Rules. Of these, we refer to the following:

Club means an association football club, other than a Candidate Club, which is, for the time being, eligible to participate in the League and, except where the context otherwise requires, includes the owner and operator of such club

...

Company means The Scottish Premier League Limited

...

Contract of Service means a contract of service for a Player in the standard form of the League and/or SFL and references to any particular type of Contract of Service shall be construed accordingly

...

League or Scottish Premier League means the combination of association football clubs comprising the Clubs known as The Scottish Premier League

...

Player means a player who is or has been a Professional Player or Amateur Player of a Club

...

Registration means the registration of a Player with the League to a specified Club in accordance with Section D of the Rules and the words Register and Registered shall be construed accordingly”.

It should be noted that this definition of “Club” is wider than that in the Articles, as it includes its owner and operator.

[30] Rule A7.1.1, in force at all material times, provides:

“A7.1.1 Membership of the League shall constitute an agreement between the Company and each Club, and between each of the Clubs, to be bound by and to comply with:

(a) these Rules and the Articles of Association;

(b) the SFA Articles and the statutes and regulations of UEFA and FIFA;...”

[31] Rule A7.2, in force at all material times, provides:

“A7.2 Such agreement shall have effect from the date of the Club's admission to the League and terminate upon the Club ceasing to be a member thereof (but without prejudice to any rights or claims which may have arisen or arise in respect of circumstances prior to such date and to any Rules which, by their terms, establish rights and obligations applicable after such date).”

[32] SFA Article 5.1(b) provides:

“All members shall:- ... (b) be subject to and shall comply with these Articles and any ... regulations ... promulgated by the Board [of the SFA]...;”.

[33] It can be seen from these provisions that every member of the SPL, being also a member of the SFA, is bound by a nexus of provisions having contractual effect to comply with the Articles and Rules of each body, and is liable to sanction for any breach of either at the instance of the SPL.

The Employee Benefit Trust (EBT) Scheme

Definition in the Notice of Commission

[34] Issues 1 to 3 (except for Issue 3(c)) allege, in essence, that the Rules of the SPL and SFA relating to disclosure were breached by non-disclosure of “EBT Payments and Arrangements”.

This expression is given the following definition:

“Payments made by or for Rangers PLC into an employee benefit trust or trusts for the benefit of Players, including the Specified Players, employed by Rangers PLC as Professional Players, Registered and/or to be Registered as Professional Players with the Scottish Premier League and Playing and/or to Play for Rangers FC in the Scottish Premier League and payments made by or for Rangers PLC into a sub-trust or sub-trusts of such trust or trusts of which such Players were beneficiaries, payments by such trust or trusts and/or sub-trust or sub-trusts to such Players and/or for the benefit of such Players and any and all arrangements, agreements and/or undertakings and the like or similar relating to or concerning any of such Players and payments.”

Outline of the Scheme

[35] As we have said, a controlling interest in Oldco was held by David Murray through the medium of Murray MHL Limited, part of the Murray Group of companies. Murray Group Management Limited (MGM) provided management services to the companies of the Murray Group. By deed dated 20 April 2001 MGM set up the Murray Group Management Remuneration Trust (the MGMRT). (We note that the MGMRT was preceded by the Rangers Employee Benefit Trust, but we are not aware that they were different trusts. We shall treat them as a continuous trust, which we shall refer to throughout as the MGMRT.) Thereafter, 108 sub-trusts were established in name of individual employees of companies in the group. Most of these employees were Specified Players, as set out in the Notice of Commission annexed hereto. Such trusts are commonly referred to as employee benefit trusts (“EBTs”).

[36] We were provided with an outline, which we did not understand to be disputed, of the steps which were generally taken in the case of Specified Players. The precise form of these arrangements may have varied over the years, but the general scheme of the arrangements adopted is set out in the next paragraph.

[37] First, separately from and in addition to his contract of employment, Oldco gave a written undertaking to a Specified Player:

(1) that it would make fixed sum payments to the MGMRT either unconditionally, except as to continuing registration with Rangers FC, on a specified date or dates or on the occurrence of a specified event or events related to or connected with playing in an official match;

(2) that it would recommend to the Trustees of the MGMRT that they establish a sub-trust, appoint the Specified Player as protector of the sub-trust and transfer to the sub-trust sums equal to the payments to be made by Oldco to the MGMRT.

This undertaking was set out in a document addressed to the Specified Player, commonly referred to as a “side-letter”.

Secondly, Rangers FC made payments pursuant to the terms of the undertaking to the MGMRT.

Thirdly, Rangers FC recommended to the Trustees that they establish a sub-trust in respect of the Specified Player, that they transfer the specified contributions to that sub-trust and that they appoint the Specified Player as protector of that sub-trust.

Fourthly, the Trustees established a sub-trust in respect of a Specified Player, transferred the payments received from Rangers FC to that sub-trust and appointed the Specified Player as protector of that sub-trust.

Fifthly, the Specified Player nominated the beneficiaries of the sub-trust.

Sixthly, the Specified Player applied for, and was granted, a loan or loans from the sub-trust, generally of the same amount as the payments made in terms of the undertaking; or alternatively the Specified Player might leave part or all of the contributions in the trust for the benefit of his nominated beneficiaries.

The introduction and administration of the scheme

[38] Evidence about the introduction and operation of the EBT scheme came from the following sources: (1) Campbell Ogilvie, who was called as a witness for the SPL; (2) Andrew Dickson, who was not called as a witness, but was interviewed by Mr McKenzie, in the presence of Mr McLaughlin on 7 June 2012, and a transcript of whose interview was produced; and (3) Douglas Odam, who was not called as a witness but whose witness statement was tendered by Mr Mure.

[39] Campbell Ogilvie is currently president of the SFA. He was employed by Oldco from 1978 until 2005. He was initially employed as assistant secretary, and became company secretary in 1979. He became an executive director of Oldco in 1989, but remained as company secretary until 2002. Mr Odam took over the role of company secretary until he left in 2003. Mr Ogilvie dealt with aspects of football administration at Rangers until late 2002 or early 2003. Mr Dickson then assumed responsibility for all football administration. From 1998 until the time when Mr Ogilvie ceased to deal with football administration, Mr Murray (as he then was) took the lead in negotiating player transfers and player contracts. Until the early 1990s the relative documents were prepared by Mr Ogilvie, and from then on they were dealt with by Mr Odam.

[40] Mr Ogilvie learnt about the existence of the MGMRT in about 2001 or 2002, because a contribution was made for his benefit. He understood that this was non-contractual. Although as a result he knew about the existence of the MGMRT, he did not know any details of it. He subsequently became aware, while he remained director of Oldco, that contributions were being made to the MGMRT in respect of players. He assumed that these were made in respect of the players' playing football, which was the primary function for which they were employed and

remunerated. He had no involvement in the organisation or management of Oldco's contributions to the MGMRT, whether for players or otherwise. He said:

"I assumed that all contributions to the Trust were being made legally, and that any relevant football regulations were being complied with. I do not recall contributions to the Trust being discussed in any detail, if at all, at Board meetings. In any event, Board meetings had become less and less frequent by my later years at Rangers."

He also said:

"Nothing to do with the contributions being made to the Trust fell within the scope of my remit at Rangers".

However it should be noted that Mr Ogilvie was a member of the board of directors who approved the statutory accounts of Oldco which disclosed very substantial payments made under the EBT arrangements.

[41] Mr Odam was employed by Oldco from 1989 until 2003, initially as a finance controller. He was appointed Financial Director in about the late 1990s. By then, he had taken over from Mr Ogilvie the responsibility for the preparation and signing of player contracts. He prepared the contracts and the schedules and dealt with the process of player registration.

[42] He became aware of the MGMRT through Ian McMillan, tax manager of the Murray Group. The scheme had been introduced to the Murray Group by Paul Baxendale-Walker, and had been discussed at the Murray Group headquarters prior to being introduced to Oldco. Draft paperwork, which had previously been prepared, was passed to Mr Odam by Mr McMillan. Mr Odam then filled in the specific details in respect of an individual player, based on information supplied by Mr Murray or the football manager or both. At least initially, completed side-letters were passed back to the Murray Group for approval before Mr Odam signed them on behalf of Oldco.

[43] Mr Odam said that none of the side-letters was sent to the SPL or the SFA. He discussed this with Mr McMillan and David Horne, the Murray Group internal solicitor during the 1990s. He said:

"My understanding at the time was that the letters were non-contractual and I did not believe that the letters had to be lodged with the football authorities as part of the player registration process. I understood that lodging the letters could have been misinterpreted as indicating a contractual commitment to the player thus potentially prejudicing the effectiveness of the [scheme]".

He also said:

“There was a common understanding of those involved that the company was not required to register the [side-letters] as part of the player registration process because the players or other beneficiaries had no unfettered contractual entitlement arising out of the scheme and because any monies advanced to the players by a sub-trust were loans not payments. Throughout my employment with [Oldco] I was acting within my understanding of what was required by the player registration rules.”

[44] Mr Odam recalled that the concept of the trust was explained to the Board of Oldco by one of Mr McMillan, Mr Murray or Mr Horne and was discussed by the Board, possibly only at one meeting. He did not recall which directors were or were not in attendance. Specific details of player contracts or EBT arrangements were not discussed at board meetings in the normal course.

[45] Mr Dickson was employed by Oldco from 1991, working in the finance department. He became the financial controller in about 1998, when Mr Odam became financial director. He became Head of Football Administration in about 2003 or 2004. By that time he was already aware of the existence of the EBT scheme. He was not involved with the negotiation of player contracts. This was done by Mr Murray, and later by Martin Bain. Mr Dickson dealt with the “mechanics” as Mr Odam had done.

[46] During the interview, Mr Dickson was shown a number of side-letters. Asked why Oldco made payments to the MGMRT pursuant to the obligation contained in the side-letter issued to a player, he said: “He was an employee of the club ... He was a football player.” He did not regard these as payments to the player. This was on the basis of discussions with Mr McMillan. For this reason he did not understand that the side-letters required to be notified to the football authorities.

The side-letters

[47] At the time when the Notice of Commission was prepared, incomplete information was available about the identities of all the players employed by Oldco who were in receipt of side-letters. Those players who were named in the documents then available were included in the A lists of Specified Players, while those in respect of whom other information was available were included in the B lists. The B lists were compiled from information broadcast by BBC Scotland and published on its website, together with inferences drawn from redacted side-letters disclosed by Biggart Baillie on 31 May 2012 (see below). Given that Oldco was represented at the hearing, we requested that un-redacted copies be made available in place of redacted copies of side-letters relating to Specified Players in the B lists, and this has now been done. At the hearing, Mr McKenzie indicated that, on reconsideration, the name of Tore André Flo should be

omitted from list 2A (but not from list 1A) and that of Michael Ball should be omitted from list 3A (but not from list 1A). Subject to this, we are satisfied that there is sufficient evidence that all of the Specified Players were in receipt of side-letters. It is not in dispute that none of these was at any time disclosed to the SPL or SFA.

[48] The style of side-letter used by Oldco varied from time to time. The following examples appear to us to be sufficiently representative of the range of styles:

(1) By letter dated 27 January 2003 to Jérôme Bonnissel, Martin Bain, Director of Football Business of Oldco, wrote:

“I confirm that the Board of Rangers Football Club (the Club) will recommend to the Trustees of the Murray Group Management Remuneration Trust (MGMRT) to include you as the protector of a sub-trust and to fund this sub-trust with a total of £48,000 net, £24,000 payable in February 2003 and £24,000 payable on 1 June 2003.

The Club undertakes to fund the MGMRT to the extent necessary to permit the Trustees of the MGMRT to carry out this recommendation.”

(2) By letter dated 1 July 2003 to Nuno Fernando Gonçalves da Rocha (Nuno Gonçalves, known as Capucho), Martin Bain wrote:

“I confirm that the Board of Rangers Football Club (the Club) will recommend to the Trustees of the Murray Group Management Remuneration Trust (MGMRT) to include you as the protector of a sub-trust and to fund this sub-trust with net totals as follows:

1. £600,000 in total, payable £150,000 in October 2003, £150,000 in April 2004, £150,000 in October 2004 and £150,000 in April 2005.
2. Effective from the date of this letter until 31 May 2004, £2,000 for each competitive First Team match in which you have played for the Club, the relevant amount being payable in quarterly instalments in arrears on the last business day in each of October, January, April and June during each season. In the event that there have been less than 5 matches for which payment is due in any instalment, payment in respect of the same will be deferred until the next instalment date.
3. The amount, if any, by which the cumulative amount payable in respect of bonuses in any one season is less than £100,000 net.

The Club undertakes to fund the MGMRT to the extent necessary to permit the trustees of the MGMRT to carry out this recommendation. In the event that the MGMRT ceases to be available, the Club will use its best endeavours to make equivalent alternative arrangements.”

(3) By letter dated 1 January 2004 to Shota Arveladze, Martin Bain wrote:

“I confirm that the Board of Rangers Football Club (the Club) will recommend to the Trustees of the Murray Group Management Remuneration Trust (MGMRT) to include you as the protector of a sub-trust and to fund this sub-trust with net totals as follows:

1. £990,000 in total, payable £190,000 in March 2004, £200,000 in October 2004 and 2005, and £200,000 in April 2005 and 2006.
2. Effective from the date of this letter until 31 May 2006, £1,000 for each competitive First Team match in which you have played for the Club, the relevant amount being payable at the end of seasons 2003/04, 2004/05 and 2005/06.

The Club undertakes to fund the MGMRT to the extent necessary to permit the trustees of the MGMRT to carry out this recommendation. In the event that the MGMRT ceases to be available, the Club will use its best endeavours to make equivalent alternative arrangements.

This letter supercedes [*sic*] the letter dated 1st September 2001 from Douglas Odam.”

(4) By letter dated 21 August 2008 to Steven Davis, Martin Bain wrote:

“I confirm that the Board of Rangers Football Club (the Club) will recommend to the Trustees of the Murray Group Management Remuneration Trust (MGMRT) to include you as the protector of a sub-trust and to fund this sub-trust with a total of up to £1,200,000 net.

This amount will be payable in instalments [*sic*] of £160,000 in August 2008 and £140,000 in February 2009, £150,000 in August 2009, 2010 and 2011 and February 2010, 2011 and 2012 or earlier at the Club’s sole discretion, subject to you being a registered player with the Club on each due date.

The Club undertakes to fund the MGMRT to the extent necessary to permit the trustees of the MGMRT to carry out these recommendations.”

It can be seen that each of these side-letters contains an undertaking by Oldco to the Specified Player “to fund the MGMRT”. A similar undertaking is found in every other side-letter before us and it is clear to us (as we believe it must have been to anyone at Oldco with even a basic grasp of legal matters) that the undertaking was contractually binding as between Oldco and the player.

[49] On any view, the total annual amount contributed by Oldco to the MGMRT was substantial. In the statutory accounts of Oldco, they were included under the heading of “Staff Costs”, along with wages and salaries and certain other costs. The relationship between the cost of such contributions and that of wages and salaries appears from the following table:

Year to 30 June	Wages and salaries £'000	Contributions to EBT £'000
2000	30,160	Nil
2001	29,595	1,010
2002	28,541	5,176
2003	25,040	6,791
2004	20,587	7,252
2005	17,764	7,241
2006	16,704	9,192
2007	17,064	4,988
2008	28,207	2,291
2009	24,908	2,360
2010	23,667	1,358

The notes to each of the statutory accounts stated that the MGMRT “was established to provide incentives to certain employees”. It is apparent from the whole evidence available to us that the great majority of these contributions were made for players.

[50] It is clear to us that the reason why side-letters were issued to players, in addition to their contracts of employment, was that they were employed by Oldco to play football. Many side-letters contained a provision that Oldco would recommend to the trustees of the MGMRT to fund a sub-trust “subject to you being a registered Rangers player on the due date” and a provision for payment of specified amounts “for each competitive First Team Match in which the player starts or...for each competitive First Team Match in which the player enters the field of play as a substitute”: we refer, for example, to the side-letter to Gregory Vignal dated 4 August 2004.

[51] It is also clear to us that the undertaking contained in a side-letter was regarded as a very significant part of the player’s total remuneration package. For example, following the enactment of section 26 of and Schedule 2 to the Finance Act 2011, by letter dated 3 May 2011 to Steven Davis, Martin Bain wrote:

“On 21 August 2008 you were given a letter of undertaking that certain recommendations would be made to the Trustees of the [MGMRT] by the Board of Rangers Football Club. Such recommendations would have resulted in further contributions to the sub-trust of which you are protector of £450,000 over and above those already made.

Unfortunately, the law has changed and the older arrangement now carries no benefits at all. Instead, therefore the Board propose to make additional payments of £312,000 in May 2011 and £312,000 on 31 August 2011 and 28 February 2012 directly to you,

subject to you being a registered Rangers player on these dates. It's the Board's understanding that such payments will be subject to deductions for Income Tax and National Insurance contributions, with the net result being that you will receive payment of the amount which would have gone into the Trust. I trust you will find this acceptable."

A similar letter was written on the same date to Saša Papac.

The decision of the Tax Tribunal

[52] A dispute arose between HMRC and five companies in the Murray Group, including Oldco. The issue between them was "whether the payments into trust or the benefits taken by the employee fall to be taxed as *emoluments of their employment*, with PAYE and NIC liabilities arising for the employer" (emphasis added): Tax Tribunal majority decision, paragraph 3. The five companies appealed to the Tax Tribunal against assessments to tax by HMRC. In due course, by decision released to the parties on 29 October 2012 and published on 20 November 2012, the Tax Tribunal, by a majority, substantially allowed the appeals. Thereafter, leave was granted to HMRC to appeal against this decision, and on 4 February 2013 it was announced that an appeal had been lodged.

[53] We wish to emphasise that the issues before this Commission as to alleged contraventions of the SPL Rules are very different from the questions of tax law which the Tax Tribunal was required to decide. As stated, they were concerned with the expression "emoluments". Crucial to the decision of the majority was that they regarded the loans – for present purposes, loans to Specified Players – as repayable.

At paragraph 208 they said:

"The format spoken to was of a contract of employment, with remuneration paid subject to PAYE and NIC and additionally a 'side-letter' providing for a discretionary trust payment. We consider that the side-letter's obligation does not amount to an *emolument*. Again it falls within the description of 'a discharge of an employer's obligation to an employee'." (emphasis in original).

By the words "discretionary trust payment" we understand the majority to have meant "payment into a discretionary trust". At paragraph 218 they said:

"The form of the loan document is sufficient in our view to create a liability to repay... That the loans were recoverable, on whatever basis, appears to us to be critical... If they have not been paid over absolutely, then they are not taxable *emoluments*." (emphasis in original)

In their findings of law at paragraph 232, they stated:

“3. The sums advanced to the employees of the Appellants by way of loan in terms of the relative loan documents, were made in pursuance of discretionary powers and remain recoverable and represent debts on their estates.

4. The sums advanced by the Appellant companies into the principal trust, whether on payment thereto, or on payment to a sub-trust, or thereafter by way of loan to the employee, were not at any time held absolutely or unreservedly for or to the order of the individual employee.”

[54] In contrast, as is apparent from the Notice of Commission, we are concerned with the expressions “*financial entitlement*” and “*payment*”. The Tax Tribunal’s findings in fact are not binding on us: see *Secretary of State for Trade and Industry v Bairstow* [2003] ECWA Civ 321. As previously indicated, we are free to treat those findings in fact as hearsay evidence in the present case, and to give them such weight as we think appropriate. But as will be seen, we do not find it necessary to take issue with any of those findings in fact.

Rules referred to in Issues 1 to 3: Disclosure

[55] We here set out and discuss the provisions of the Rules which are applicable to Issues 1 to 3, with the exception of Issue 3(c), read together with the concluding words of Issue 3(b), which we discuss below under the heading “Eligibility of Players”.

Issue 1: period from 23 November 2000 to 21 May 2002

[56] The only Rule referred to in Issue 1 is SPL Rule D10.2.3, in effect prior to 23 May 2005. This provided:

“The Contract of Service between the Player and the Club shall state the Player’s full financial entitlement from the Club, including signing-on fees, additional lump sum payments, remuneration, bonus payments, removal assistance and benefits in kind. In any dispute between the Player and the Club, the remuneration contained in the Contract of Service shall be deemed to be the Player’s complete entitlement. Any Club failing to detail a Player’s full financial entitlement in the Contract of Service shall be dealt with as the Board may decide.”

Issue 2: period from 22 May 2002 to 22 May 2005

[57] The Rules referred to in Issue 2 are SPL Rule D10.2.3, SPL Rule A7.1, SFA Article 12.3, SFA Procedures Rule 2.2.1 and SFA Procedures Rule 4. SPL Rule A7.1 and SPL Rule D10.2.3 are quoted above.

[58] SFA Article 12.3, in effect from and including 22 May 2002 provides:

“Furthermore, all payments, whether made by the club or otherwise, which are to be made to a player solely relating to his playing activities must be fully recorded within the

relevant written agreement with the player prior to submission to the Scottish FA and/or the recognised football body of which his Club is in membership.”

[59] SFA Procedures Rule 2.2.1, in effect from and including the season 2002/03, provides:

“Unless lodged in accordance with Procedures Rule 2.13 a Non-Recreational Contract Player Registration Form will not be valid unless it is accompanied by the contract entered into between the club concerned and the player stating all the terms and conditions in conformity with the Procedures Rule 4.”

[60] SFA Procedures Rule 4, in effect from and including the season 2002/03, provides:

“All payments to be made to a player relating to his playing activities must be clearly recorded upon the relevant contract and/or agreement. No payments for his playing activities may be made to a player via a third party.”

Issue 3: period from 23 May 2005 to 3 May 2011

[61] The Rules referred to in Issue 3 are SPL Rule D9.3, SPL Rule D1.13, SPL Rule A7.1 SFA Article 12.3, SFA Procedures Rule 2.2.1 and SFA Procedures Rule 4. (Issue 3(c) also refers to SPL Rule D1.11, which we discuss below under a separate heading.) SPL Rule A7.1, SFA Article 12.3, SFA Procedures Rule 2.2.1 and SFA Procedures Rule 4 are quoted above.

[62] SPL Rule D9.3, in effect from and including 23 May 2005, provides:

“No Player may receive any payment of any description from or on behalf of a Club in respect of that Player’s participation in Association Football or in an activity connected with Association Football, other than in reimbursement of expenses actually incurred or to be actually incurred in playing or training for that Club, unless such payment is made in accordance with a Contract of Service between that Club and the Player concerned.”

SPL Rule D1.13, in effect from and including 23 May 2005 provides:

“A Club must, as a condition of Registration and for a Player to be eligible to Play in Official Matches, deliver the executed originals of all Contracts of Service and amendments and/or extensions to Contracts of Service and all other agreements providing for payment, other than for reimbursement of expenses actually incurred, between that Club and Player, to the Secretary [of the SPL], within fourteen days of such Contract of Service or other agreement being entered into, amended and/or, as the case may be, extended.”

The proper approach to construction of these Rules

[63] In considering the expressions “financial entitlement” and “payment” in the provisions quoted above - which appear to us to be the key expressions - we start with the proposition that, as already explained, these provisions are all contractually binding on the members of the SPL. It was not in dispute before us that contractual provisions such as this require to be construed in a manner which is consistent with the context in which they are used and the purpose which the parties using them intended to fulfil. In a case recently decided in the Supreme Court, *Lloyds*

TSB Foundation for Scotland v Lloyds Banking Group Plc [2013] UK SC 3, Lord Mance said in paragraph 21 that “the proper approach is contextual and purposive”. He cited *Prenn v Simmonds* [1971] 1 WLR 1381, in which Lord Wilberforce said at pp 1383 to 1384:

“We must...enquire beyond the language and see what the circumstances were with reference to which the words were used, and the object, appearing from those circumstances, which the person using them had in view.”

[64] Clearly, the expressions “financial entitlement” and “payment” must be construed in the context of the relevant Articles and Rules; but in our opinion they also require to be interpreted in the wider context in order to establish their purpose and to be applied in such a way as to fulfil that purpose.

The purpose of these Rules

[65] Evidence was given by Iain Blair, the Company Secretary of the SPL. (He is also Secretary to this Commission, but no objection was made to his being called as a witness.) Part of his role involves supervising the receipt and processing of the contractual documentation disclosed by SPL member clubs in relation to players employed by those clubs. This processing involves checking that the contracts contain all of the information required by the SPL Rules. He gave evidence, which was uncontested and which we accept, about the mischief which the Articles and Rules with which we are concerned are intended to prevent, i.e. their purpose.

[66] Professional football has considerable financial and commercial significance. This arises in a number of different ways. Football clubs can have significant financial value; commercial opportunities are widely exploited through broadcasting, sponsorship, endorsement and a wide range of other means; prize money and rights fee payments can be substantial and there is extensive interest in gambling on professional football.

[67] In recognition of the need to regulate the business of professional football in order to maintain its sporting integrity the international and national associations and the professional leagues have adopted extensive measures to ensure (so far as possible) that players do not receive irregular or improper payments or benefits. Amongst such measures which have been adopted are those which require that all payments and benefits received by or for the benefit of professional footballers must be disclosed in advance to the relevant national association and league body and that all such payments and benefits must be made by the club employing the relevant player. The English Football Association, English Premier League, English Football League and Scottish Football League all have rules which require such disclosure. In an environment in which all such payments and benefits must be so disclosed in advance and must

be made or provided by the employing club it is much easier to identify irregular or improper payments or benefits which might compromise the sporting integrity of the competition.

[68] In short, the main purpose of these Articles and Rules is the promotion of sporting integrity. They also afford a protection to clubs and players in the event of dispute about a player's financial entitlement.

Issues 1 to 3: Non-disclosure

Issue 1: period 1

[69] The question we have to consider in connection with Issue 1 is whether, during the period from 23 November 2000 to 21 May 2002, by entering into EBT arrangements with Specified Players which were not detailed or recorded in their contracts of service and not disclosed to the SPL, there was a breach of SPL Rule D10.2.3 by Oldco and Rangers FC.

[70] In our opinion the answer to this question can be found on a straightforward application of Rule D10.2.3, giving the words used in it their ordinary meaning. Each side-letter issued to a Specified Player clearly constituted a contractual agreement: the unanimous view of the Tax Tribunal also was that it was an "obligation". The player had an entitlement to require Oldco to fund the main trust to the extent necessary to permit the trustees to fund the sub-trust to be established for the player. That was a contractual entitlement, constituting a financial liability on the part of Oldco to the player, and enforceable by the player. It was therefore a "financial entitlement". Accordingly, in the case of each of the Specified Players in lists 1A and 1B, the EBT arrangements were an essential element of "the Player's full financial entitlement" within the meaning of Rule 10.2.3.

Issue 2: period 2

[71] The question we have to consider in connection with Issue 2 is whether, during the period from 22 May 2002 to 22 May 2005, by entering into EBT arrangements with Specified Players which were not detailed or recorded in their contracts of service and not disclosed to the SPL or SFA, there was a breach of SPL Rule D10.2.3, SPL Rule A7.1, SFA Article 12.3, SFA Procedures Rule 2.2.1 and SFA Procedures Rule 4 by Oldco and Rangers FC.

[72] The opinion we have expressed about SPL Rule D10.2.3 in connection with Issue 1 is equally applicable to our consideration of Issue 2.

[73] SPL Rule A7.1 obliges members of the SPL to comply with the SFA Articles and its statutes and regulations. SFA Article 12.3, SFA Procedures Rule 2.2.1 and SFA Procedures

Rule 4 in effect require all payments to be made to a player relating to his playing activities to be recorded in his contract of employment and disclosed to the SFA.

[74] The key expression in SFA Article 12.3 and Procedures Rule 4 is “payments”. For reasons already given, we consider it appropriate to give a purposive construction to this expression. Under the EBT arrangements Oldco was to make payments to the main trust, which were intended to be paid over to the sub-trust, the trustees of which were to advance loans to the player, as and when requested by the player. The player was to be appointed as protector of the trust, with the power to give directions to the trustees and thus to determine the identity of the beneficiaries.

[75] The common intention of the parties, and the only basis on which these terms were agreed, was that the player should take the benefit, through the trust arrangements, of the payments which Oldco was agreeing to make. If it had not been intended that the player would directly benefit from the EBT arrangements then there is no reason to believe that the player would have agreed to accept the overall financial package offered by Oldco.

[76] In those circumstances the mutual intent of the contracting parties, Oldco and the player, was that the player should receive payments from the sub-trust, which payments were to be funded indirectly by Oldco. On that basis the player was to receive “payments ... made by the club” within the meaning of SFA Article 12.3 and Procedures Rule 4. The fact that the payment was to be in the form of a loan is not material. A loan of money is made by payment of the money by the lender to the borrower. The general law is that the loan is repayable on demand (with interest), or on such terms as may be agreed; but this does not detract from the starting point being the initial payment.

[77] In the alternative, the payment by Oldco to the MGMRT itself constituted a payment received by the player. It was a payment made at the request of the player to fund a sub-trust to be established on his behalf, of which he was to be the protector and over which he would exercise control. On that basis the payment by Oldco was a payment paid for the benefit of the player and thus received by him or on his behalf.

[78] For the reasons given above the payments which Oldco agreed to make under a side-letter were payments from Oldco to the player relating, or solely relating, to his playing activities within the meaning of SFA Article 12.3 and Procedures Rule 4.

Issue 3: period 3

[79] The question we have to consider in connection with Issue 3 (except Issue 3(c)) is whether, during the period from 23 May 2005 to 3 May 2011, by entering into EBT

arrangements with Specified Players which were not detailed or recorded in their contracts of service and not disclosed to the SPL or SFA, there was a breach of SPL Rule D9.3, SPL Rule D1.13, SPL Rule A7.1, SFA Article 12.3, SFA Procedures Rule 2.2.1 and SFA Procedures Rule 4 by Oldco and Rangers FC.

[80] The opinion we have expressed about SFA Article 12.3 and Procedures Rules 2.2.1 and 4 in connection with Issue 2 is equally applicable to our consideration of Issue 3.

[81] The key expression in SPL Rules 9.3 and D1.13 is “payment”. For reasons already given, we consider it appropriate to give a purposive construction to this expression. We also consider it appropriate to give it a construction which is consistent with that which we have given to the comparable SFA provisions, which use the word “payments”. Our reasoning in connection with Issue 2 is therefore equally applicable to Issue 3, and we see no need to repeat it. Again, the fact that the payment was to be in the form of a loan is not material, as Rule D9.3 covers a “payment of any description”.

[82] For the reasons given above, in our opinion (1) the side-letters constituted “agreements providing for payment ... between that Club and Player” within the meaning of SPL Rule D1.13, and (2) the payments which Oldco agreed to make under a side-letter were payments from Oldco to the player (a) “from or on behalf of a Club in respect of that Player’s participation in Association Football” within the meaning of SPL Rule D9.3 and (b) relating, or solely relating, to his playing activities within the meaning of SFA Article 12.3 and Procedures Rule 4.

General conclusion

[83] For all these reasons, we are satisfied that breaches of the Rules have been established in terms of Issues 1 to 3, except Issue 3(c) and the concluding words of Issue 3(b), which we shall now discuss.

Issue 3(c): Eligibility of Players

[84] SPL Rule D1.11, which with its predecessor were in effect from and including 23 May 2005, provides:

“Any Club playing an ineligible Player in an Official Match and the Player concerned shall be in breach of the Rules.”

Issue 3(c) alleges that during the period from 23 May 2005 until 3 May 2011 (inclusive) Rangers FC, whilst a member of the SPL, breached Rule D1.11 by playing the Specified Players in lists 3A and 3B in official matches when those players were ineligible so to play. This requires to be

read in conjunction with the concluding passage of Issue 3(b) which alleges that Oldco and Rangers FC breached SPL Rule D1.13, as discussed above, “such that Rangers FC was in breach of a condition of the registration of such players and such players were ineligible to play in official matches for Rangers FC”. Reference also requires to be made to SFA Registration Procedure Rules 2.2.1 and 4.

[85] In addressing us on Issue 3(c), Mr McKenzie sought to include a reference to period 2. Although there is a passage in the outline written argument for the SPL which may be taken to relate to period 2, Issue 3(c) and the relevant passage in Issue 3(b) both relate to period 3, from 23 May 2005 until 3 May 2011 (inclusive). No notice is given in the Notice of Commission of any comparable allegation relating to any earlier period, and for this reason we are not prepared to consider this part of the argument.

[86] Evidence was given by Alexander Bryson, Head of Registrations at the SFA, who described the registration process. During the course of his evidence he explained that, once a player had been registered with the SFA, he remained registered unless and until his registration was revoked. Accordingly, even if there had been a breach of the SFA registration procedures, such as a breach of SFA Article 12.3, the registration of a player was not treated as being invalid from the outset, and stood unless and until it was revoked.

[87] Mr McKenzie explained to us that SPL Rule D1.13 had hitherto been understood to mean that if, at the time of registration, a document was not lodged as required, the consequence was that a condition of registration was broken and the player automatically became ineligible to play in terms of SPL Rule D1.11. He accepted however that there was scope for a different construction of the rule, to the effect that, as the lodging of the document in question was a condition of registration, the registration of the player would be liable to revocation, with the consequence that the player would thereafter become ineligible to play. He accepted that no provision of the Rules enabled the Board of the SPL retrospectively to terminate the registration of the player. It became apparent from his submissions that Mr McKenzie was not pressing for a finding that Issue 3(c), together with the concluding words of Issue 3(b), had been proved.

[88] In our opinion, this was a correct decision by Mr McKenzie. There is every reason why the rules of the SFA and the SPL relating to registration should be construed and applied consistently with each other. Mr Bryson’s evidence about the position of the SFA in this regard was clear. In our view, the Rules of the SPL, which admit of a construction consistent with those of the SFA, should be given that construction. All parties concerned – clubs, players and footballing authorities – should be able to proceed on the faith of an official register. This means that a player’s registration should generally be treated as standing unless and until revoked.

There may be extreme cases in which there is such a fundamental defect that the registration of a player must be treated as having been invalid from the outset. But in the kind of situation that we are dealing with here we are satisfied that the registration of the Specified Players with the SPL was valid from the outset, and accordingly that they were eligible to play in official matches. There was therefore no breach of SPL Rule D1.11.

[89] For these reasons we are not satisfied that any breach of the Rules has been established in terms of Issue 3(c), taken in conjunction with the concluding words of Issue 3(b) quoted above. This is an important finding, as it means that there was no instance shown of Rangers FC fielding an ineligible player.

Issue 4: Delay in Provision of Information

The relevant Rules

[90] SPL Rule F1 provides:

“Every Club shall keep detailed financial records and the Company shall be entitled to inspect such records and to require Clubs to provide copies of any financial or other records which the Company may reasonably require in order to enable the Company to investigate whether the Club has complied and is complying with these Rules, the Articles of Association, the SFA Articles, the UEFA Statutes and the FIFA Statutes and to ensure compliance by the Club with the same.”

[91] We have already quoted Rule G1.1 in paragraph [1] of this Decision. Rule G.1.5 provides:

“The Board, and where appointed by the Board, a Commission, may require ... the production to the Board or a Commission of any books, letters and other documents or records whatsoever and howsoever kept relating to or concerning any matter in relation to which the Board, and where appointed by the Board, a Commission, shall have the power of enquiry or determination in terms of Rules G1.1 and G1.2 respectively.”

The facts

[92] Issue 4 relates to events during the period when the joint administrators were in control of the affairs of Oldco. On 5 March 2012 Rod McKenzie of Harper Macleod LLP, the solicitors acting for the SPL, wrote to the joint administrators stating that the Board of the SPL had determined on 1 March 2012 to instruct an investigation relating to payments made by Oldco to players for playing football which had not been disclosed in those players' contracts of service, and in particular the use by Oldco of EBT payments and arrangements (“the investigation”). By this letter, the SPL required Oldco, as part of the investigation, to deliver copies of any and all items of documentation, communications, contract documents, notes, correspondence, emails, trust deeds, memoranda and others, including all notes of conversations and meetings in any way

concerning and relating to EBT payments and arrangements paid and/or made in respect of players whether held by Oldco or by a third party for and on behalf of Oldco, and certain other detailed information, to Harper Macleod by 5 pm on 9 March 2012.

[93] On 7 March 2012 Oldco requested an extension to the deadline for production of the required materials, and suggested a deadline of 14 March 2012. This extension was granted and the deadline for the production of the required materials was altered to 5 pm on that day. No materials were produced prior to this deadline.

[94] On 15 March 2012, Michael McLaughlin of Biggart Baillie (now DWF Biggart Baillie) emailed Harper Macleod to state that he was now instructed by Oldco, and that all future correspondence be directed to him. No materials were produced by 20 March 2012, and the SPL's solicitors reported the failure of Oldco to cooperate with the investigation to the Board.

[95] By letter dated 22 March 2012 Mr McLaughlin wrote:

“[I]t is the Club's position that it is not compelled to intimate documents that relate to the Trust at this time.”

By letter dated 28 March 2012 he stated that Oldco was willing to “provide the documentation requested as and when it becomes necessary and appropriate to do so.”

[96] At a meeting on 12 April 2012 one of the joint administrators undertook on behalf of Oldco to make four binders of documentation immediately available to the SPL. This did not happen.

[97] By email of 16 April 2012, Biggart Baillie passed on a request to the Murray Group in these terms:

“Harper Macleod has requested intimation of financial information and documentation by Rangers. Specifically we have been asked to ask the Murray Group whether or not it would be prepared to intimate to Harper Macleod, an entire set of productions from the First Tier Tax Tribunal Hearing ... that relates to operation of the trusts.”

By further email of 16 April 2012 Biggart Baillie told Harper Macleod that documentation held by Oldco which would fall within the SPL's request for information contained, in their view, “sensitive personal data” of current and former employees of Oldco. Biggart Baillie further stated that disclosure of the requested information might breach the Data Protection Act 1998 unless all such personal and sensitive personal data were to be redacted from the information prior to disclosure.

[98] Meanwhile, BBC Scotland came, by unknown means, into possession of what they described as “dozens of secret emails, letters and documents”, which we understand were the productions before the Tax Tribunal. These formed the basis of a programme entitled “Rangers

– The Men Who Sold the Jerseys”, which was broadcast on 23 May 2012. BBC Scotland also published copious material on its website. The published material included a table containing the names of Rangers players, coaches and staff who were beneficiaries of the MGMRT, and how much they received through that trust. It also listed the names of people where the BBC had seen evidence that they received side-letters. This event appears to have been the trigger for more activity in response to the SPL’s request.

[99] On 31 May 2012 Biggart Baillie disclosed a number of redacted side-letters and other letters ancillary to side-letters. A total of 50 redacted letters were disclosed, 40 of which were side-letters (one being a duplicate), six were ancillary to side-letters and four related to contractual payments to Specified Players which had previously been disclosed to the SPL.

[100] The redacted side-letters provided to the SPL clearly did not comprise all the side-letters which were extant and should have been provided, as could readily be established by comparison of the redacted side-letters with the side letters listed by BBC Scotland. Moreover, there was in our opinion no justification for redaction, as it is clear from comparison between redacted and un-redacted versions that what had been redacted was the identities of players and financial information relating to them. Financial information is not included among the “sensitive personal data” listed in section 2 of the Data Protection Act, and given the nature of the applicable rules these names and financial information should have been included in the documents sent to the SPL in response to the original request on 5 March 2012. As we have said, we have now been provided, at our request but without further demur, with un-redacted copies of the side-letters.

[101] Given that disclosure of the requested players’ personal data to the SPL or this commission would not have resulted in Oldco being in breach of the Data Protection Act, Oldco should have disclosed all of the requested information in un-redacted form pursuant to SPL Rules G1.1.1 and G1.5. All side-letters in respect of the Specified Players, along with all other relevant financial records, ought to have been held by or on behalf of Oldco. As such, all such materials ought to have been readily accessible and ought to have been capable of production to the SPL or Harper Macleod within a reasonable period of time. In the event, 12 weeks elapsed between the initial requirement and the production of the redacted side-letters. Moreover, Oldco was not entitled to redact any materials produced to the SPL in terms of Rule F.1. By entering a contract of service with a club, a player consents to the club producing such materials to the SPL as is necessary for the club to comply with the rules: see Rule D1.14, which provides:

“By permitting himself to be Registered, a Player shall be deemed to have submitted himself to the jurisdiction of the Company and to the Board and to have agreed to adhere to, comply with and be subject to these Rules...”.

[102] In these circumstances Oldco breached Rule F.1 by failing to provide all of the documents, information and materials specified in the letter of 5 March 2012 and by redacting the materials produced. This restricted the ability of the SPL to investigate Oldco’s compliance with the SPL Rules, the SFA Articles of Association and Rules, UEFA statutes and FIFA statutes. The failure to provide the required documents, information and materials, the redaction of the limited materials produced, and the unwarranted delay in the production thereof constituted a breach by Oldco of its obligations under and in terms of Rule G1.1 to afford every assistance to the Board of the SPL, or its solicitors, in the conduct of the investigation. They likewise constituted a breach by Oldco of its obligations under and in terms of rule G1.5 to produce to the Board of the SPL, or its solicitors, in the books, letters or other documents or records whatsoever relating to EBT payments and arrangements paid or made by Oldco in respect of players.

Sanction

[103] Under SPL Rule G6.1 we have the power to impose a wide range of sanctions. Under Rule G6.1.18 we may in addition “make such other direction, sanction or disposal, not expressly provided for in these Rules”. Since at the time of the hearing we had made no decision on the merits, we invited Mr McKenzie and Mr Mure to address us on various hypotheses. Mr McKenzie stated, and we wish to emphasise, that *the SPL did not seek the imposition by us of any specific sanction*. It was a matter for the exercise of the Commission’s discretion in the whole circumstances of the case. This should be borne in mind for the remainder of our discussion of the question of sanction.

Issues 1 to 3

[104] As we have already explained, in our view the purpose of the Rules applicable to Issues 1 to 3 is to promote the sporting integrity of the game. These rules are not designed as any form of financial regulation of football, analogous to the UEFA Financial Fair Play Regulations. Thus it is not the purpose of the Rules to regulate how one football club may seek to gain financial and sporting advantage over others. Obviously, a successful club is able to generate more income from gate money, sponsorship, advertising, sale of branded goods and so on, and is consequently able to offer greater financial rewards to its manager and players, in the hope of even more

success. Nor is it a breach of SPL or SFA Rules for a club to arrange its affairs – within the law – so as to minimise its tax liabilities. The Tax Tribunal has held (subject to appeal) that Oldco was acting within the law in setting up and operating the EBT scheme. The SPL presented no argument to challenge the decision of the majority of the Tax Tribunal and Mr McKenzie stated expressly that for all purposes of this Commission’s Inquiry and Determination the SPL accepted that decision as it stood, without regard to any possible appeal by HMRC. Accordingly we proceed on the basis that the EBT arrangements were lawful. What we are concerned with is the fact that the side-letters issued to the Specified Players, in the course of the operation of the EBT scheme, were not disclosed to the SPL and the SFA as required by their respective Rules.

[105] It seems appropriate in the first place to consider whether such breach by non-disclosure conferred any competitive advantage on Rangers FC. Given that we have held that Rangers FC did not breach Rule D1.11 by playing ineligible players, it did not secure any direct competitive advantage in that respect. If the breach of the rules by non-disclosure of the side-letters conferred any competitive advantage, that could only have been an indirect one. Although it is clear to us from Mr Odam’s evidence that Oldco’s failure to disclose the side-letters to the SPL and the SFA was at least partly motivated by a wish not to risk prejudicing the tax advantages of the EBT scheme, we are unable to reach the conclusion that this led to any competitive advantage. There was no evidence before us as to whether any other members of the SPL used similar EBT schemes, or the effect of their doing so. Moreover, we have received no evidence from which we could possibly say that Oldco could not or would not have entered into the EBT arrangements with players if it had been required to comply with the requirement to disclose the arrangements as part of the players’ full financial entitlement or as giving rise to payment to players. It is entirely possible that the EBT arrangements could have been disclosed to the SPL and SFA without prejudicing the argument – accepted by the majority of the Tax Tribunal at paragraph 232 of their decision – that such arrangements, resulting in loans made to the players, did not give rise to payments absolutely or unreservedly held for or to the order of the individual players. On that basis, the EBT arrangements could have been disclosed as contractual arrangements giving rise to a facility for the player to receive loans, and there would have been no breach of the disclosure rules.

[106] We therefore proceed on the basis that the breach of the rules relating to disclosure did not give rise to any sporting advantage, direct or indirect. We do not therefore propose to consider those sanctions which are of a sporting nature.

[107] We nevertheless take a serious view of a breach of rules intended to promote sporting integrity. Greater financial transparency serves to prevent financial irregularities. There is

insufficient evidence before us to enable us to draw any conclusion as to exactly how the senior management of Oldco came to the conclusion that the EBT arrangements did not require to be disclosed to the SPL or the SFA. In our view, the apparent assumption both that the side-letter arrangements were entirely discretionary, and that they did not form part of any player's contractual entitlement, was seriously misconceived. Over the years, the EBT payments disclosed in Oldco's accounts were very substantial; at their height, during the year to 30 June 2006, they amounted to more than £9 million, against £16.7 million being that year's figure for wages and salaries. There is no evidence that the Board of Directors of Oldco took any steps to obtain proper external legal or accountancy advice to the Board as to the risks inherent in agreeing to pay players through the EBT arrangements without disclosure to the football authorities. The directors of Oldco must bear a heavy responsibility for this. While there is no question of dishonesty, individual or corporate, we nevertheless take the view that the non-disclosure must be regarded as deliberate, in the sense that a decision was taken that the side-letters need not be or should not be disclosed. No steps were taken to check, even on a hypothetical basis, the validity of that assumption with the SPL or the SFA. The evidence of Mr Odam (cited at paragraph [43] above) clearly indicates a view amongst the management of Oldco that it might have been detrimental to the desired tax treatment of the payments being made by Oldco to have disclosed the existence of the side-letters to the football authorities.

[108] Given the seriousness, extent and duration of the non-disclosure, we have concluded that nothing less than a substantial financial penalty on Oldco will suffice. Although we are well aware that, as Oldco is in liquidation with an apparently massive deficiency for creditors (even leaving aside a possible reversal of the Tax Tribunal decision on appeal), in practice any fine is likely to be substantially irrecoverable and to the extent that it is recovered the cost will be borne by the creditors of Oldco, we nevertheless think it essential to mark the seriousness of the contraventions with a large financial penalty. Since Issues 1 to 3 relate to a single course of conduct, a single overall fine is appropriate. Taking into account these considerations, we have decided to impose a fine of £250,000 on Oldco.

[109] It is the board of directors of Oldco as a company, as distinct from the football management or players of Rangers FC as a club, which appears to us to bear the responsibility for the breaches of the relevant rules. All the breaches which we have found were therefore clearly committed by Oldco. We see no room or need for separate findings of breaches by Rangers FC, which was not a separate legal entity and was then part (although clearly in football and financial terms the key part) of the undertaking of Oldco. Rangers FC is of course now owned and operated by Newco, which bears no responsibility for the matters with which we are

concerned. For the reasons already given, we have decided against the imposition of a sporting sanction. In these circumstances the financial penalty lies only upon Oldco and does not affect Rangers FC as a football club under its new ownership.

Issue 4

[110] Failure to respond timeously to legitimate requests for the provision of information is a serious breach of the rules. If the football authorities are to perform their functions effectively, such requests by them must be met. In the present case, at the time that the initial request was made, and throughout the subsequent period, Oldco was in administration and the administrators were acting as its agents. The administrators had the responsibility of discharging Oldco's obligations, including those to the football authorities. They did not do so, and thus caused Oldco to be in breach of the Rules. We have decided, however, without wishing to detract from the gravity of the breach, that no separate financial penalty should be imposed on Oldco in this regard. Instead, we shall impose an admonition

Result

[111] In the result, therefore, and for all the foregoing reasons:

- (1) We find the breaches in Issue 1, Issue 2, Issue 3 (except Issue 3(c) and the concluding passage of Issue 3(b) starting with "such that Rangers FC . . .") and Issue 4 proved against RFC 2012 Plc (in liquidation), formerly The Rangers Football Club Plc.
- (2) We fine RFC 2012 Plc (in liquidation) £250,000 in respect of Issues 1 to 3, and admonish it in respect of Issue 4.
- (3) We make no separate finding of breach by Rangers FC and impose no penalty on it.

Publicity

[112] By Rule G7.2, it is for the Board to determine what, if any, publicity is to be given to a decision of the Board or a Commission. In our view, the present decision should be published in unredacted form as soon as it is made available, and we so recommend.

W A Nimmo Smith
(The Rt Hon Lord Nimmo Smith)
Chairman, for and on behalf of the Commission
Hampden Park, Glasgow
28 February 2013

Annex

The Scottish Premier League: Notice of Commission

A. Notice

The Board of the Company (defined below) has, in terms of Rule G3, appointed a Commission to inquire, in terms of Rule G1.1, into the Issues (defined below), to determine, in terms of Rule G1.2, whether there has with respect to the Issues been a breach or breaches of and/or a failure or failures to fulfil the Rules and, in the event that the Commission determines that there has with respect to the Issues been a breach or breaches of and/or a failure or failures to fulfil the Rules, to exercise such of the powers in Rules G6.1 and G6.2 as the Commission shall think appropriate.

B. Definitions

In this notice capitalised words and phrases have their defined meanings as specified in this notice and in the Rules of the Scottish Premier League.

“Company”

The Scottish Premier League Limited, Hampden Park, Glasgow, G51 2XD

“EBT Payments and Arrangements”

Payments made by or for Rangers PLC into an employee benefit trust or trusts for the benefit of Players, including the Specified Players, employed by Rangers PLC as Professional Players, Registered and/or to be Registered as Professional Players with the Scottish Premier League and Playing and/or to Play for Rangers FC in the Scottish Premier League and payments made by or for Rangers PLC into a sub-trust or sub-trusts of such trust or trusts of which such Players were beneficiaries, payments by such trust or trusts and/or sub-trust or sub-trusts to such Players and/or for the benefit of such Players and any and all arrangements, agreements and/or undertakings and the like or similar relating to or concerning any of such Players and payments.

“Issues”

The issues for inquiry into and determination by the Commission set out in paragraph C. of this notice.

“Rangers FC”

Rangers Football Club, Ibrox Stadium, 150 Edmiston Drive, Glasgow, G51 2XD

“Rangers PLC”

RFC 2012 P.L.C. (in administration) (formerly known as The Rangers Football Club plc), Ibrox Stadium, 150 Edmiston Drive, Glasgow, G51 2XD

“Specified Players 1A”

1. Tore André Flo
2. Shota Arveladze
3. Michael Ball
4. Stefan Klos
5. Russell Latapy
6. Neil McCann
7. Christian Nerlinger
8. Arthur Numan

“Specified Players 1B”

1. Alan Hutton
2. Andrei Kanchelskis
3. Barry Ferguson
4. Bert Konterman
5. William Dodds
6. Christopher Burke
7. Claudio Caniggia
8. Craig Moore
9. Fernando Ricksen
10. Lorenzo Amoruso
11. Maurice Ross
12. Ronald de Boer
13. Steven Smith
14. Tero Penttilä

“Specified Players 2A”

1. Mikel Arteta
2. Shota Arveladze
3. Jérôme Bonnisse
4. Thomas Buffel
5. Jesper Christiansen
6. Nuno Fernando Gonçalves da Rocha
7. Dan Eggen
8. Tore André Flo
9. Stefan Klos
10. Russell Latapy
11. Peter Løvenkrands
12. Neil McCann
13. Michael Mols
14. Kevin Muscat
15. Christian Nerlinger
16. Arthur Numan
17. Dado Pršo
18. Alex Rae
19. Gavin Rae
20. Paolo Vanoli
21. Grégory Vignal

“Specified Players 2B”

1. Alan Hutton
2. Barry Ferguson
3. Robert Malcolm
4. Christopher Burke
5. Egil Østenstad
6. Fernando Ricksen
7. Jean-Alain Boumsong
8. Lorenzo Amoruso
9. Marvin Andrews
10. Maurice Ross
11. Ignacio Javier Gómez Novo
12. Ronald de Boer
13. Ronald Waterreus
14. Sotirious Kyrgiakos
15. Steven Smith
16. Steven Thomson
17. Zurab Khizanishvili

“Specified Players 3A”

1. Mikel Amatriain Arteta
2. Shota Arveladze
3. Michael Ball
4. Olivier Bernard
5. Kris Boyd
6. Thomas Buffel
7. Jesper Christiansen
8. Steven Davis
9. Brahim Hemdani
10. Peter Løvenkrands
11. Pedro Mendes
12. Kevin Muscat
13. Saša Papac
14. Julien Rodriguez
15. Grégory Vignal

“Specified Players 3B”

1. Alan Hutton
2. Carlos Cuéllar
3. Christopher Burke
4. Fernando Ricksen
5. Federico Nieto
6. Ian Murray
7. Jean-Alain Boumsong
8. Libor Sionko
9. Lorenzo Amoruso

10. Marvin Andrews
11. Ignacio Javier Gómez Novo
12. Ronald Waterreus
13. Sotirious Kyrgiakos
14. Steven Smith
15. Steven Thomson
16. Zurab Khizanishvili

C. Issues for Inquiry into and Determination by the Commission

Whether during:-

1. the period from 23 November 2000 until 21 May 2002 (inclusive) Rangers PLC, whilst a member of the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule D10.2.3 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 1A and/or the Specified Players 1B and/or other Players employed by Rangers PLC without detailing same in the relevant Players' Contracts of Service;
- 2(a) the period from 22 May 2002 until 22 May 2005 (inclusive) Rangers PLC, whilst a member of the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule D10.2.3 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 2A and/or the Specified Players 2B and/or other Players employed by Rangers PLC without detailing same in the relevant Players' Contracts of Service;
- 2(b) the period from 22 May 2002 until 22 May 2005 (inclusive) Rangers PLC, whilst a member of the SFA and the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule A7.1 and SFA Article 12.3 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 2A and/or the Specified Players 2B and/or other Players where such EBT Payments and Arrangements related solely to the playing activities of each of the Specified Players 2A and/or the Specified Players 2B and/or other Players without recording such EBT Payments and Arrangements in the written agreements between each of the Specified Players 2A and/or the Specified Players 2B and/or other Players and Rangers PLC prior to submission of such written agreements to the SFA and, separately, to the Company;
- 2(c) the period from 22 May 2002 until 22 May 2005 (inclusive) Rangers PLC, whilst a member of the SFA and the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule A7.1, SFA Registration Procedures Paragraph 2.2.1 and SFA Procedures Rule 4 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 2A and/or the Specified Players 2B and/or other Players employed by Rangers PLC without submitting to the SFA along with an Non-Recreational Contract Player Registration Form a contract entered into between Rangers PLC and each of the Specified Players 2A and/or the Specified Players 2B and/or other Players stating all of the terms between each of the Specified Players 2A and/or the Specified Players 2B and/or other Players and Rangers PLC recording all of the payments to be made to each of the Specified Players 2A and/or

the Specified Players 2B and/or other Players for their respective playing activities for Rangers FC;

- 2(d) the period from 22 May 2002 until 22 May 2005 (inclusive) Rangers PLC, whilst a member of the SFA and the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule A7.1 and SFA Procedures Rule 4 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 2A and/or the Specified Players 2B and/or other Players to the effect of and, separately, with the intent that payments would be made via a third party to each of the Specified Players 2A and/or the Specified Players 2B and/or other Players for their respective playing activities with and for Rangers FC, such third party being the respective trusts and/or sub-trusts relating to each of the Specified Players 2A and/or the Specified Players 2B and/or other Players which were part of the relevant EBT Payments and Arrangements for each of the Specified Players 2A and/or the Specified Players 2B and/or other Players;
- 3(a) the period from 23 May 2005 until 3 May 2011 (inclusive) Rangers PLC, whilst a member of the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule D9.3 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 3A and/or the Specified Players 3B and/or other Players employed by Rangers PLC whereby each of the Specified Players 3A and/or the Specified Players 3B and/or other Players received and/or had the benefit of a payment or payments from or on behalf of Rangers PLC in respect of each such Player's participation in Association Football or an activity within Association Football for Rangers FC other than in reimbursement of expenses actually incurred or to be incurred in playing or training for Rangers FC which were not in accordance with a Contract of Service between Rangers PLC and each of the Players concerned;
- 3(b) the period from 23 May 2005 until 3 May 2011 (inclusive) Rangers PLC, whilst a member of the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule D1.13 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 3A and/or the Specified Players 3B and/or other Players which provided for payment other than for reimbursement of expenses actually incurred and failed to deliver agreements relative to such EBT Payments and Arrangements to the Secretary within fourteen days of such agreements being entered into and/or amended such that Rangers FC was in breach of a condition of the Registration of such Players and such Players were ineligible to Play in Official Matches for Rangers FC;
- 3(c) the period from 23 May 2005 until 3 May 2011 (inclusive) Rangers FC, whilst a member of the Scottish Premier League, breached Rule D1.11 by Playing the Specified Players 3A and/or the Specified Players 3B in Official Matches when those Players were ineligible so to play;
- 3(d) the period from 23 May 2005 until 3 May 2011 (inclusive) Rangers PLC, whilst a member of the SFA and the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule A7.1 and SFA Article 12.3 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 2A and/or the Specified Players 2B and/or other Players

where such EBT Payments and Arrangements related solely to the playing activities of each of the Specified Players 2A and/or the Specified Players 2B and/or other Players without recording such EBT Payments and Arrangements in the written agreements between each of the Specified Players 2A and/or the Specified Players 2B and/or other Players and Rangers PLC prior to submission of such written agreements to the SFA and separately to the Company;

- 3(e) the period from 23 May 2005 until 3 May 2011 (inclusive) Rangers PLC, whilst a member of the SFA and the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule A7.1, SFA Registration Procedures Paragraph 2.2.1 and SFA Procedures Rule 4 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 2A and/or the Specified Players 2B and/or other Players employed by Rangers PLC without submitting to the SFA along with an Non-Recreational Contract Player Registration Form a contract entered into between Rangers PLC and each of the Specified Players 2A and/or the Specified Players 2B and/or other Players stating all of the terms between each of the Specified Players 2A and/or the Specified Players 2B and/or other Players and Rangers PLC recording all of the payments to be made to each of the Specified Players 2A and/or the Specified Players 2B and/or other Players for their respective playing activities for Rangers FC;
- 3(f) the period from 23 May 2005 until 3 May 2011 (inclusive) Rangers PLC, whilst a member of the SFA and the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule A7.1 and SFA Procedures Rule 4 by making and/or entering into EBT Payments and Arrangements in respect of the Specified Players 2A and/or the Specified Players 2B and/or other Players to the effect of and, separately, with the intent that payments would be made via a third party to each of the Specified Players 2A and/or the Specified Players 2B and/or other Players for their respective playing activities with and for Rangers FC, such third party being the respective trusts and/or sub-trusts relating to each of the Specified Players 2A and/or the Specified Players 2B and/or other Players which were part of the relevant EBT Payments and Arrangements for each of the Specified Players 2A and/or the Specified Players 2B and/or other Players;
- 4(a) the period from and including 15 March 2012 Rangers PLC, whilst a member of the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule F1 by failing to deliver to the Company or to agents acting on behalf of Company copies of any and all items of documentation, communications, contract documents, notes, correspondence, emails, trust deeds, memoranda and others, including all notes of conversations and meetings in any way concerning or relating to any and all payments made by or on behalf of Rangers PLC to Players since 1 July 1998 which had not previously been disclosed to The Scottish Premier League Limited, including, without prejudice to the foregoing generality, all payments made by or on behalf of Rangers PLC to an employee benefit trust or trusts and/or sub-trust or sub-trusts for or in respect of Players and/or any and all such payments made by such employee benefit trust or trusts or sub-trust or sub-trusts to Players including any and all productions of whatever nature lodged for Rangers PLC and lodged by HMRC relating to Rangers PLC in the pending First Tier Tribunal proceedings known as “the Big Tax Case”;

- 4(b) the period from and including 15 March 2012 Rangers PLC, whilst a member of the Company, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule G1.1 by failing to afford every assistance to the Company and to agents acting on behalf of the Company as requested and required in a letter dated 5 March 2012 from agents acting on behalf of the Company and that by failing to deliver to the Company or to agents acting on behalf of the Company copies of any and all items of documentation, communications, contract documents, notes, correspondence, emails, trust deeds, memoranda and others, including all notes of conversations and meetings in any way concerning or relating to any and all payments made by or on behalf of Rangers PLC to Players since 1 July 1998, which had not previously been disclosed to the Company, including, without prejudice to the foregoing generality, all payments made by or on behalf of Rangers PLC to an employee benefit trust or trusts and/or sub-trust or sub-trusts for or in respect of Players and/or any and all such payments made by such employee benefit trust or trusts or sub-trust or sub-trusts to Players including any and all productions of whatever nature lodged for Rangers PLC and lodged by HMRC relating to Rangers PLC in the pending First Tier Tribunal Proceedings known as “The Big Case” and by failing to produce to the Company or to agents acting on behalf of the Company, preferably in spreadsheet format, details comprising all payments made by or on behalf of Rangers PLC to or for the benefit of any Player since 1 July 1998 to any employee benefit trust or sub-trust, by any employee benefit trust or sub-trust and to or by any other third party, to and for the benefit of any Player since 1 July 1998, where such payment has not been made for or in terms of a Contract of Service notified to the Company and to The SFA with details of (i) name of Player; (ii) date of payment(s); (iii) amount of payment(s); (iv) method of payment(s); (v) by whom payment was made; and (vi) reason for payment(s); and
- 4(c) the period from and including 15 March 2012 Rangers PLC, whilst a member of the Company and the owner and operator of Rangers FC, and Rangers FC, whilst a member of the Scottish Premier League, breached Rule G1.5 by failing to deliver to the Company or to agents acting on behalf of the Company copies of any and all items of documentation, communications, contract documents, notes, correspondence, emails, trust deeds, memoranda and others, including all notes of conversations and meetings in any way concerning or relating to any and all payments made by or on behalf of Rangers PLC to Players since 1 July 1998, which had not previously been disclosed to the Company, including, without prejudice to the foregoing generality, all payments made by or on behalf of Rangers PLC to an employee benefit trust or trusts and/or sub-trust or sub-trusts for or in respect of Players and/or any and all such payments made by such employee benefit trust or trusts or sub-trust or sub-trusts to Players including any and all productions of whatever nature lodged for Rangers PLC and lodged by HMRC relating to Rangers PLC in the pending First Tier Tribunal Proceedings known as “the Big Tax Case”.

D. Provisions of the Rules, Articles of Association of the SFA and SFA Registration Procedures referred to in the Issues

(i) Rule F1:

“Every Club shall keep detailed financial records and the Company shall be entitled to inspect such records and require Clubs to provide copies of any financial or other records

which the Company may reasonably require in order to enable the Company to investigate whether the Club has complied and is complying with these Rules, the Articles of Association, the SFA Articles, the UEFA Statutes and the FIFA Statutes and to ensure compliance by the Club with the same.”

(ii) **Rule G1.1:**

“The Board and where appointed by the Board, a Commission, shall have the power of inquiry into all financial, contractual or other arrangements with and between and/or amongst Clubs and Players and all matters concerning compliance with Financial Disclosure Requirements and into all matters constituting or pertaining to any suspected or alleged breach or failure to fulfil the Rules by any Club, Club Official and/or Player or any matter considered by the Board or, where appointed by the Board, a Commission, to be relevant to an Adjudication or an Appeal and every Club and Club Official and Player shall be liable to and shall afford every assistance to the Board or, as the case may be, Commission, as may be requested or required of it, or him.”

(iii) **Rule G.1.5:**

“The Board, and where appointed by the Board, a Commission, may require the attendance of any Club Official, Player and/or other person at any meeting of the Board or a Commission and/or the production to the Board or a Commission of any books, letters and other documents or records whatsoever and howsoever kept relating to or concerning any matter in relation to which the Board, and where appointed by the Board, a Commission have the power of inquiry or determination in terms of Rules G1.1 and G1.2 respectively.”

(iv) **Rule D9.3:**

“No Player may receive any payment of any description from or on behalf of a Club in respect of that Player’s participation in Association Football or any activity within Association Football, other than in reimbursement of expenses actually incurred or to be actually incurred in playing or training for that Club, unless such payment is made in accordance with a Contract of Service between that Club and the Player concerned.” (In effect from and including 23 May 2005).

(iv) **Rule D1.11:**

“Any Club Playing an ineligible Player in an Official Match and the Player concerned shall be in breach of the Rules.” (This Rule and its predecessor in effect from and including 23 May 2005).

(v) **Rule D1.13:**

“A Club must as a condition of Registration and for a Player to be eligible to Play in Official Matches, deliver the executed originals of all Contracts of Service and Amendments and/or extensions to Contracts of Service and all other agreements providing for payment, other than for reimbursement of expenses actually incurred,

between that Club and Player, to the Secretary, within fourteen days of such Contract of Service or other agreement being entered into, amended and/or, as the case may be, extended.” (In effect from and including 23 May 2005).”

(vi) **Rule D10.2.3:**

“The Contract of Service between the Player and the Club shall state the Player’s full financial entitlement from the Club, including signing on fees, additional lump sum payments, remuneration, bonus payments, removal assistance and benefits in kind. In any dispute between the Player and the Club, the remuneration contained in the Contract of Service shall be deemed to be the Player’s complete entitlement. Any Club failing to detail a Player’s full financial entitlement in the Contract of Service shall be dealt with as the Board may decide.” (In effect prior to 23 May 2005).

(vii) **Rule A7.1:**

“A.7.1. Membership of the Scottish Premier League shall constitute an agreement between the Company and each Club, and between each of the Clubs, to be bound by and to comply with:- (a) these Rules and the Articles of Association; (b) the SFA Articles;” (This Rule and its predecessor A7.1.1(b) in effect from 1998).”

(ix) **SFA Article 5.1(b):**

“All members shall: ... (b) be subject to and shall comply with these Articles and any ... regulations ... promulgated by the Board ... ;”

(x) **SFA Article 12.3:**

“Furthermore, all payments whether made by the club or otherwise which are to be made to a Player solely relating to his playing activities must be fully recorded within the relevant written agreement with the Player prior to submission to the Association and/or the recognised football body of which his Club is in membership.” (In effect from and including 22 May 2002).

(xi) **SFA Registration Procedures Paragraph 2.2.1:**

“Unless lodged in accordance with Procedures Rule 2.13 a Non-Recreational Contract Player Registration Form will not be valid unless it is accompanied by the contract entered into between the club concerned and the player stating all the Terms and Conditions in conformity with the Procedures Rule 4.” (In effect from and including Season 2002/03).

(xi) **SFA Procedures Rule 4:**

“All payments to be made to a player relating to his playing activities must be clearly recorded upon the relevant contract and/or agreement. No payments for his playing activities may be made to a Player via a third party.” (In effect from and including Season 2002/03).