

IN THE MATTER OF A CLAIM FOR COMPENSATION
UNDER RULE W.51.5 OF THE PREMIER LEAGUE RULES
BEFORE THE PREMIER LEAGUE INDEPENDENT DISCIPLINARY
COMMISSION

PLJP 2023/3

Mr David Phillips KC FCI Arb
HH Alan Greenwood
Mr Nick Igoe ACA

B E T W E E N –

BURNLEY FOOTBALL & ATHLETIC COMPANY LIMITED

Claimant

and

EVERTON FOOTBALL CLUB COMPANY LIMITED

Respondent

SUMMARY OF THE DECISION

1. The following represents a summary of the Commission’s decision in this matter. It is not intended to replace the reasoning which is set out in the decision itself. For ease of reference, we adopt in this summary the defined terms set out in the decision.

Burnley’s Claim

2. Burnley’s claim is for compensation for losses caused by its relegation from the Premier League at the conclusion of the 2021/22 season. It alleges that that relegation was caused by the sporting advantage conferred on Everton by its breach of the PSR. Burnley’s claim is to be put in the position that it would have been in if Everton had not breached the PSR.
3. By a Complaint dated March 2023 the Premier League alleged Everton to have been in breach of the PSR by an amount of £19.5 million for the 2021/22 season. This Commission heard the Complaint in October 2023 and handed down its decision on 17 November 2023, imposing a sanction of a deduction of 10 points. Following appeal, the sanction was reduced to a deduction of 6 points.

4. Burnley instructed experts to support their claim in respect of both causation and quantum. Burnley's expert on quantum, Mr Richard Boulton KC, FCA, calculated Burnley's losses as £51.7 million before interest.

Everton's Defence

5. Everton accepts that its breach of the PSR conferred a sporting advantage but disputes both the extent and effect of that advantage. Moreover the expert on quantum instructed by Everton, Mr Louis Dudney CPA, CFF, concluded that Burnley had suffered no financial loss following relegation, indeed had made a gain, which Mr Dudney has calculated on two alternative bases, of either £6.8 million or £18.2 million before interest.
6. Aside from Mr Dudney's assessment regarding quantum, Everton based its defence on three arguments.
 - (1) Counterfactual;
 - (2) Date of breach;
 - (3) Causation.

Counterfactual

7. Everton submitted that the counterfactual requires the exercise of altering its conduct only to the minimum extent necessary to avoid a breach of the PSR. It relied on legal authorities which state that the court must *decide on the level of performance* [of the contract] *which the defendant would have adopted* [without the breach]: effectively a hypothetical which would be the most favourable to Everton so long as it avoids any breach.
8. Burnley relied on the same authorities but disputed the manner of their application. It argued that the court's task was to take a *practical and realistic* approach to making findings of fact in the counterfactual. Everton could not adopt an approach described by Burnley as being *wholly self-serving and unrealistic*. We agree with this approach which we apply to the arguments advanced by Everton including the following.
 - (1) Everton argued that it could have generated the £19.5 million without impacting on playing performance by selling another player, in addition to [REDACTED], most likely [REDACTED].

(2) Everton set out an alternative counterfactual *that Everton could and would have refrained from buying other players, or made other player sales, without affecting its sporting performance in the 2021/22 season*, citing not only a pattern of inefficient spending by the club but also the presence of underperforming players within its playing squad.

9. The Commission rejects Everton's arguments for the following reasons.
10. In evidence to the original PSR hearing, in which he had reported [REDACTED] offer of [REDACTED], the club's then owner and chairman, Mr Moshiri, advised that he had rejected that offer observing that [REDACTED]
11. Everton reported that it sold [REDACTED].
12. The legal authorities on which Everton relies provide that a party *would have acted in good faith but with their commercial interests very much in mind*: to have sold the player for [REDACTED] would have been inconsistent with that principle.
13. Notwithstanding the club's Director of Football's belief that certain players [REDACTED] many of those players featured regularly in the club's matchday squad throughout the four years of the breach (the "PSR Period") including the 2021/22 season. In this context, the Commission notes the conclusion of the Appeal Board that *the point is not that the Club, having invested heavily in players, did not do as well as it expected or hoped, but rather that, having made that investment, the Club is likely to have performed better than it would had it not done so*.
14. The Commission concludes that neither of the counterfactuals advanced by Everton meet the *practical and realistic* test. In our view the only realistic counterfactual would be for Everton to have secured an additional £19.5 million in profit on player sales, together with any associated wage saving, at an earlier stage in 2021/22.

Date of Breach

15. Everton argued that Burnley's relegation (which is the cause of its claimed losses) occurred before Everton's breach of the PSR. Accordingly, whatever loss may have been suffered was not caused by Everton's breach.
16. Burnley was relegated from the Premier League on 22 May 2022. Everton's financial year ended on 30 June 2022. Everton argued that there could be no breach of the PSR until the end of its financial year, prior to which it was open to Everton to remedy any incipient breach by the sale of one or more players.
17. Burnley disputed this analysis, which it said produces a result that is inconsistent with the purpose of the PSR which, properly construed, recognise the concept of a breach that was in existence before the end of Everton's financial year.
18. Both parties relied on the various decisions in the Premier League v Leicester City tribunals. Leicester City had argued that it had been relegated before the end of its financial year, so that no breach of the PSR had been committed while it was a member of the Premier League.
19. We note the conclusion of the Rule X tribunal in the Leicester City case. The Rules tie the annual accounts to the playing season. Any adverse effect caused by a breach of the PSR occurs during a playing season which falls within a financial year. Accordingly, a proper construction of the Rules should recognise that any breach relates to the playing season: it is not something that can be confined to a particular date determined by the end of the financial year.
20. We conclude that Everton's breach of the PSR began before the end of the 2021/22 season and before Burnley was relegated. It is therefore open to Burnley to maintain its case that the breach caused both the relegation and the claimed loss.

Causation

21. In support of its claim, that the sporting advantage enjoyed by Everton as a consequence of its PSR breach caused Burnley's relegation, Burnley instructed Professor Rob Wilson and Mr Will Daniels as expert witnesses. Professor Wilson and Mr Daniels undertook a statistical and probabilistic modelling exercise in three stages.

22. Stage 1 involved establishing a correlation between player-related expenditure and points won for each of the twelve Premier League seasons from 2012/13 to 2023/24. Wilson/Daniels concluded that their analysis demonstrated a high degree of correlation.
23. Stage 2 applied the results of stage 1 for Everton to calculate the club's points per £1 million spend over four scenarios, ranging from the entire twelve years covered by the analysis to the four years of the PSR Period.
24. Applying the points per £1 million spend produced by that calculation, Wilson/Daniels calculated that Everton's £19.5 million overspend had resulted in a gain of between 7.13 points (scenario 1) and 3.85 (scenario 4). They concluded that scenario 1 was *the preferable and most statistically robust scenario*.
25. For Stage 3, Wilson/Daniels employed historical "ratings", developed and used by the gambling industry, for Premier League clubs for 2021/22 in order to perform 100,000 simulations of Everton's results over that season to assess the probability of Everton or Burnley being relegated. They concluded that, under each scenario, Everton was more likely than Burnley to be relegated.
26. Burnley had also instructed Mr David Baldwin as an expert witness. He emphasised he was claiming *no statistical or econometric expertise* but relied on his *lived experience* within the football industry to endorse the conclusion of Wilson/Daniels.
27. Everton had engaged Mr Derek Holt as an expert on causation. He questioned the Wilson/Daniels stage 2 conclusion on a number of grounds, including whether it was correct to allocate the entire £19.5 million to season 2021/22, alleged inefficiency of spend by Everton and the effect of what was termed "inflation" in player-related expenditure, essentially the increase in spending by clubs on player wages and amortisation costs over the period of the Wilson/Daniels analysis.
28. Professor Wilson was insistent that the effect of overspending was cumulative and that the total overspend would have benefited Everton's performance in 2021/22. The Commission agrees with this view. The Commission acknowledges

that Everton may have spent inefficiently on players but, in line with the decision of the Appeal Board quoted in paragraph 13, concludes that even if Everton did not perform as well as it had expected it performed better than it would have done had it not spent over the PSR limit. The Commission also acknowledges the argument regarding inflation on player-related expenditure and, for this reason, was not convinced by the Wilson/Daniels argument in favour of the 7.13 points advantage under scenario 1. However, we note that, even under scenario 4 (the four years of the PSR Period) the Wilson/Daniels stage 3 analysis showed there to be a greater probability of Everton rather than Burnley being relegated.

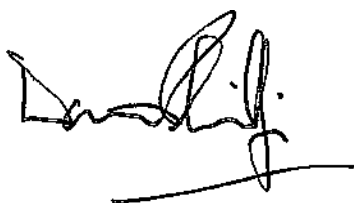
29. Everton also expressed misgivings about the Wilson/Daniels stage 3 exercise. The Commission accepts that trying to quantify the impact of Everton's overspend in points terms is an inexact science and that the conclusions reached by Wilson/Daniels reflect uncertainty. However, their analysis does consistently show that, after adjusting for the impact of Everton's overspend, Everton would have been more likely than Burnley to have been relegated.
30. Mr Holt undertook his own analysis of the impact of Everton's overspend. He used player expenditure data to replay all Premier League games over the four years of the PSR Period to arrive at expected points and league position. He then adjusted for the impact of Everton's £19.5 million overspend, using three allocations but favouring an allocation of £6.5 million per season.
31. Even under Mr Holt's allocation 3, applying the whole overspend to 2021/22, he calculated that Everton's points advantage would have been insufficient to relegate Everton in Burnley's place.
32. Following criticism by Professor Wilson and Mr Daniels, Mr Holt also undertook a probabilistic simulation of Everton's results in 2021/22 and again concluded that Burnley, not Everton, would have been relegated.
33. The Commission found the Wilson/Daniels analysis to be more compelling and was lent support by Mr Baldwin's evidence. We conclude that, on the balance of probabilities, Everton's breach of the PSR caused Burnley to be relegated.

Quantum

34. Both experts had modelled Burnley's potential claim based on "lost cash flows" over the four years ending summer 2025 (the "Relevant Period"). These were not cash flows in the commonly accepted accounting sense but comprised operating profit/loss and player trading, the latter being calculated as the total cost of player registrations acquired in a period, less the disposal proceeds of any player registrations sold. As with cash flows, the experts' treatment of player trading was a departure from conventional accounting treatment.
35. Both experts calculated the potential claim as the difference between Burnley's actual cash flows and estimated "but-for" cash flows, calculated on a range of assumptions, most importantly the club's league status.
36. Mr Boulton calculated Burnley's loss at £51.7 million before interest. He identified four possible scenarios in which Burnley participated in either the Premier League or Championship and made assumptions regarding operating profit/loss and player trading for each of those scenarios, reflecting the fact of four scenarios by weighting each by 25%.
37. Importantly, Mr Boulton also calculated player trading by reference to the football season (1 June to 31 May) rather than Burnley's financial year (1 August to 31 July) although he continued to account for operating profit/loss by reference to the financial year. He justified this treatment on the grounds that it would more accurately reflect the club's decisions regarding squad restructuring for the forthcoming season, especially in seasons (as was the case during the Relevant Period) in which Burnley had been promoted or relegated in the actual scenario.
38. Mr Dudney concluded that Burnley had suffered no loss. In his primary case, Burnley had enjoyed a gain of £18.1 million and, in his alternative case, Burnley had enjoyed a gain of £6.8 million, both before interest.
39. In his primary case, Mr Dudney selected just one scenario, Mr Boulton's scenario 3, while in his alternative case his model mirrored Mr Boulton's four scenarios.
40. The Commission preferred Mr Dudney's alternative case to his primary case. We agreed with Mr Boulton's seasonal approach to player trading and his selection

of four, as opposed to just one, scenarios, while Mr Dudney's alternative case more readily facilitated direct comparison with Mr Boulton's model.

41. The Commission analysed in detail the experts' models, focusing in particular on the appropriateness of different assumptions giving rise to the variance of £58.6 million between the experts' calculation of Burnley's loss/gain (Mr Boulton's loss (£51.7 million) and Mr Dudney's gain (£6.8 million)).¹
42. The variance comprised £11.2 million in respect of operating profit/loss and £47.3 million in respect of player trading. The variances for operating profit/loss arose from different assumptions about trading performance, in particular assumptions about Burnley's league finish while in the Premier League and associated merit fee revenue. The variances for player trading resulted from different assumptions about player purchases and sales, impacted to a great extent by assumptions about Burnley's league status. In this context, Mr Boulton's seasonal approach to player trading proved helpful.
43. The outcome of the Commission's analysis was an adjusted loss for Burnley in the sum of £26.0 million before interest, comprising £24.6 million in respect of operating profit/loss and £1.4 million in respect of player trading.
44. Interest of £9.1 million, calculated to 31 July 2025, has been added, resulting in a total claim of £35.0 million. Interest continues to accrue at an annual rate of 11.81%.



David Phillips KC FCI Arb
HH Alan Greenwood
Nick Igoe ACA

2 June 2026

¹ All components of the experts' calculations, and reconciliations between those calculations, are expressed in millions, rounded to one decimal place. On occasion this may give rise to rounding differences of +/- £0.1 million.