



Arbitration CAS 2019/A/6432 The Football Association (The FA) v. Fédération Internationale de Football Association (FIFA), award of 23 October 2020

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mrs Siobán Healy QC (United Kingdom); Prof. Ulrich Haas (Germany)

Football

Failure of a national association to cause its member clubs to comply with the provisions regarding minors in the RSTP
Res judicata

Obligation of the national association to cause its own members to comply with the rules and decisions of FIFA
PLGP as “organized football”

Application of art. 19 para. 2 RSTP to players below the age of 12 or 10 years

Obligation of the national association to keep a register and to cause its member clubs and academies to report players

1. **The subjective scope of *res judicata* does not extend to persons that were not parties to the proceedings before the adjudicatory authority that issued the decision in question. Furthermore, only the operative part of the award/decision is vested with *res judicata*, not the underlying reasoning.**
2. **Pursuant to Article 14(1)(d) FIFA Statutes, a national association is not only bound by the Statutes, regulations, directives and decisions of FIFA bodies, it also has an obligation to cause its own members to comply with them. Pursuant to Article 14(2) FIFA Statutes, a violation of such obligation may be sanctioned. This is not a strict liability offence, i.e. it is not automatically true that the national association is in breach of the applicable regulations because its member is found guilty. Instead, something more is required. However, FIFA is not necessarily required to identify “*actions and measures*” which the national association ought reasonably to have taken to cause its member clubs to comply, but which it failed to take, for it to be sanctioned. What appropriate action to take is within the autonomy (and responsibility) of the individual national federation. The appropriate “*actions and measures*” may differ from member to member and a one-size-fits-all policy may not be effective. Indeed, large member associations may require a very different approach than small member federations.**
3. **The Premier League Goals Programme (PLGP) comprises “organized football” in the sense of Article 5(1) of the FIFA Regulations for the Status and Transfer of Players (RSTP), with the consequence that players are required to be registered before participating in the PLGP. “Organized football” as defined in the RSTP is “*association football*” that is either i) “*organised under the auspices*” of FIFA, the confederations or the national associations; or ii) “*authorised*” by them. There is no requirement that matches must somehow be related to professional football in order to be considered as “organized football”. Article 2(1) RSTP indicates that players participating in “organized football” are either amateurs or professionals. Article 2 FIFA Statutes**

provides that one of the objectives of FIFA is *“to control every type of association football”*, from which the conclusion can be drawn that there is not just one type of “association football”, i.e. the type that is played in accordance with the IFAB Laws of the Game. The mere fact that the rules may be slightly different from the IFAB Laws of the Game, does not make the sport anything else than “association football” in the sense of Article 5(1) RSTP. Although privately organised friendly or trial matches between two clubs without the involvement of a third party, such as for example the national federation providing for referees, is indeed not “organized football”, matches played in the framework of an organised structure are, in principle, “organized football”. The PLGP is clearly an organised structure as it comprises a very thought-out sophisticated plan with a detailed regulatory framework. Moreover, the football matches played in the PLGP are not privately organised by the clubs or academies, but by the Premier League and the Football League, under the auspices of The FA.

4. Article 19(1) RSTP provides that *“[i]nternational transfers of players are only permitted if the player is over the age of 18”*, i.e. transfer below such age are in principle prohibited, unless one of the exceptions carved out in Article 19(2) RSTP is applicable. It cannot be inferred from any provision in the RSTP that because no ITC is required on the basis of Article 9(4) RSTP, the requirements of Article 19(2) RSTP would not be applicable. Moreover, FIFA Circular no. 1468 provides that *“if a member association intends to register players under the age of 10 [...], despite the fact that no ITC and no application to the sub-committee appointed by the Players’ Status Committee will be required, it is all the more the responsibility of this association to verify and ensure that the requirements for the protection of minors established in art. 19 par. 2 of the Regulations are met”*. Consequently, notwithstanding the fact that no International Transfer Certificate is required for players under the age of 12 (or 10), they still need to comply with the substantive requirements set forth in Article 19(2) RSTP before they can be registered and/or participate in “organized football”.
5. In accordance with Article 19bis(3) RSTP, each association shall keep a register *“comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies”*. By means of Article 14(1)(d) FIFA Statutes, the national association is obliged to cause its members to comply with Article 19bis(3) RSTP. Accordingly, not only is the national association required to keep a register, i.e. to register whatever is reported to it, but it is also required to cause its member clubs and the academies to report accurately and comprehensively the relevant players to it. The reference to “long-term training” in the definition of the term “academy” in the RSTP refers to the objective of the academy as a whole and not to the type of training an individual player is receiving at such academy. Accordingly, all players attending an academy are required to be reported, not only those that actually stay there for a longer period and receive long-term training. This is necessary for national federations to keep oversight control.

I. PARTIES

1. The Football Association (the “Appellant” or “The FA”) is the governing body of football at domestic level in the United Kingdom. The FA is affiliated to the *Fédération Internationale de Football Association*.
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the global governing body of football. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players at international level.
3. The FA and FIFA are collectively referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

5. In light of the large number of football players referred to in the present arbitral award, the Panel will refer to the players only by the numbers assigned to each player as mentioned below: [1 to 176].
6. On 19 November 2013, the FIFA Transfer Matching System GmbH (“FIFA TMS”) Integrity and Compliance Department started an initial investigation and contacted Chelsea Football Club (“CFC”) in relation to Player 1 because he appeared to have been internationally transferred to CFC without the prior approval of such transfer by the Sub-Committee.
7. On 17 October 2017, following the exchange of information between FIFA TMS, CFC and The FA, the Secretariat to the FIFA Disciplinary Committee (the “FDC Secretariat”) informed The FA and CFC that it had initiated a preliminary investigation to complete the existing file in relation to the international transfer and first registration of minor football players.

B. Proceedings before the Disciplinary Committee of FIFA

8. On 23 February 2018, the FDC Secretariat informed The FA and CFC that disciplinary proceedings were opened against them for potential violations of Article 5(1), 9(1), 18bis, 19(1), (3) and (4), 19bis(1) and (6) as well as of Annexe 2, 3 and 3a of the FIFA Regulations on the Status and Transfer of Players (the “RSTP”) with respect to Players 1-65.

9. On 27 August 2018, the FDC Secretariat informed The FA and CFC that disciplinary proceedings were opened against them for potential violations of Article 5(1), 9(1), 18bis, 19(1), (3) and (4), 19bis(1) and (6) as well as of Annexe 2 and 3 RSTP with respect to Players 1-176. Accordingly, the scope of the proceedings was expanded to an additional number of players, but without a charge for violating Annexe 3a RSTP.
10. On 11 December 2018, a joint hearing was held with respect to CFC and The FA, attended by the members of the Disciplinary Committee, representatives of the FDC Secretariat, representatives of CFC and representatives of The FA.
11. On 22 February 2019, The FA was notified of the decision rendered by the Disciplinary Committee (the “First Instance Decision”) against it on 9 January 2018, with the following operative part:
 - “1. *The [FA] is declared liable for the violation of article 19 pars. 1 and 3 of the [RSTP], with respect to the international transfers and first registrations of minor players for the club Chelsea FC.*
 2. *The [FA] is declared guilty of the violations of article 19 par. 4 in conjunction with Annexes 2 and 3 of the [RSTP] (procedure relating to applications for the first registration and international transfer of underage players) and articles 5 par. 1, 9 par. 1 and 19bis par. 3 of the [RSTP].*
 3. *The [FA] is ordered to pay a fine of CHF 510,000. The fine is to be paid within 30 days of notification of the present decision. [...].*
 4. *In application of article 10 a) and 13 of the FIFA Disciplinary Code, The [FA] is warned on its future conduct. The [FA] is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations are strictly complied with. Should such incidents occur again in the future, the FIFA Disciplinary Committee may impose harsher sanctions on The [FA].*
 5. *In application of article 10 b) and 14 of the FIFA Disciplinary Code a reprimand is issued against The [FA].*
 6. *The [FA] is granted a period of 6 months to regularize the regulatory framework in England applicable to the international transfer of minor players and the first registration of foreign minor players in compliance with articles 1 par. 3 a) of the [RSTP] and 14 par. 1 d) of the FIFA Statutes.*
 7. *The costs of these proceedings amounting to CHF 25,000 are to be borne by The [FA] and shall be paid according to the modalities stipulated under point 3. above”.*
12. On 11 March 2019, the grounds of the First Instance Decision were notified to The FA.

C. Proceedings before the Appeal Committee of FIFA

13. On 13 March 2019, The FA lodged an appeal against the First Instance Decision with the Appeal Committee of FIFA.

14. On 3 May 2019, the Appeal Committee of FIFA issued its decision (the “Appealed Decision”), with the following operative part:

- “1. *The appeal lodged by The FA is partially upheld.*
2. *The decision of the FIFA Disciplinary Committee rendered on 9 January 2019 is modified as follows:*
 1. *The [FA] is declared liable for the violations of article 19 pars. 1 and 3 of the [RSTP], with respect to the international transfers and first registrations of minor players for the club Chelsea FC.*
 2. *The [FA] is declared guilty of the violations of article 19 par. 4 in conjunction with Annexes 2 and 3 of the [RSTP] (procedure relating to applications for the first registration and international transfer of underage players) and articles 5 par. 1, 9 par. 1 and 19bis par. 3 of the [RSTP].*
 3. *The [FA] is ordered to pay a fine of CHF 350,000. The fine is to be paid within 30 days of notification of the present decision. [...].*
 4. *In application of article 10 a) and 13 of the FIFA Disciplinary Code, The [FA] is warned on its future conduct. The [FA] is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations are strictly complied with. Should such incidents occur again in the future, the FIFA Disciplinary Committee may impose harsher sanctions on The [FA].*
 5. *In application of article 10 b) and 14 of the FIFA Disciplinary Code a reprimand is issued against The [FA].*
 6. *The [FA] is granted a period of 6 months to regularize the regulatory framework in England applicable to the international transfer of minor players and the first registration of foreign minor players in compliance with articles 1 par. 3 a) of the [RSTP] and 14 par. 1 d) of the FIFA Statutes.*
 7. *The costs of this proceeding amounting to CHF 25,000 are to be borne by The [FA] and shall be paid according to the modalities stipulated under point 3. above.*
3. *The costs and expenses of these proceedings in the amount of CHF 3,000 are to be borne by The FA. This amount is set off against the appeal fee of CHF 3,000 already paid by The FA”.*

15. On 13 August 2019, the grounds of the Appealed Decision were notified to The FA, determining, *inter alia*, as follows:

- “97. *[T]he Committee confirms the findings of the FIFA Disciplinary Committee with the exception of players 55 and 58, where no violation of art. 19 pars. 3 and 4 of the RSTP was committed.*
98. *Additionally, the Committee considers that [The FA] did not breach art. 5 of the RSTP with respect to player 15.*

99. Finally, the Committee rules that The FA is not to be held responsible for a violation of art. 19bis par. 3 of the RSTP with respect to players 15, 41, 65, 136, 138, 140 and 152.
100. Consequently, the Committee finds that [The FA] violated:
- i. the ban on international transfers of underage players laid down by article 19 par. 1 of the RSTP in fifteen (15) cases (players 1, 2, 4, 6, 11, 16, 20, 25, 27, 30, 35, 40, 43, 68 and 78);
 - ii. the ban on the first registration of foreign underage players laid down in article 19 par. 3 of the RSTP in relation to the provisions of article 19 par. 1 of the RSTP in twelve (12) cases (players 36, 37, 51, 57, 61, 65, 70, 71, 72, 75, 77 and 84);
 - iii. the procedural rules laid down in article 19 par. 4 of the RSTP in conjunction with Annexe 2 of the RSTP and article 1 par. 3 of Annexe 3 of the RSTP in eleven (11) cases (players 1, 2, 4, 6, 11, 16, 20, 27, 35, 40 and 78);
 - iv. the provisions of article 19bis par. 3 of the RSTP in forty-three (43) cases (players 1, 2, 4, 6, 11, 16, 20, 25, 27, 30, 32, 33, 34, 35, 36, 37, 39, 40, 43, 44, 45, 50, 51, 53, 54, 55, 57, 58, 61, 68, 70, 71, 72, 73, 75, 77, 78, 84, 105, 122, 134, 135 and 139);
 - v. the provisions of article 9 of the RSTP in twenty (20) cases (players 1, 2, 4, 6, 7, 10, 11, 16, 19, 20, 28, 35, 38, 40, 52, 59, 60, 62, 63 and 78);
 - vi. the provisions of article 5 of the RSTP in forty (40) cases (players 1, 2, 4, 6, 7, 10, 11, 16, 19, 20, 24, 27, 28, 31, 34, 35, 36, 38, 40, 42, 47, 49, 51, 52, 53, 54, 55, 56, 57, 59, 60, 62, 63, 64, 68, 71, 75, 78, 156 and 162);

d) Determination of the sanction

101. After having established the violations committed by [The FA], the Committee will now proceed to assess the sanctions imposed by the FIFA Disciplinary Committee.
102. The Committee notes that CFC was sanctioned with a fine of CHF 510,000, a reprimand and a warning.
103. The Committee agrees with the FIFA Disciplinary Committee that the infractions committed by The FA are inexcusable and shall be punished accordingly. Additionally, the Committee strongly believes that a sanction, in order to be effective, must have both a punitive and a deterrent effect.
104. However, the Committee believes that The FA, although it has the ancillary duty to cause compliance among its members, was not directly involved in the breach of the relevant provisions of the RSTP. In the Committee's opinion, The FA rather felt [sic] short in implementing measures in order to guarantee compliance and supervise the actions of Chelsea FC.
105. Therefore, the Committee considers that the fine imposed on [The FA] should be reduced. In this sense, and taking into account all circumstances of the case, the Committee decides the appropriate fine to be imposed should be in the amount of CHF 350,000.

106. *Moreover, the Committee confirms the warning and reprimand imposed on [The FA] by the FIFA Disciplinary Committee.*
107. *Finally, the Committee takes note that [The FA] was granted a period of 6 months to regularize the regulatory framework in England applicable to the international transfer of minor players and the first registration of foreign minor players. The Committee decides that said period shall start from the date of the notification of this decision”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 2 September 2019, The FA filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”), pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2019) (the “CAS Code”). The FA requested that the matter be referred to the same sole arbitrator as in the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA. The FA also applied for a stay of execution of para. 2.6 of the operative part of the Appealed Decision and a joinder of the present matter with the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.
17. On 4 September 2019, FIFA objected to The FA’s suggestion to refer the present arbitration to a sole arbitrator and therefore also objected to refer the matter to the same sole arbitrator as in the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.
18. On 5 September 2019, the CAS Court Office informed the Parties that because the decisions under appeal are not identical, The FA’s request for a joinder of the present matter with the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA could not be granted. The Parties were also informed that, in light of the Parties’ disagreement as to the number of arbitrators to be appointed, the President of the CAS Appeals Arbitration Division, or her Deputy, would decide.
19. On 10 September 2019, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present matter to a Panel composed of three arbitrators.
20. On 12 September 2019, FIFA indicated that it did not oppose to The FA’s request for a stay of execution of para. 2.6 of the operative part of the Appealed Decision.
21. On 13 September 2019, the CAS Court Office informed the Parties that an Order on The FA’s application for provisional measures would be issued by the President of the CAS Appeals Arbitration Division, or her Deputy, in due course.
22. On 19 September 2019, The FA nominated Ms Siobán Healy QC, Barrister in London, United Kingdom, as arbitrator. The FA also suggested to nominate the sole arbitrator in the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA as chair.

23. On 30 September 2019, FIFA nominated Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator, and objected to nominate the sole arbitrator in the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA as chair.
24. On 4 October 2019, The FA filed its Appeal Brief, pursuant to Article R51 CAS Code.
25. On 10 October 2019, pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted by:

President: Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands;

Arbitrators: Ms Siobán Healy QC, Barrister in London, United Kingdom; and

Mr Ulrich Haas, Professor of Law in Zurich, Switzerland
26. On 15 October 2019, the CAS Court Office informed the Parties that Mr Dennis Kooloord, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as Ad hoc Clerk.
27. On 24 October 2019, The FA requested an update with regard to the provision of the Order on Provisional Measures.
28. On 31 October 2019, the CAS Court Office informed the Parties that the Order on Provisional Measures would be issued in due course.
29. On 12 November 2019, FIFA reiterated that it agreed to stay para. 2.6 of the Operative Part of the Appealed Decision under the understanding that the procedure would follow its normal course rather than being delayed for unnecessary reasons.
30. On 27 November 2019, FIFA filed its Answer, pursuant to Article R55 CAS Code.
31. On 6 December 2019, CAS issued a press release with respect to the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA indicating that a decision had been rendered but that the grounds had not yet been issued.
32. On 9 December 2019, The FA commented on the press release of 6 December 2019.
33. On 9 January 2020, the CAS Court Office requested the Parties to sign and return the Order of Procedure, which request was duly complied with by FIFA and The FA on 16 January 2020.
34. On 17 January 2020, The FA provided a summary of The FA's position with regard to some of points raised by FIFA in its Answer.
35. On 22 January 2020, The FA requested FIFA to confirm that it would not seek to reargue in the present proceedings factual or legal points which had already been determined by the CAS Panel in the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.

36. On 27 January 2020, FIFA objected to the admissibility of The FA's letter dated 17 January 2020.
37. On 4 June 2020, The FA informed the CAS Court Office that CFC and FIFA had agreed that a copy of the award in the proceedings referenced CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA (the "CFC Award") be provided to The FA and enclosed a copy of the reasoned award, indicating that it intended to write to FIFA and the CAS Court Office with respect to the impact of the CFC Award on the present proceedings shortly.
38. On 17 June 2020, following an invitation from the CAS Court Office, The FA filed its written submissions on the impact of the CFC Award on the present proceedings.
39. On 23 June 2020, FIFA filed its written submission on the impact of the CFC Award on the present proceedings.
40. On the same date, 23 June 2020, the CAS Court Office invited The FA to make sure that Mr Richard Garlick, Director of Football of the Premier League, would be available to give evidence during the hearing. The Parties were also provided with a copy of the reasoned Order on Provisional Measures.
41. On the same date, 23 June 2020, The FA indicated that it transpired from FIFA's submission that the latter intends to reargue the issues that were determined in the CFC Award and, with the purpose of maximising the chances of the hearing being effective, suggested certain modalities for the hearing.
42. On 24 June 2020, The FA informed the CAS Court Office that it had written to the Premier League concerning the proper implementation of the findings of the sole arbitrator in the CFC Award with respect to meeting the requirements of Article 19bis FIFA RSTP going forward.
43. On the same date, 24 June 2020, both Parties provided Hearing Bundles to the CAS Court Office.
44. On the same date, 24 June 2020, FIFA objected to the admissibility of certain documents being included in the Hearing Bundle filed by The FA.
45. On 25 June 2020, FIFA informed the CAS Court Office that, in its view, the issue of "re-litigating" the CFC case was simply inexistent. FIFA indicated that it sought to defend the Appealed Decision, as it does in all other proceedings in which someone challenges a decision of one of its bodies. FIFA considered the Appealed Decision to be independent from the one passed against CFC and that it concerned only The FA's breaches (and not CFC's) regarding the minors mentioned in the Appealed Decision.
46. On the same date, 25 June 2020, CFC informed the CAS Court Office of its contention that it would be inequitable, contrary to the principle of good faith and in breach of Article 6 of the European Convention on Human Rights (the "ECHR"), for FIFA to seek to reargue these points and for CAS to potentially decide them to CFC's disadvantage in circumstances where CFC was not privy to the arguments FIFA now sought to make and would not be at the hearing

so as to be in a position to rebut them. CFC clarified that its position was that, in respect of The FA proceedings, no finding of facts could or should be made with regard to CFC's conduct that had already been determined against FIFA and in favour of CFC.

47. On 26 June 2020, a hearing was held by video-conference. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.
48. In addition to the Panel, Mr Fabien Cagneux, Counsel to the CAS, and Mr Dennis Koolaard, Ad hoc Clerk, all of whom convened in-person in Lausanne, Switzerland, the following persons attended the hearing by video-conference:

For the Appellant:

- 1) Ms Polly Handford, Legal & Governance Director, The FA;
- 2) Mr Bryan Faulkner, Head of Legal – Football Regulation & Litigation, The FA;
- 3) Mr David Newton, Head of Player Status & Competitions, The FA;
- 4) Ms Beth Mitchell, Legal Counsel Football Regulation & Litigation, The FA;
- 5) Ms Kate Gallafent QC, Counsel;
- 6) Mr Tom Cleaver, Counsel.

For the Respondent:

- 1) Mr Miguel Liétard Fernández-Palacios, Director of Litigation, FIFA;
 - 2) Mr Jaime Cambreleng Contreras, Head of Litigation, FIFA;
 - 3) Mr Alexander Jacobs, Senior Legal Counsel, FIFA;
 - 4) Ms Maria Liz Giordano, Senior TMS Compliance Legal Counsel, FIFA.
49. At the start of the hearing, the Panel informed the Parties that it had decided not to admit the new documents submitted by The FA in its Hearing Bundle on file, as it did not consider such documents to be relevant.
 50. At the opening of the hearing, The FA requested that the Panel express itself on whether or not it considered itself to be bound by the CFC Award. The FA considered that, depending on the Panel's views, it would potentially not be necessary to hear the witnesses. The Panel invited both Parties to state their positions in this respect and, subsequently, indicated that, for the time being, it did not consider itself to be bound by the CFC Award and therefore preferred to hear the witnesses.

51. The Panel gave the Parties the following guidance with respect to the evidentiary part of the hearing. It indicated that the Parties were of course completely free as to what evidence they wished to adduce, but that the Panel, in particular, was interested to hear the Parties' submissions on whether or not there were alleged structural failures of The FA when implementing the rules and regulations on the protection of minors on its territory. The Panel further advised the Parties that it was less concerned with the individual circumstances surrounding the various players.
52. The Panel heard evidence from Mr David Newton, Head of Player Status & Competitions of The FA, and Mr Richard Garlick, Director of Football of the Premier League.
53. Mr Newton was called as a witness by The FA. Although The FA had not called Mr Garlick as a witness, it had submitted a witness statement of him that had previously been produced by CFC in the proceedings before the Appeal Committee. Upon the request of the Panel, The FA made Mr Garlick available to be heard.
54. Mr Newton and Mr Garlick were invited by the President of the Panel to tell the truth subject to the sanction of perjury under Swiss law. The Parties and the Panel had full opportunity to examine and cross-examine the witnesses.
55. The Parties were given full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.
56. Before the hearing was concluded, both Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected, although The FA, with respect to its liability, accepted that it had no objection to the procedure adopted by the Panel and that its right to be heard had been respected, but nevertheless it reserved its rights with respect to the Panel's treatment of the CFC Award in relation to The FA.
57. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

58. The FA summarises its submissions as follows:
 - *“The FA brings this appeal with a view to securing clarity as to the requirements of the RSTP and the basis for the liability of an association for a breach by a member club of them. The FA had no direct involvement in any of the alleged contraventions, so is limited in its ability to make factual submissions about them and therefore relies on the factual materials adduced by CFC in its own parallel appeal proceedings before CAS [CAS 2019/A/6301], due to be heard on 20 November 2019. This Appeal Brief addresses the issues of law and principle, in particular as to The FA's liability for any contravention of the RSTP by a member club.*

- *In outline:*

- o *FIFA has never properly set out a case as to what it says The FA has done wrong. The proceedings were commenced with no explanation of the case against The FA; all that was provided was a list of 151 players alleged to have been connected with CFC and a list of the provisions alleged to have been breached in each case, nearly all of which imposed obligations on the club or the player rather than on the association.*
- o *It is now clear, following the decisions of the Disciplinary Committee and the Appeal Committee, that the basis on which The FA is said to have contravened the relevant provisions is that it owes an obligation under Article 14 of the FIFA Statutes to cause its members to comply with FIFA's rules. On occasion in those decisions the obligation is also expressed to be an 'ancillary' obligation arising under the RSTP, but no principled basis is identified for implying any such obligation (which is in any event inconsistent with the scheme of obligations and enforcement thereunder). In any event, the justification appears to be the same in both cases: even though The FA has not itself done anything which contravenes the RSTP; it is nevertheless liable for all contraventions by any club, because it owed an obligation to FIFA to cause each of its member clubs not to commit such contraventions.*
- o *That is an entirely inadequate basis for finding The FA to have contravened the RSTP or any other rules.*
 - *The Appeal Committee correctly recognised that it would be entirely inappropriate for The FA to be strictly liable for breaches of the RSTP by member clubs. It expressly disavowed any such analysis of the rules.*
 - *It follows that no case against The FA could properly be based on the mere fact that there had been a contravention by a member club which The FA had failed to prevent.*
 - *Rather, any allegation of culpability on the part of The FA would have needed to identify (i) what exactly a reasonable association in The FA's position was required to do in order to cause every one of its members not to breach the RSTP and (ii) in what respects The FA's arrangements were said to have fallen short of what was required. That in turn would have required particulars and evidence of matters such as the steps taken by other associations to police the same issues in order to assess what a reasonable association in the position of The FA would have been expected to have done.*
 - *That being so, for the purposes of considering The FA's liability (as distinct from a club's), it would be necessary to consider whether there is evidence that The FA was or ought to have been aware of the such [sic] contravention (or the likelihood of such contravention) and evidence that The FA failed to take the steps that a reasonable association would have taken in those circumstances to cause its members to comply with the rules.*
 - *No case of any such kind has ever been advanced. Indeed, in many cases it is not at all obvious what The FA could conceivably have done to prevent the alleged contraventions by CFC. The Appeal Committee's analysis would make The FA liable for acts or omissions*

such as failing to cause CFC to report information of which CFC itself was unaware. There is no basis for any such requirement in the Articles or elsewhere in any FIFA rule, and it would be impossible to comply with.

- o *Subject to that overarching point, The FA raises a number of other issues about the interpretation of the RSTP adopted by the Appeal Committee, and about the various findings of contravention.*
- o *Even if The FA is unsuccessful on the substantive grounds, it submits that the sanction imposed by the Appeal Committee is entirely unworkable. It requires, in vague terms, that The FA must regularise the regulatory arrangements for which it is responsible; but says nothing about what if any specific steps are required or how such compliance is to be measured. If the basis for the findings of liability were sufficiently rooted in steps which The FA could have taken but failed to take, it might nevertheless be possible to comply with that sanction, but in circumstances where The FA's culpability is essentially said to lie in the fact that it failed to prevent every single breach that might have happened in football at any level in the whole of England, an order requiring it to regularise its arrangements is simply impossible to comply with.*
- o *Finally, The FA submits that the fine imposed should be reduced. Any findings of liability made against it arise from matters of interpretation which are unclear and which FIFA did not clarify across the whole 10-year period in which these contraventions are alleged. No clarity was provided – even regarding the basis of the charge – until the Disciplinary Committee actually gave its decision. These proceedings have been necessary to secure a measure of clarity and The FA should not be fined to any significant extent if it is found to have contravened the rules historically in those circumstances”.*

59. On this basis, The FA submits the following prayers for relief:

“105. For the reasons set out above, The FA submits that the Panel should

105.1 Set aside the Decision of the Appeal Committee;

105.2 Render a decision that The FA has not violated the RSTP and that the charges brought by FIFA are dismissed, with no sanction imposed;

105.3 Order that FIFA shall pay all the costs of the arbitration as well as the legal costs incurred by The FA to date (including in the disciplinary and appeal proceedings), and that The FA is not required to pay FIFA's costs of the disciplinary proceedings.

106. *Alternatively, The FA seeks an order replacing the sanction imposed by the Appeal Committee with a lesser sanction, and/or an order requiring FIFA to particularise the steps which The FA must take in order to comply with the obligation to “regularise the regulatory framework in England”, together with an appropriate costs order.*

107. *As to the costs of the present proceedings:*

107.1 If it succeeds in whole or in part, The FA seeks an order that FIFA be ordered to bear its own costs and to contribute to the legal fees incurred by The FA.

107.2 *Even if it does not, The FA seeks an order that both parties bear their own costs: the proceedings are justified by the need to secure clarity in relation to important issues of interpretation, and The FA should not be penalised for seeking that clarity”.*

60. FIFA summarises its submissions as follows:

- *“The present case revolves around The FA’s blatant infringements of the different provisions that FIFA has enacted throughout the years in order to protect children that love football from the adverse consequences that early international transfers have on their personal development. These transfers are not conducive to their best interests as minors, to the contrary.*
- *The interest of protecting the adequate and healthy development of minors as a whole must always prevail over purely sporting and financial interests such as those of [The FA’s] clubs. Despite this, The FA has remained in a passive approach and enabled its members to place their own interests over those of many minor players who, with the ultimate goal of becoming professional football players, were induced to relocate internationally in order to join clubs like CFC.*
- *In addition to an inexcusable alleged lack of understanding of the FIFA Regulations, the only apparent justification of The FA is that implementing the system envisaged in the RSTP to protect minor players would be too difficult given the (unsubstantiated) large amount of players involved.*
- *FIFA’s thorough and in-depth analysis of the specific facts pertaining to the minor players involved revealed the underlying and actual scheme that The FA allowed its club to implement; to gain early control over young and promising players by engaging them from abroad.*
- *This individual analysis – which The FA was much better positioned to have carried out – revealed situations of players that played more than 128 matches with CFC despite the latter allegedly not even having registered them or the intention to do so. Other minor players relocated to London without their families at very young ages in pursuit of a football career. For instance, a 14 year old Swedish player relocated to London without his family and spent 22 months within a 2-year period in England, only returning home to his family for occasional weekends. Despite this, [The FA] defends that the player was not “the subject of a transfer outside the requirements of Article 19”.*
- *Surprisingly, instead of recognizing its own wrongdoings and accepting its responsibility, The FA has denied all violations – including those that CFC has partially recognized – and is attempting to hide behind CFC and the Premier League by bringing impracticable interpretations, incorrect technicalities, alleged misunderstandings of the applicable regulations and unworkable comparisons to other cases (with their own factual and legal reality) previously decided by the judicial bodies of FIFA and CAS.*
- *A thorough analysis of this case leaves no doubt that the CHF 350,000 fine – which represents an insignificant amount for The FA – imposed on [The FA] by FIFA’s judicial bodies is appropriate and proportionate.*
- *Severely reprehensible behaviours, such as [The FA’s], must be addressed accordingly, especially in view of the serious nature of the violations committed and the legal interest protected by the provisions that it has repeatedly disregarded on numerous occasions”.*

61. On this basis, FIFA submits the following prayers for relief:

- “(a) rejecting the reliefs sought by the Appellant;*
- (b) confirming the Appealed Decision;*
- (c) ordering the Appellant to bear the full costs of these arbitration proceedings; and*
- (d) ordering the Appellant to make a contribution to FIFA’s legal costs”.*

V. JURISDICTION

62. The jurisdiction of CAS, which is not disputed, derives from articles 58(1) FIFA Statutes (2019 edition) as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 CAS Code.

63. Article R47 CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. [...]”.

64. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both Parties.

65. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

66. The appeal was filed within the deadline of twenty-one days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

67. It follows that the appeal is admissible.

VII. APPLICABLE LAW

68. The FA submits that Swiss law is the law that governs FIFA and its procedures.

69. FIFA submits that, according to Article 57(2) FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings, that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

70. Article R58 CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

71. Article 57(2) FIFA Statutes provides as follows:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

72. The Panel finds that the various regulations of FIFA are primarily applicable, in particular the RSTP, and is satisfied to accept the additional application of Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

73. The main issues to be resolved by the Panel can be divided in the following subject matters:

- i. The consequences of the CFC Award for the matter at hand;
- ii. The basis for liability of The FA;
- iii. Interpretation and application of Article 5(1) RSTP;
- iv. The consequences of the findings with respect to Article 5(1) RSTP;
- v. The application of Article 19(2) RSTP to players below the age of 12 or 10;
- vi. Interpretation and application of Article 19bis(3) RSTP;
- vii. Proportionality of the sanction imposed by means of the Appealed Decision.

i. The consequences of the CFC Award for the matter at hand

a. The position of The FA

74. In its submission dated 17 June 2020, commenting on the CFC Award, The FA maintains that the Appeal Committee (both in the Appealed Decision as well as in the decision concerning CFC) had made 98 findings of breach of Article 5(1), 9(1), 19(1), 19(3) and/or 19(4) FIFA RSTP in respect of 50 players. Besides, both decisions also contained findings as to breaches of Articles 19bis(1), 19bis(3) and 18 RSTP.

75. In the Chelsea Award, the Sole Arbitrator upheld the breach of Article 19bis(1) RSTP and overturned the vast majority of the findings of breach of Article 5(1), 9(1), 19(1), 19(3), 19(4), 18 RSTP, making only 17 findings of breach in respect of 15 players. 6 of the 7 infringements of Article 19 RSTP concerned players under the age of 10.
76. FIFA has repeatedly refused to confirm its position as to the relevance of the CFC Award to these proceedings, save to suggest that the issues in the two cases are not the same. The FA's position is that the two appeals are obviously inseparable. The FA accepts the findings in the CFC Award as to CFC's liability, and does not seek to reargue any of the points that have been determined against CFC.
77. Since the majority of breaches for which The FA was held liable have now been held by a competent tribunal not to have occurred, it would be nonsensical for The FA to be held to have contravened its obligation to prevent breaches which, as a matter of fact, never happened.
78. In relation to Article 19bis RSTP, the Sole Arbitrator's findings in the CFC Award are noted. The FA does not dissent from that finding, and is taking steps to ensure that the register will be maintained in the future by it rather than by the Premier League. The FA's position is that there can be no breach of Article 19bis(3) RSTP in respect of these players as alleged, because this provision obliges associations to record the details of players reported to it, and these players were not reported to it. The FA's breach in this respect is in any event *de minimis*, as there is no real difference in substance, or in the achievement of the goals of the RSTP, between a register maintained by The FA and a register fully accessible by The FA but maintained by the Premier League, a member of The FA which carries on its activities under The FA's auspices and because The FA is taking steps to remedy that minor breach.
79. What FIFA is left with, at best, is a case that The FA should have taken steps to prevent the 17 breaches that have been upheld in the CFC Award, and that it failed to do so. In relation to these 17 breaches, The FA contends that it had no responsibility and/or that the infringements are *de minimis*. As a consequence, the fine imposed on The FA in the Appealed Decision should be significantly reduced.

b. The position of FIFA

80. In its submission dated 23 June 2020, commenting on the CFC Award, FIFA, on the one hand, recognises that the facts at the basis of both proceedings are almost identical. On the other hand, it also points out that the responsibilities of clubs and member associations vis-à-vis the RSTP are not exactly the same, nor are they entirely dependent on one another.
81. While the Panel may look into the considerations contained in the CFC Award, it is certainly not bound to reach the same decisions given the lack of *stare decisis* effect of CAS awards. This obviously applies in the same way with respect to the other awards passed by CAS on the topic of international transfers of minors.
82. The CFC Award confirms that The FA maintained a secondary and passive role when it came to minor players entering its territory. In particular, while it has been confirmed (once again)

that Article 19 RSTP has always applied to all minors, including those under 12 years old (U-10 after FIFA's Circular No. 1468), it was confirmed that "*the FA never instituted a system to verify whether international transfer of minors or first registration of minors by English clubs met one of the exceptions of Article 19*".

83. The FA was not aware of the minor players arriving at CFC and it never conducted an analysis of those minors' compliance with the exceptions of Article 19 RSTP. Despite The FA's oversight role vis-à-vis CFC in what concerns, for example, Article 19 RSTP, it is clear that The FA acted negligently and breached Article 19 RSTP by default or omission.
84. There are several minor players (probably those with the clearest signs of circumvention of the RSTP as even CFC admitted that most of them never met an exception of Article 19(2) RSTP at the time they joined CFC's discipline) with respect to which CFC was not found to have violated Article 19 RSTP in the CFC Award. This conclusion was exclusively based on the absence of a written registration at the time when they were engaged by CFC.
85. FIFA also does not agree with the CFC Award in the sense that the FIFA judicial bodies have discarded the literal interpretation of Article 19 RSTP and replaced it with a purposive one. FIFA is not stretching the wording of Article 19 RSTP, but interpreting the rule according to its true meaning.
86. In what concerns Article 5 RSTP, FIFA maintains that the Premier League Goals Programme (the "PLGP") should be considered as "organized football" and invites the Panel to confirm FIFA's views that The FA has supported and helped the Premier League in setting up and developing the Elite Player Performance Plan (the "EPPP"), which is the overall plan that covers the whole range of phases of the PLGP.
87. As to Article 9 RSTP, FIFA still relies on the conclusions contained in para. 306 of CAS 2016/A/4805, despite the opposing views contained in the CFC Award.

c. The findings of the Panel

88. Much debate ensued between the Parties as to whether the Panel in the present proceedings is bound by the reasoning and conclusions of the Sole Arbitrator in the CFC Award and whether FIFA is entitled to relitigate issues determined in the CFC Award.
89. The Panel finds that the CFC Award only has *res judicata* effect with respect to the dispute between CFC and FIFA, not between The FA and FIFA, because the CFC Award was issued in a dispute between different parties. Of course, the reasoning and findings of the CFC Award may be relevant and the Panel may take such reasoning into account in its own assessment if such reasoning is considered persuasive, but it is, certainly, not bound by it. The limits and scope of the *res judicata* effect are governed by Swiss law. According thereto the subjective scope of *res judicata* does not extend to persons that were not parties to the proceedings before the adjudicatory authority that issued the decision in question. The fact that FIFA opposed the consolidation of both proceedings and thereby sought to limit the effects of the CFC Award is immaterial, since it is within its autonomy to consent to the consolidation of different

proceedings or not. Furthermore, according to Swiss law only the operative part of the award/decision is vested with *res judicata*, not the underlying reasoning.

90. This view is supported by CAS jurisprudence based on legal doctrine on the concept of *res judicata* in international arbitration:

“In its Final Report on the topic of res judicata and arbitration, the International Law Association’s International Commercial Arbitration Committee states that for an arbitral award to have conclusive and preclusive effects it must comply with the traditional triple identity test (identity of the claims, of the causes of action and of the parties), and if there are different parties in the further arbitration proceedings, the prior award will not have conclusive and preclusive effects on a different party (DE LY/SHEPPARD, ILA Final Report on Res judicata and Arbitration, Arbitration International, Vol. 25, No. 1, 2009, p. 76).

There are however several published awards in which arbitral tribunals have given some effects to a prior decision, even though it did not qualify as res judicata. This was typically done in situations where the prior decision involved a case that was not identical but was closely connected to the case before the arbitral tribunal. The effects given to such prior decisions varied among arbitral tribunals. While some tribunals considered themselves bound by a prior decision that was not res judicata, others were more cautious holding that they would take the prior decision into consideration (SCHAFFSTEIN, Res judicata in International Commercial Arbitration – A Problem, in: International Commercial Arbitration, 2016, para. 4.173).

Applying the above legal framework to the matter at hand, the Panel finds that it is not bound by the CAS Media Release or award issued in the proceedings related to Mr Platini (TAS 2016/A/4474). This is particularly so because (1) only the CAS Media Release was issued at the time of the hearing in the matter at hand and no further reasoning was available until after the hearing in this arbitration, (2) the CAS Media Release and award were not submitted into evidence in this arbitration, and (3) they were not in any event relied upon by the parties in making their submissions and requests for relief in this arbitration” (CAS 2016/A/4501, paras. 104-106 of the abstract published on the CAS website).

91. The situation in the matter at hand is different from the situation in CAS 2016/A/4501, because in the present case the Parties and the Panel had full access to the reasoned CFC Award at the time of the hearing, the CFC Award is submitted into evidence and the CFC Award is relied upon by the Parties. The Panel nonetheless does not consider itself bound by the findings of the Sole Arbitrator in the CFC Award, because the triple identity test is not complied with.
92. It is common ground between the Parties that the findings of breaches committed by CFC are accepted as facts in the present proceedings and that The FA only maintains that, notwithstanding such findings, it cannot be sanctioned for some of such violations because its duties under the RSTP are different from those of CFC.
93. The Panel finds that FIFA is entitled to relitigate issues determined in the CFC Award. The issues FIFA seeks to relitigate form part of the Appealed Decision and the present appeal arbitration proceedings. The Panel only accepts the reasons and findings set forth in the CFC Award insofar as it is persuaded by such reasons and findings.

94. Any deviation from the reasons and findings do not negatively impact on CFC, because the CFC Award has a *res judicata* effect between CFC and FIFA. The Panel therefore does not give effect to CFC's letter dated 25 June 2020.
95. Besides the fact that the Parties to the present proceedings are different in comparison with the CFC Award, also the nature of the proceedings is fundamentally different. Whereas CFC was sanctioned for violating the provisions in the RSTP regarding minors, The FA is accused of failing to comply with its obligation to cause CFC to comply with the RSTP provisions regarding minors.
96. As will be discussed in greater detail below, the Panel finds that The FA's responsibility is not necessarily to avoid singular breaches, but rather to prevent systemic breaches of the rules concerning the transfer and registration of minors.
97. As acknowledged by FIFA, The FA is not simply liable because CFC is determined to have violated certain provisions concerning minors in the RSTP, i.e. these are not strict liability offences. The violations found to have been committed by CFC are nonetheless a relevant aspect in the present appeal arbitration proceedings.

ii. *The basis for liability of The FA*

98. Article 14 FIFA Statutes provides as follows:

"1. Member associations have the following obligations:

[...]

(d) to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies.

[...]

2. Violations of the above-mentioned obligations by any member association may lead to sanctions provided for in these Statutes".

a. *The position of The FA*

99. The RSTP make clear provision as to which participants owe which obligations. The Appeal Committee did not find that The FA had breached any obligation imposed upon it directly under the RSTP. Rather, it found that it was liable for CFC's breaches of various obligations imposed on the club. The Appeal Committee expressly disavowed that The FA could be held strictly liable for CFC's breaches. It relied instead on Article 14 FIFA Statutes, requiring The FA to "*cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies*". The Appeal Committee held that this duty implies that "*member associations are requested to take concrete actions and measures so that their members respect the different rules implemented by FIFA*". The FA agrees with this analysis in principle, but it is not the charge that The FA faced.

100. Rather, any disciplinary charge based on a breach of Article 14 FIFA Statutes would have had to identify the “*actions and measures*” which The FA ought reasonably to have taken to cause its member clubs to comply, but which it failed to take. That would require something other than an allegation that it failed to prevent a particular contravention of the RSTP by a member club. The allegations against The FA relate exclusively to the alleged contraventions by CFC. That is in substance no different from the strict liability test which the Appeal Committee disavowed.
101. Given the specificity with which obligations and consequences are spelled out in the RSTP, it cannot be inferred that associations owe duties other than those specified.
102. Under Article 14(1)(d) FIFA Statutes, a failure by an association to cause its members to comply with FIFA’s rules is punishable if it is committed deliberately or negligently. In these proceedings, no breach of Article 14(1)(d) FIFA Statutes was alleged. If such breach was alleged, it would have been necessary for FIFA to set out its case so as to enable The FA to respond. FIFA would have had to articulate a case as to what measures it alleges The FA failed to take which a reasonable association would have taken to cause its members to comply with the RSTP. That would potentially have raised a range of factual and legal issues. It would have had to explain exactly which types of matches The FA would have been required to monitor, and why. The FA might then have adduced evidence as to the practical implications, such as the impossibility of monitoring every such match in view of the scale of English football.
103. In short, if the starting point is taken to be the fact that there was a contravention which The FA failed to prevent, it is impossible to reach any sensible conclusions to The FA’s culpability other than on the basis of strict liability, the very analysis which the Appeal Committee rightly held to be inappropriate. Without either i) an impermissible strict liability approach; or ii) a properly articulated case as to what the standards of reasonable skill and care require of an association in this context and the respects in which The FA is alleged to have fallen short of these standards, there is simply no basis for any finding of culpability on the part of The FA.
104. In CAS 2014/A/3813, the tribunal held in effect that the equivalent provision of the FIFA Statutes then in force meant that the RFEF had breached the various provisions of the RSTP because it had failed to prevent breaches by its members. There are three points in response: i) the wording of Article 13(1)(d) FIFA Statutes no longer requires member associations to “ensure” compliance, but only to “cause” compliance, apparently because it appears to have been recognised that since the award CAS 2014/A/3813 it would be inappropriate for an association to assume responsibility for “ensuring” things which might be wholly outside its control; ii) the decision in the award CAS 2014/A/3813 does not appear to have been that a breach by the clubs gave rise to a breach by the association without more; and iii) if contrary to the above, it is thought that the award CAS 2014/A/3813 does establish effectively strict liability on the part of an association for any breach by a member, The FA will argue that it is wrong.

b. The position of FIFA

105. FIFA objects to The FA’s argument revolving around its lack of liability with respect to breaches of the provisions. Not only has this matter been confirmed in the award CAS

2014/A/3813, but, most importantly, The FA has never argued this with respect to other similar violations that it was found to have committed in the past. The FA has been sanctioned on two prior occasions for breaches of Article 19 RSTP. The FA is therefore estopped from bringing this argument at this stage given that it is not related to the specific facts of the present case, but to the overall understanding of its obligations set forth under the RSTP.

106. The argument according to which the substitution of the term “ensure” with “cause” would provide a sufficiently different framework that would lead to the impossibility to apply the findings of the award CAS 2014/A/3813 *in casu* is wrong and constitutes a desperate attempt to justify a wrong line of defence. Not only was this amendment a purely linguistic one with no intention to modify the legal framework applicable to the 211 member associations, but there are also no reasons why FIFA would suddenly opt to change the obligations of its member associations in the radical way that The FA is suggesting. If any, the amendment should be understood as having imposed a stronger obligation on FIFA’s member associations.
107. Moreover, even if said argument would be accepted by the Panel, *quod non*, this would not lead to The FA’s acquittal given that i) the vast majority of the offences for which The FA has been sanctioned were committed before the amendment of Article 14(1)(d) FIFA Statutes; and ii) The FA has not only failed to “ensure” that CFC would respect FIFA’s regulations, but it has also failed to “cause” CFC to comply with the RSTP.
108. The FA argues that “*this is not the charge that [it] faced*”. Nonetheless, all decisions passed against it clearly and undoubtedly mention this infringement and it is therefore undisputable that it has been perfectly capable of defending itself from such charge. Even if this would not have been the case, *quod non*, the *de novo* effect of these proceedings would heal such (inexistent) flaw.
109. Finally, in what concerns “*the principle that there should be no punishment without culpability or guilt*”, FIFA does not understand how this would be of any relevance to the present case, namely after the Appeal Committee’s assertion that “*[a]t no point did the FIFA Disciplinary Committee rule that a breach by CFC automatically corresponded to a breach by The FA*”. FIFA strongly holds that the member associations of FIFA, including The FA, bear their own responsibilities and obligations when it comes to FIFA’s system of protection of minors. Hence, it is evident that The FA can be held liable for breaching Article 5, 9, 19, 19bis and Annexes 2 and 3 RSTP as uncontestedly confirmed by CAS in the award CAS 2014/A/3813.

c. The findings of the Panel

110. The Panel finds that, pursuant to Article 14(1)(d) FIFA Statutes, The FA is not only bound by the specific provisions of the RSTP imposing obligations on it, it also has an obligation to cause its own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies. This includes a duty of The FA to cause CFC to comply with the provisions regarding minors in the RSTP. Pursuant to Article 14(2) FIFA Statutes, a violation of such obligation may be sanctioned.

111. The Panel agrees with The FA that this is not a strict liability offence, i.e. it is not automatically true that The FA is in breach of the applicable regulations because CFC is found guilty. Instead, something more is required.
112. However, contrary to the submission of The FA, FIFA is not necessarily required to identify “*actions and measures*” which The FA ought reasonably to have taken to cause its member clubs to comply, but which it failed to take, for it to be sanctioned. What appropriate action to take is within the autonomy (and responsibility) of the individual national federation. This being said, it is certainly legitimate for FIFA to identify precautionary measures that should have been taken, but were not, but in a situation where The FA failed to demonstrate that it undertook any “*actions and measures*” to cause CFC to comply with the provisions concerning minors in the RSTP, the Panel does not consider it incumbent for FIFA to identify a range of specific duties for The FA.
113. The Panel does not consider it inappropriate for FIFA to leave it up to its members to decide whether “*actions and measures*” are necessary in the first place, because it may well be that the members of a federation are aware of and comply with the rules. Further, if “*actions and measures*” are considered necessary, the Panel does not consider it inappropriate for FIFA to leave it up to the member federation to decide which “*actions and measures*” are appropriate. The appropriate “*actions and measures*” may differ from member to member and a one-size-fits-all policy may not be effective. Indeed, large member associations such as The FA may require a very different approach than small member federations.
114. The Panel finds that The FA cannot legitimately argue that it justifiably refrained from taking action to cause compliance among its member clubs just because FIFA had never spelled out which specific precautionary measures were required to be taken. Rather, to avoid being sanctioned for violating its duty under Article 14(1)(d) FIFA Statutes, it is for The FA to show that it took all reasonable actions to cause its members to comply with the provisions regarding minors in the RSTP, but that, notwithstanding such measures, CFC still did not comply. In that case CFC could be found guilty, but The FA not.
115. The Panel does not consider this to be a reversal of the burden of proof, because it finds that FIFA established a *prima facie* case that The FA undertook no actions to cause its members to comply with the provisions concerning minors. In such circumstances, it is then up to The FA to dispute the allegations of FIFA in a substantiated manner, i.e. by showing what individual actions it undertook. It would then be up to FIFA to show that these measures were inappropriate.
116. Considering the large number of foreign minors playing for its member clubs and their academies, the Panel finds that The FA should have been alert to the risk of its member clubs potentially circumventing, avoiding or breaching the provisions concerning minors in the RSTP, whether intentionally or negligently. This is all the more true considering that there have been many publicized high profile cases in the past related to a breach of the regulations on the protection of minors (both involving clubs and national federations).

117. Indeed, if FIFA could find out about CFC's violations, how come The FA did not detect them, while it has a much closer connection to CFC.
118. The Panel is also comforted in its reasoning by the fact that a different CAS panel in the award CAS 2014/A/3813 held that the RFEF could be sanctioned for failing to ensure its member clubs to comply with the RSTP. The Panel finds the reasoning in the award CAS 2014/A/3813 compelling in this respect.
119. The arguments advanced by The FA, suggesting that the present proceedings are to be distinguished from the award CAS 2014/A/3813 are not persuasive. The Panel finds that there is no meaningful difference in the wording between the previous Article 14(1)(d) FIFA Statutes and the current article. There is no indication that by changing the wording from "*ensuring*" compliance to "*causing*" compliance, FIFA intended to increase or decrease the standard of care required from its member federations. Similar to the award CAS 2014/A/3813, also in the present proceedings there is more than simply a failure of a member club violating the provisions concerning minors, i.e. The FA failed to take action to ensure or cause compliance.
120. Indeed, the award CAS 2014/A/3813 indicates with respect to the violations committed by Barcelona that by failing or neglecting "*to perform its oversight role as required under Article 13.1 (d) of the FIFA Statutes, the RFEF by default or omission breached*" Article 19(1), (3) and (4), Article 5(1) and Article 9(1) RSTP. The RFEF failed to fulfil its oversight role, mainly because it inappropriately left the registration of minors to regional federations, while it should have registered such minors itself. In the present case, one of the key allegations of FIFA is that The FA misinterpreted the concept of "organized football" in Article 5(1) RSTP, as a consequence of which minors participated in PLGP matches without being registered.
121. If such allegation of FIFA were upheld, The FA would be responsible for more than just being held strictly liable for CFC's violations. It would – just like RFEF – have failed to exercise its supervisory role over the clubs on its territory and this is what would justify a sanction.
122. Consequently, the Panel finds that The FA can, in theory, be sanctioned for failing to comply with its obligations under Article 14(1)(d) FIFA Statutes. Whether such sanctions are warranted will be set out below in respect of the specific provisions that were allegedly violated by CFC.

iii. Interpretation and application of Article 5(1) RSTP

123. Article 5(1) RSTP (2019 edition) provides as follows:

"A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2. Only registered players are eligible to participate in organised football. [...]"

a. *The position of The FA*

124. The FA's arguments in this respect are two-fold. It maintains that as an association it cannot be held liable for a violation of Article 5(1) RSTP and that the term "organized football" is applied inappropriately by FIFA.
125. As to the first argument, The FA submits that Article 5(1) RSTP imposes an obligation which must be satisfied before a player can play for a club. It makes no reference to an association except in establishing the precondition which must be satisfied. This arrangement does not impose any obligation on the association, which is corroborated by Article 11 RSTP, from which it can be derived that the association is not the subject of the obligation, but the principal enforcer.
126. Although it would theoretically be possible for FIFA to advance a case against an association on the basis of Article 5(1) RSTP, that would require matters such as i) the circumstances relied upon as giving rise to an obligation on the part of a reasonable association to take certain action; ii) the nature of the action which such an association would be obliged to take, in the context of the English game; and iii) the respects in which The FA fell short of that standard. But no such case was advanced. Nevertheless, The FA was held liable in the case of 40 players, while the Appeal Committee does not appear to give any reasons for that decision. The Appeal Committee adopted the strict liability approach which it had accepted would be incorrect: it assumed that a breach of the underlying obligation automatically gave rise to a breach by The FA. That was wrong in law, and since no other basis of liability was advanced, it should be overturned and the charge dismissed.
127. The FA submits that in case its argument that it cannot be held liable for a violation of Article 5(1) RSTP is dismissed, the term "organized football" as used in the RSTP should be interpreted to mean "official matches" played within a competitive framework.
128. As to the meaning of "organized football", The FA submits that the Appeal Committee set out no clear dividing lines as to what, in its judgement, did or did not constitute "organized football". However, it decided that the matches within the PLGP, a youth programme operated by the Premier League, were within the scope. The term "organized football" does not apply to i) trials or trainings; ii) friendly matches or trial matches; or iii) other activity outside the scope of what is organised or required to be organised by a relevant association or confederation.
129. The FIFA Commentary on the RSTP (the "FIFA Commentary") makes it clear that the focus of Article 5(1) RSTP is on competitions organised by the association and that it is not concerned with friendlies or with matches organised for training purposes. This is further supported by the definition of "organized football" and "official matches" in the RSTP. FIFA's interpretation is incompatible with Article 11 RSTP. The Appeal Committee simply accepted the reasoning of the Disciplinary Committee in the First Instance Decision, which considers that the term "organized football" must be wider than the term "official matches". However, the much more natural explanation for why there are two separate terms is because there needs to be a term to refer to individual matches and a term to refer to the total sum of the footballing activity which those matches represent.

130. The Appeal Committee appears to have departed from the reasoning of the Disciplinary Committee in one significant aspect, because it appears to have accepted, correctly, that trial matches are outside the scope of “organized football”. If that is right, it is not at all clear how the line between trial matches and non-trial matches is to be drawn. The Appeal Committee however also rejected The FA’s argument that trial matches fall outside the scope of “organized football”. FIFA’s position is therefore unclear, whereas The FA’s position provides a clear and logical solution.
 131. The allegations of breach of Article 5(1) RSTP turned in very large part on matches played as part of the PLGP. The Disciplinary Committee and the Appeal Committee both concluded that matches within that programme should be treated as part of “organized football”. They are wrong in doing so, because i) the PLGP is effectively a training programme operated by the Premier League, it is not authorised or monitored by The FA; ii) in many cases, matches played under the PLGP will not even constitute “association football”; iii) the Sole Arbitrator in CAS 2016/A/4785 held that four tournaments did not constitute “organized football” for the purposes of the RSTP, with the consequence that there was no requirement to register. The same applies to the PLGP.
- b. The position of FIFA*
132. FIFA submits that “organized football” is comprised of official matches as well as friendly matches and tournaments (insofar as they have to be authorised and/or are organised by – or they fall under the auspices of – FIFA, the confederations or the associations). Privately organised friendly matches and trial matches fall outside the scope of “organized football”. A breach of Article 5(1) RSTP is therefore committed by a member association when an amateur or professional player participates in “organized football” for a club affiliated to it while not registered – or not duly registered – with it.
 133. The “majority” of the “organized football” matches in which the players participated for which The FA was sanctioned were categorised as PLGP matches.
 134. The FA has expressly acknowledged its relationship with the Premier League throughout the proceedings. As a result, all matches organised by the Premier League and under its auspices (with the Premier League operating under the auspices of The FA), are considered “organized football” within the meaning of the RSTP, requiring a preceding registration with The FA of any player wanting to participate in such matches.
 135. The FA has not developed any novel arguments regarding the concept of “organized football” or the nature of the PLGP and has not provided any new evidence in the scope of the present proceedings. As a result, it appears that such arguments and evidence have already been addressed in the Appealed Decision.
 136. As to The FA’s liability, FIFA submits that, as correctly pointed out by The FA, Article 11 RSTP only covers the effects that fielding an ineligible player may have during a domestic competition. Hence, this provision covers the relationship ‘players/clubs – member association’ as it establishes the basis for sanctions to be imposed on players and/or clubs “in principle” by

the association. Nevertheless, this article does not regulate the relationship ‘FIFA – member association’ when it comes to the latter’s obligation to register players prior to their participation in “organized football”, this is done exclusively by Article 5 RSTP.

137. An infringement of Article 5 RSTP cannot be regarded as a violation that can only be committed by the clubs as implied by The FA. The reality is that Article 5 RSTP is also directed to the associations by establishing an obligation for them in relation to the registration of players. In fact, this obligation constitutes the preceding condition that would later on lead to the application of Article 11 RSTP. This is further corroborated by the fact that, only by registering players with its clubs will the member associations properly ensure and cause players to comply with the FIFA Statutes and regulations at all times within their jurisdiction.
138. As to the meaning of “organized football”, The FA’s self-serving interpretation of “organized football” is easily contestable as it unilaterally narrows down a concept in a way that, if accepted, would lead to absurd and dangerous results. The concept has already been explained above, but it must be clarified that it cannot be reduced to competitive football. Should this be accepted, friendly matches that must be authorised as per the applicable regulations or which take place under the auspices of a member association would automatically fall outside the competence of FIFA, the confederations and the associations. Several provisions (Articles 38(2)(g), 55(2) and 71(1) of the FIFA Disciplinary Code confirm that friendly matches fall under the concept of “organized football” and, hence, under the remit of FIFA, the confederations and/or the associations. These articles reflect that if The FA’s views were to be accepted, they would lead to the finding that the FIFA Disciplinary Code is flawed, that many disciplinary decisions concerning friendly matches would have been incorrectly taken and the FIFA Regulations Governing International Matches would not be enforceable. The definition of “organized football” purposely refrained from referring to “official matches” in order to cover a broader range of matches in line with the above articles of the FIFA Disciplinary Code.
139. The definition of “official matches” indicates that these are part of the broader construct of “organized football”, the latter not being limited to it, and that these matches are different from “friendly and trial matches”. With respect to “trial matches”, it is abundantly clear that the fact that a player is trialled during PLGP matches does not change the qualification of such match to a “trial match”. Trialists (who are evidently not registered with the relevant association) are only permitted to participate in “non-organized” friendly and trial matches. CFC clearly understood such principle since it organized matches which it described as “*Training Game Organized by CFC in house*” which are perfectly suited for the purpose of friendly and/or trial matches.
140. As to the PLGP matches, the definition of “organized football” contains two relevant and independent elements: i) “*organised under the auspices*” or ii) “*authorised by them*”. Even if FIFA, UEFA or The FA do not directly authorise PLGP matches, the PLGP still takes place under the auspices of The FA. These matches take place within “organized football” structures. Deviating from such principle would lead to the inevitable conclusion that English football has two separate entities governing football, *quod non*. Given that authorisation is not the only element that may lead to conclude that a certain match constitutes “organized football” and that The FA has not contested the specific findings of the Appealed Decision, those conclusions

are undisputed; the Premier League organises the PLGP across age groups and through competitions and operates under The FA (the latter even approving and sanctioning its rules, including the Premier League Youth Development Rules – the “PLYDR”).

141. The FA’s statement that the PLGP matches do not constitute association football is not supported by any evidence and should therefore not be accepted.
142. The FA’s reference to the award CAS 2016/A/4785 is irrelevant. The tournaments in such case were analysed in the eyes of the second independent element of “organized football” mentioned above – “*authorised by them*” – rather than the first one – “*organised under the auspices*” – that is applicable here.
143. Accordingly, all matches organised by the Premier League under The FA’s auspices qualify as “organized football” within the meaning of the RSTP, requiring a preceding registration with The FA of any player wanting to participate in such matches. In 40 instances, The FA failed to properly register players prior to their participation with CFC in “organized football” matches, resulting in a breach of Article 5 RSTP. Such finding is in line with the reasoning of the award CAS 2014/A/3813 which clearly established that “[t]he RFEF had an ancillary duty to play in ensuring full compliance of Article 5.1 of the FIFA RSTP. This role entailed undertaking both preventive and curative measures in monitoring clubs’ compliance thereof”.

c. *The findings of the Panel*

144. The Panel finds that the concept of “organized football” is a very important element of the present proceedings, because if the PLGP does not qualify as “organized football”, the registration requirement of Article 5(1) RSTP was arguably not applicable to many CFC players. This was indeed the conclusion reached by the Sole Arbitrator in the CFC Award. Conversely, if the PLGP were to be considered as “organized football”, a considerable number of minors of CFC would undisputedly have participated in PLGP matches without complying with the registration requirements. Indeed, as recorded in the CFC Award, “*all 40 players participated in PLGP matches*” and that 21 of those participated in other types of matches (CFC Award, para. 132). Since these figures were not explicitly contested in the present proceedings, several additional players would not have been properly registered in accordance with Article 5(1) RSTP.
 145. As indicated *supra*, the Panel finds that it is not bound by the findings of the Sole Arbitrator in the CFC Award in this respect and therefore makes its own independent analysis of the concept of “organized football” and whether the PLGP forms part of such concept.
- c.1. The concept of “organized football”
146. The concept of “organized football” is defined as follows in the RSTP:

“Association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them”.

147. There are two alternative definitions in this provision that both lead to the conclusion that there is “organized football”, i.e. it is “*association football*” that is either i) “*organised under the auspices*” of FIFA, the confederations or the national associations; or ii) “*authorised*” by them.
148. The PLGP is a programme comprising different age groups:
- The Foundation phase (U-9 to U-11)
 - The Youth Development phase (U-12 to U-16)
 - The Professional Development phase (U-17 to U-23)
149. Mr Garlick states in his witness statement that The FA only authorises the Professional Development phase, but not the Foundation phase or the Youth Development phase. He states that the PLGP (in particular the Foundation phase and the Youth Development phase) are intended to encourage the holistic development of young players, and that it differs materially from the objectively competitive nature of football played in the professional game with which The FA is concerned and formally authorises. Mr Garlick maintains that the involvement of the Premier League is limited to providing a suggestive fixture list, but that clubs can decide on the rules of the game applicable to such matches, such as the size of the ball, the number of players, the length of the match. There are no league tables and the matches do not need to be played in accordance with the IFAB Laws of the Game.
150. The Panel notes that the Sole Arbitrator in the CFC Award held that, after analysing the system and the regulations in great detail, “*PLGP matches do not count as “organised football” under Article 5.1 RSTP and, therefore, that [CFC] did not breach that provision in relation to the 40 players who participated in such matches prior to or without ever registering*”.
151. This Panel has a different view. First of all, there is no requirement that matches must somehow be related to professional football in order to be considered as “organized football”, as suggested by Mr Garlick. Article 2(1) RSTP indicates that players participating in “organized football” are either amateurs or professionals.
152. Second, the term “association football” is defined as follows in the FIFA Statutes:
- “Association football: the game controlled by FIFA and organised by FIFA, the confederations and/or the member associations in accordance with the Laws of the Game”.*
153. The Panel, however, does not find that in order to comprise “association football” matches must be played strictly in accordance with the IFAB Laws of the Game that apply to professional football. Indeed, Article 2 FIFA Statutes for instance provides that one of the objectives of FIFA is “*to control **every type** of association football*”, from which the conclusion can be drawn that there is not just one type of “association football”, i.e. the type that is played in accordance with the IFAB Laws of the Game.
154. It is commonplace that youth matches are played with smaller teams, on smaller pitches, with smaller balls, etc. Indeed, Articles 137.7 and 144.7 PLYDR determine the standards and sizes

applicable for each age category within the Foundation phase and the Youth Development phase of the PLGP. The mere fact that the rules may be slightly different from the IFAB Laws of the Game, does not make the sport anything else than “association football” in the sense of Article 5(1) RSTP. Indeed, any such interpretation would mean that, pursuant to the definition of “association football”, youth matches would fall outside the remit of FIFA’s control for the simple fact that the size of the pitch or the ball is different than prescribed in the IFAB Laws of the Game, which conclusion the Panel does not find sustainable.

155. The Panel agrees with FIFA that privately organised friendly or trial matches between two clubs without the involvement of a third party, such as for example the national federation providing for referees, is indeed not “organized football”. However, matches played in the framework of an organised structure are, in principle, “organized football”. The Panel accepts that there may be borderline situations, but it finds that the PLGP is clearly an organised structure as it comprises a very thought-ought sophisticated plan with a detailed regulatory framework. Indeed, the Panel is impressed with the level of detail the PLYDR provides for.
156. The Panel notes the emphasis on development and education of minor players in the PLGP and this is certainly an important element of the programme. However, the Panel is not convinced that the PLGP is a mere educational initiative, as schools would provide for. The ultimate business rationale behind the PLGP is clearly to produce talented football players from which clubs will benefit, either by profiting from their sporting capacity or by profiting from transferring the players by benefitting from transfer fees, training compensation and solidarity contribution. There is in principle nothing wrong with such objective, in particular if combined with general education and development of minors, but it should at least take place in accordance with the regulatory framework established by FIFA.
157. Further, the mere possibility that matches in the Foundation phase and Youth Development phase of the PLGP may be played under alternative rules does not say anything about whether such matches are organised under the auspices or authorised by The FA, which are in fact the relevant criteria to examine whether a certain category of matches constitute “organized football”.
158. The definition of “*under auspices*” is defined in the Oxford English Dictionary as follows:
“with the help, support, or protection of someone or something”.
159. It is not in dispute that all three categories of PLGP matches are organised by the Premier League. It is also not denied by The FA that the Premier League generally carries out its activities under the auspices of The FA and that The FA explicitly authorises the Professional Development phase of the PLGP. The Panel finds that this combination in itself already justifies the conclusion that the Foundation phase and the Youth Development phase of PLGP matches are organised under the auspices of The FA, as it is not considered appropriate to distinguish between separate phases within the PLGP, because the first two phases ultimately flow and merge into the third phase.

160. The close link between the PLGP matches and The FA also became apparent through Mr Garlick's evidence at the hearing when he said that the Premier League was designed to have control over the PLGP, in consultation with The FA. Accordingly, The FA at least had a certain degree of influence on the PLGP. Mr Garlick also clarified that The FA in the past contributed to the fund from which the PLGP was financed, but that it currently no longer contributes, as the PLGP is funded by the Premier League and Football League clubs by paying a levy of 4% on each transfer.
161. The Panel finds that these statements corroborate FIFA's contention that The FA was involved in the creation of the PLGP in 2012 and gave its consent thereto.
162. It further transpired from Mr Garlick's testimony that the rules of PLGP matches in the Foundation phase and Youth Development phase may deviate from the rules as established by the IFAB Laws of the Game, but he also admitted that, for instance, the "*Floodlit Cup*", which is played in the Foundation phase as well as the Youth Development phase, is competitive football. Although Mr Garlick stated that it is more about the experience than about competition, he confirmed that tournaments organised as part of the PLGP are competitive and played under the same rules. He added that, although he did not have the details of the different tournaments being played, he suspected that, for instance, the U-15 Floodlit Cup would be played as regular games.
163. Mr Garlick's statement that the Premier League only provides a suggestive fixture list, but that the teams can cancel or postpone matches whenever they want, does not appear to be entirely accurate. In fact, Article 170 PLYDR provides that "[a] match in the games programme between Academy teams in age groups Under 9 to Under 16 inclusive shall not be cancelled, postponed or abandoned except with the written consent of the Board or on the instructions of the officiating referee [...]". Accordingly, there is a certain rigour in the system that prevents teams from cancelling matches for fanciful reasons.
164. Also, Articles 1.37 and 1.80 PLYDR for instance define the "Foundation Phase Games Programme" and the "Youth Development Phase Games Programme" as "*the games programmes **organised by the League and the Football League** for teams in each of the [relevant age groups]*" (emphasis added). This clearly demonstrates that the football matches played in the PLGP are not privately organised by the clubs or academies, but by the Premier League and the Football League.
165. There may be a possibility that matches in the Foundation phase or Youth Development phase are sometimes played indoors, with music, with rebound boarding, with roof nets and with an unequal number of players, but no evidence has been presented that these are indeed the circumstances that would generally apply. Rather, it appears that PLGP matches would usually take place under rules that are similar to the IFAB Laws of the Game.
166. For these reasons, the Panel agrees that the Foundation phase and the Youth Development phase of the PLGP are not explicitly authorised by The FA, but the Panel finds that they are organised by the Premier League, under the auspices of The FA.

167. The Panel finds that the award CAS 2016/A/4785 is of no particular relevance in this respect, as the Sole Arbitrator in such case analysed whether the relevant tournaments were organised or authorised by the regional (FFM), national (RFEF), European (UEFA) or worldwide federation (FIFA), which they were not. It was, however, not analysed whether such tournaments were organised by an organisation under the auspices of any such federation, which this Panel considers to be the relevant criterion.
168. Furthermore, the concept of “official matches” is defined as follows in the RSTP:
- “Matches played within the framework of organized football, such as national league championships, national cups and international championships for clubs, but not including friendly and trial matches”.*
169. As to The FA’s argument that the definition of “organized football” and “official matches” are the same, the Panel accepts FIFA’s explanation that this is not the case. For instance, FIFA clearly sanctions friendly matches of national A-teams, because FIFA generally provides for referees and has disciplinary power over violations committed during such matches. Several provisions (Articles 38(2)(g), 55(2) and 71(1)) of the FIFA Disciplinary Code confirm that friendly matches fall under the concept of “organized football” and, hence, under the remit of FIFA, the confederations and/or the associations.
170. The Panel finds that such conclusion can particularly be drawn from the different treatment of official matches and friendly matches in Article 55(1) and (2) of the FIFA Disciplinary Code:
- “1. If a player takes part in an **official match** despite being ineligible, his team will be sanctioned by forfeiting the match (cf. art. 31) and paying a minimum fine of CHF 6,000.*
- 2. If a player takes part in a **friendly match** despite being ineligible, his team will be sanctioned by forfeiting the match and paying a minimum fine of CHF 4,000”.*
171. Accordingly, it is clear that such friendly matches are not “official matches” in the sense of being played in a larger framework of a competitive structure, but it is still “organized football” in the sense that such match is not privately organised.
172. The Panel finds that this interpretation prevails over the interpretation set forth in the FIFA Commentary, suggesting that a player would only have to be registered to play in “*competitions organised by this association or by the confederation concerned*”. The Panel finds that this interpretation, which in any event is incorporated in a non-binding legal document, is trumped by the definition of “organized football”, suggesting that it also comprises matches organised under the auspices of a national federation, i.e. matches not directly organised by the national federation.
173. Consequently, the Panel finds that the PLGP comprises “organized football” in the sense of Article 5(1) RSTP, with the consequence that players were required to be registered before participating in the PLGP.

- c.2. The FA's duty to "ensure" or "cause" compliance with Article 5(1) RSTP
174. In view of the conclusion that all PLGP matches constitute "organized football" in the sense of Article 5(1) RSTP, the Panel comes to the conclusion that, besides the players already identified in the CFC Award, a higher number of CFC players should have been registered with The FA. Indeed, The FA maintains that the alleged breach of Article 5(1) RSTP turns in *"very large part on matches played as part of the PLGP"*.
175. The Panel does not consider it necessary to determine whether the tournaments abroad also comprised "organized football", as it is already clear that these players participated in "organized football" by means of taking part in PLGP matches.
176. The Panel finds that if The FA wrongly assumed that the PLGP did not form part of "organized football", The FA mistakenly condoned minors playing for CFC in "organized football" without them being registered.
177. As argued by The FA, the requirement of Article 5(1) RSTP to register players is applicable to clubs, not directly to associations, but the Panel finds that it was The FA's duty to *"ensure"* or *"cause"* compliance. If The FA had a mistaken perception of "organized football" it is clear that it did not cause compliance under its members. In fact, by such mistaken perception, it would to a certain extent cause incompliance of its members, because the members would rely on The FA's interpretation of the RSTP.
178. As said, the Panel does not consider it necessary to review the specific circumstances and situation of each and every individual player. What matters is that The FA had a flawed understanding of "organized football" and therefore did not cause CFC to register players prior to participating in PLGP matches. As argued by The FA, it is not The FA's duty to prevent any possible infringement of the RSTP by its member clubs, but it should undertake due care in exercising oversight control, which includes not only preventive measures but to some extent also active verification of whether its member clubs comply with the provisions concerning minors in the RSTP.
179. The misinterpretation of "organized football" is a major structural flaw in the system, as a consequence of which The FA failed to comply with its obligation to cause its member clubs to comply with the provisions regarding minors in the RSTP. The Panel finds that The FA was negligent in this respect.
180. The Panel also took note of two provisions in the PLYDR.
181. Article 231 PLYDR provides as follows:
- "Subject to the conditions set out in Rules 232 and 238, a Trialist may attend an Academy for up to eight weeks in any one season without being registered provided that: [...]"*
182. Article 247 PLYDR provides the following:

“Subject to Rules 121 to 126, except for Trialists attending trials in accordance with Rule 231, and players attending Development Centres and players with whom a Club has entered into a pre-registration agreement in accordance with Rule 243, no player shall be coached by or at an Academy or participate in matches, tours, Festivals, Training Camps or Tournaments in which the Club operating that Academy is involved unless that Club holds his registration”.

183. Since The FA was involved in designing the PLGP, the Panel also considers it negligent for The FA to have permitted the existence of rules allowing its member clubs to let players participate in PLGP matches during a trial for up to 8 weeks, which may even be extended under certain circumstances, without such players having to be registered, i.e. without The FA having oversight control over the players participating in PLGP matches or any assurance that such players comply with the criteria set forth in Article 19(2) RSTP.
184. FIFA refers to three factual examples in its submissions that remained uncontested by The FA:
- Player 1 was enrolled with CFC for almost 3 years since the age of 16 before being formally registered with The FA, playing *inter alia* 10 PLGP matches;
 - Player 2 participated in 6 trials with CFC for a total of 68 days, moved to London without his family in August 2013 at the age of 15 before being formally registered with The FA in September 2014, playing *inter alia* 19 PLGP matches;
 - Player 6 moved from Portugal to England without his parents in October 2012 at the age of 13, playing in *inter alia* 75 PLGP matches, without ever having been registered for CFC.
185. The Panel finds that these three examples are demonstrative of The FA’s lack of oversight and failure to cause CFC to comply with the provisions concerning minors in the RSTP.
186. Insofar as The FA relies on Article 11 RSTP to argue that it cannot be sanctioned because such provision only indicates that clubs and players can be sanctioned for participation of a player in an official match without being registered, but not a national federation, the Panel finds that this argument is to be dismissed. It is true that Article 11 RSTP enables clubs and players to be sanctioned. However, The FA has a separate obligation to cause compliance among its member clubs to register players prior to their participation in “organized football”, pursuant to Article 5(1) RSTP. This is the obligation that The FA breached in the case at hand.
187. Finally, the Panel finds that the mere fact that the PLYDR allows players to be considered as trialists does not make the PLGP matches trial matches, because these matches are not privately organised friendly matches or trial matches, but form part of the overall structure of the PLGP.
188. Consequently, on the basis of the above, the Panel finds that The FA violated its duties under Article 14(1)(d) FIFA Statutes in conjunction with Article 5(1) RSTP, as it failed to ensure or cause compliance among its member clubs to register players prior to participation in “organized football”.

iv. The consequences of the findings with respect to Article 5(1) RSTP

189. The above conclusions are highly relevant for the other charges The FA is facing in these proceedings, because a significant part of the remaining charges, i.e. the conditions under which players can be internationally transferred or registered for the first time as set forth in Article 19 RSTP and the duty to obtain an ITC prior to making an international transfer as set forth in Article 9 RSTP, are consequences of the same misinterpretation. Indeed, should The FA have caused CFC to comply with its duty to register minors with The FA prior to participating in PLGP matches, it would have been clear to CFC that it had to comply with the terms of Article 19 RSTP in case it wanted to register players following an international transfer or first registration and that an ITC would have to be obtained for minors above 12 (or 10) prior to registering such players.
190. Ultimately, Articles 5(1), 19 and 9 RSTP serve the same purpose, i.e. ensuring that minor players participating in “organized football” comply with the criteria set out in Article 19(2) RSTP. If a violation of Article 5(1) RSTP would prevent a club from complying with a mandatory prerequisite for violating Articles 19 and 9 RSTP, this makes the violation of Article 5(1) RSTP all the more severe.
191. It is not so much about the quantity of individual violations, i.e. assessing with respect to how many players how many provisions were violated, but rather about the quality of the violations, i.e. about the severity.
192. There may be situations where it is necessary to distinguish between these different provisions, but in the matter at hand the Panel considers that regardless of whether all three provisions are considered to be violated, or whether only a violation of Article 5(1) RSTP took place and thereby prevented violations of Articles 19 and 9 RSTP, the result is basically the same, i.e. the mandatory requirements to register minors were not complied with, while they participated in “organized football”.
193. Indeed, as argued by FIFA, fielding a player in “organized football” or not complying with the requirements to internationally transfer a minor cannot be healed by the absence of a registration. If a club finds a way of reaching the ultimate goal – fielding the player – without complying with the previous pre-conditions – verification of Article 19(2) RSTP exception and approval by the competent body, ITC and/or registration –, as CFC was allowed to do by The FA, it is evident that such circumvention cannot be left unsanctioned.
194. Finding The FA liable for infringing only Article 5(1) RSTP or for infringing Articles 5(1), 9 and 19 RSTP separately would therefore not have an impact on the Panel’s assessment of the proportionality of the sanctions imposed by the Appeals Committee. The Panel therefore, in principle, does not consider it necessary to examine the alleged violations of Articles 9 and 19 RSTP any further.
195. However, one aspect of Article 19 RSTP requires a more detailed analysis. This issue is related to the international transfer or first registration of players under Article 19(1) and (3) RSTP, as there is a specific aspect of interpretation that has consequences for the proper application of

the rules. For players below 12 or 10, depending on the applicable version of the RSTP, no ITC is required pursuant to Article 9(4) RSTP. The FA initially interpreted this as if the substantive requirements set forth in Article 19(2) RSTP would not apply to such players. If such interpretation were considered to be mistaken, this would comprise another structural flaw in The FA's system, potentially leading to the conclusion that The FA thereby failed to cause its member clubs to comply with the requirements of Article 19(2) RSTP.

v. *The application of Article 19(2) RSTP to players below the age of 12 or 10*

196. Article 9(4) FIFA RSTP provides as follows:

“An ITC is not required for a player under the age of ten years”.

a. *The position of The FA*

197. In several cases FIFA alleged a contravention of Article 19 RSTP where the player was below the age at which an ITC was necessary. The FA submits that FIFA was wrong in this respect. In the award CAS 2016/A/4785, CAS held that there is no contravention under such circumstances, prior to the issuance of FIFA Circular no. 1468 in January 2015. The points raised by the sole arbitrator in that case apply equally to this case.

198. The FA submits that the reasoning in the award CAS 2016/A/4785 also applies after the issuance of FIFA Circular no. 1468. The RSTP was amended so as to reduce the age in from 12 to 10 but there was no amendment to alter the obligations of national associations. In circumstances where the RSTP have been held not to impose any such obligation prior to the Circular, the issuing of the Circular cannot have affected the position. Further, if documents published by FIFA were capable of affecting the meaning of the rules, then it is no less relevant that the FIFA Commentary is to the opposite effect, in particular with respect to Article 9 RSTP.

b. *The position of FIFA*

199. As to The FA's responsibility with respect to players under the age of 12 before 23 January 2015, FIFA submits that there is no element to justify that an exception to a purely formal obligation (i.e. obtaining an ITC for players under a certain age under Article 9 RSTP) can be applied by analogy to a substantive prohibition (i.e. Article 19 RSTP), since that would contradict the *ratio legis* of Article 19 RSTP. FIFA relies on the findings of the panel in CAS 2014/A/3793. How can The FA justify that players under the age of 12 (or 10) are not afforded the same protection as the one provided to other minor players? The application of Article 19 RSTP to players under the age of 12 is also confirmed by the historic evolution of the system protecting minor players. Only in 2009, when Article 19 RSTP was already in force since 2001, FIFA became competent to deal with the administrative procedure concerning minor players over the age of 12. Nevertheless, FIFA did not exonerate its member associations at any point in time from their obligation to guarantee the correct implementation of the rule with regard to the remaining minor players.

200. The FA simply decided to rely on the findings of the Sole Arbitrator in the award CAS 2016/A/4785, thereby completely disregarding the majoritarian and most recent position of CAS on this same topic which FIFA supports. In fact, in both the awards CAS 2014/A/3793 and CAS 2014/A/3813, CAS panels of three arbitrators found that Article 19 RSTP applied to players under 12. In the award CAS 2016/A/4805, which serves as the most recent CAS case concerning violations of Article 19 RSTP, two of the three arbitrators on the Panel reached the same conclusion. The FA's purposeful disregard of the provisions on protection on minors is revealed by the fact that even after CAS' issuance of the awards CAS 2014/A/3793 and CAS 2014/A/3813 in 2015 in which the clubs' and associations' duties towards under 12 players were confirmed and widely publicized, it chose to ignore them and continue to turn a blind eye to the matter.
201. As to The FA's responsibility with respect to players under 10 after 23 January 2015, The FA's argument automatically falls apart the moment that FIFA's position on the under 12 players is confirmed. The FA's reference to the FIFA Commentary has consistently been held to be flawed in the awards CAS 2014/A/3793, CAS 2014/A/3813 and CAS 2016/A/4805. Even the sole arbitrator in the award CAS 2016/A/4785 confirmed the responsibilities concerning Article 19 RSTP with respect to under 10 players that stemmed from said Circular.

c. The findings of the Panel

202. The Panel finds that The FA's interpretation in this respect is flawed, because notwithstanding the fact that no ITC is required for players under the age of 12 (or 10), they still need to comply with the substantive requirements set forth in Article 19(2) RSTP before they can be registered and/or participate in "organized football", as The FA maintains it has been doing since 2019.
203. The main reason for this is that Article 19(1) RSTP provides that "[i]nternational transfers of players are only permitted if the player is over the age of 18", i.e. transfer below such age are in principle prohibited, unless one of the exceptions carved out in Article 19(2) RSTP is applicable.
204. It cannot be inferred from any provision in the RSTP that because no ITC is required on the basis of Article 9(4) RSTP, the requirements of Article 19(2) RSTP would not be applicable.
205. Although FIFA Circulars are not binding law, the Panel finds that at least as from 1 March 2014, it must have been clear to The FA how FIFA interpreted Article 9(4) RSTP, because FIFA Circular no. 1468 provides that "*if a member association intends to register players under the age of 10 [...], despite the fact that no ITC and no application to the sub-committee appointed by the Players' Status Committee will be required, it is all the more the responsibility of this association to verify and ensure that the requirements for the protection of minors established in art. 19 par. 2 of the Regulations are met*".
206. However, neither FIFA Circular 1468, nor the amended version of the RSTP changed the substantive duties of national associations with respect to Article 19 RSTP.
207. This view is also confirmed by CAS jurisprudence, i.e. in the award CAS 2016/A/4805, the award CAS 2014/A/3793 and the award CAS 2014/A/3813, and most notably, also in the recent CFC Award.

208. The views of the Sole Arbitrator in the award CAS 2016/A/4785 and the minority in the award CAS 2016/A/4805 remain isolated. Furthermore, the reasoning of the Sole Arbitrator in the award CAS 2016/A/4785 is somewhat more nuanced as The FA purports it is. Indeed, the Sole Arbitrator indicated that he had “*serious doubts*” whether a club had to provide the relevant national association with all relevant documentation in order for the national federation to verify whether the requirements of Article 19(2) RSTP were complied with before March 2015, but ultimately concluded that he could not follow the conclusion of the Panel in the award CAS 2014/A/3793.
209. The Sole Arbitrator in the award CAS 2016/A/4785 logically focussed his assessment on the duty of clubs in complying with Article 19(2) RSTP, but the present proceedings, like the award CAS 2014/A/3813, deal with the responsibility of a national association in this respect. The Panel finds that, by failing to cause its member clubs to comply with the duty to register minors that participated in “organized football”, The FA failed to exercise oversight as to whether such minors complied with the requirements of Article 19(2) RSTP.
210. Consequently, the Panel finds that The FA violated its duties under Article 14(1)(d) FIFA Statutes in conjunction with Article 19 RSTP, insofar The FA failed to ensure or cause compliance of its members clubs with respect to the registration of minors below the age of 12 (or 10) prior to the participation of these minors in “organized football”. The Panel does not consider it necessary to determine whether Article 19(1) and/or (3) RSTP are violated, because such violations are moot in view of the Panel’s conclusion with respect to Article 5(1) RSTP *supra*.

vi. Interpretation and application of Article 19bis(3) RSTP

211. Article 19bis(3) RSTP (edition 2019) provides as follows:

“Each association shall keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies”.

a. The position of The FA

212. The FA submits that there is no dispute that it “*keep[s] a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies*”. There is also no suggestion that any of the players in question was reported to it but not recorded on that register. The conclusions in the Appealed Decision are, thus, unjustifiable.
213. First, FIFA’s interpretation is plainly contrary to the text of the relevant provision. Article 19bis(3) RSTP delineates the scope of the association’s obligation: to record what is reported to it. That is part of a hierarchy of obligations set out in the rest of Article 19bis RSTP. The comparison between Article 19bis(1) and (2) RSTP makes clear that no obligation is imposed on the association to ensure that academies operated by clubs report their minor attendees: *unius est exclusivo alterius*. To interpret Article 19bis(3) RSTP as imposing such an obligation, notwithstanding the absence of anything in the wording to support it, would be inappropriate

as a matter of interpretation in any context, but is certainly unjustifiable in the context of a rule giving rise to disciplinary sanction.

214. Second, there is no basis for the suggestion that the “intent” of Article 19bis(3) RSTP is “*to ensure that associations exercise detailed control over underage players within the country*”. It makes no provision for the association to exercise any “*detailed control*”. The function of recording information and the function of exercising control over individuals are very different in nature, and Article 19bis(3) RSTP refers only to the first.
215. Third, interpreting Article 19bis(3) RSTP in accordance with its terms would not “*suggest that member associations are not required to take any active measure*”. It would simply mean that no such requirement for active measures arises under Article 19bis(3) RSTP. If FIFA wished to require associations to take active measures it is open to it to make separate provision to that effect, defining what those measures are rather than leaving them to be inferred.
216. Fourth, if the suggestion were that it is necessary to infer an obligation on associations to take active measures because otherwise there would be no means of ensuring compliance, that is wrong. As noted above, Article 19bis(5) RSTP contains an express provision for the enforcement of the obligations by the Disciplinary Committee. It is therefore perfectly possible for action to be taken in respect of a failure of reporting by a club in breach of Article 19bis(1) RSTP, as indeed has happened in this case. There is no need to read obligations into the rules which are not there.
217. Fifth, The FA does not dispute that the obligation in Article 14(1)(d) FIFA Statutes could, in principle, require it to take action to cause a club to comply with Article 19bis(1) RSTP. If there were evidence of a failure by a club to report minors attending its academy then it might be appropriate for The FA to investigate, and if The FA failed without good reason to take any action then that might be ground for a finding that it had negligently failed to discharge its obligations under Article 14(1)(d) FIFA Statutes. No such grounds were alleged in the present case, and there are none. Unlike argued by the Disciplinary Committee and the Appeal Committee, there is an obligation for The FA to “*collect the relevant reports from CFC*”. The Appeal Committee also erred on a separate basis, by holding that the obligations applied even to players who were not engaged in any long-term training. The term “academy” is defined in the RSTP as providing for long-term training. That being so, a person who does not engage in long-term training at the academy is not “attending” it. Merely visiting the academy, or taking part in football temporarily, is not enough. Even if that were not the natural meaning of the words (which it is), it is the interpretation that should be adopted in view of the disciplinary context.
218. Upon receipt of the reasoned CFC Award, The FA adopted a somewhat different approach as it indicated that it did not seek to dissent from the findings in the CFC Award and that it was taking steps to ensure that the register will in future be maintained by The FA rather than by the Premier League. The FA’s position nonetheless remained that there could be no breach of Article 19bis(3) RSTP in respect of the players as alleged, because this provision obliges associations to record the details of players reported to it, and these players were not reported to it. The FA’s breach in this respect is in any event *de minimis*, as there is no real difference in substance, or in the achievement of the goals of the RSTP, between a register maintained by

The FA and a register fully accessible by The FA but maintained by the Premier League, a member of The FA which carries on its activities under The FA's auspices and because The FA is taking steps to remedy that minor breach.

b. The position of FIFA

219. FIFA submits that Article 19bis(1) RSTP establishes an obligation for clubs, operating an academy to report the presence of all underage players who attend it to the association. In addition, as per Article 19bis(3) RSTP, each association is responsible for keeping a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies. In order to ensure that the well-being of the minor is guaranteed in the fullest manner, the association is responsible for having detailed information concerning all minors (both national and foreign) attending the academies of its clubs – i.e. causing its clubs to report the information diligently to it – so that it may keep a register and, therefore, a control of those minor players present in the academies of English clubs. Any register kept in line with Article 19bis(3) RSTP shall be different from the registration documents that the association may hold of the players enrolled with its clubs. The obligations contained in Article 19bis RSTP are additional obligations that are separate – and run in parallel – from those provided under Article 19 RSTP, since it is possible that underage players form part of the academy without being duly registered with the club in question, and *vice versa*.
220. The FA never contested the Disciplinary Committee's finding that CFC operates an academy within the meaning of the RSTP. The FA failed to collect the information from CFC in a direct and independent manner in relation to these players.
221. The FA, as per FIFA's regulatory framework, is compelled to ensure that its clubs comply with their reporting obligation in order to be able to maintain a register and a control of the minor players enrolled in the English clubs' academies. A self-serving interpretation of the member associations' obligations as the one defended by The FA according to which only a register has to be kept with whatever information there may be (and hence without a duty to ensure that it is complete and correct) serves no purpose in the framework established by FIFA to protect minor players.
222. The FA's defence based on the argument that clubs can also be sanctioned for violating Article 19bis(1) RSTP is flawed, as this possibility clearly does not eliminate the member associations' own obligations which run in parallel to those of clubs. Moreover, Article 19bis(5) RSTP purposely does not limit the stakeholders to be sanctioned for the different possible violations of the obligations set forth in that provision.
223. Concerning the disagreement on the applicability of the concept "long-term training", given that The FA limits its submission to reiterating its arguments before the Appeal Committee, FIFA fully refers to the findings of its judicial bodies that the concept of "long-term training" only serves to qualify an academy as such. It does not mean that only those players that indeed remain for a long term must be reported and included in the member association's register.

224. The FA has not even demonstrated having complied with the obligation to maintain a separate and individual register of minors attending academies. Hence, The FA's assertion that "[i]t is common ground that The FA did what the text of the rule requires" is not correct. The FA is simply relying on the information gathered by the Premier League of the players registered with the clubs to argue that this also constitutes its register of players attending CFC's academy. Tellingly, there is certainly no documentation submitted by The FA that may allow the Panel to evaluate this register.
225. An Excel chart submitted by the FA during the disciplinary proceedings shows that all the minor players mentioned therein correspond to the players that were in fact participating in football matches for CFC, i.e. the players that were registered, instead of those who were attending the academy. CFC explicitly acknowledged that it did not comply with the separate reporting obligation under Article 19bis RSTP because "*the mechanism in English football for reporting players attending an academy pursuant to article 19bis.1 was through the registration of those players*". The finding that the list of registered players does not serve to comply with the obligation set forth by Article 19bis RSTP is confirmed in the awards CAS 2014/A/3793, CAS 2016/A/4785, and CAS 2016/A/4805.
226. Even if the document would be deemed sufficient to comply with the obligations set forth under Article 19bis(3) RSTP, *quod non*, Players 11 and 27 that were enrolled in its academy are nowhere to be found in such document. Hence, The FA is to be held in breach of Article 19bis RSTP with respect to such minor players.
227. The FA's assertion according to which "[i]n many cases The FA had no records of any such players", reveals that it had not gathered the information of the numerous players for which FIFA has found it to violate Article 19bis RSTP.
228. The FA's argument that it had access to the register of registrations held by the Premier League is equally inadequate. The Appealed Decision already clarified that "[o]nly a direct and regular provision of information from clubs operating an academy in such a territory can allow the provision to be effective and reach its goal".
229. As a result, taking into consideration that The FA was not able to demonstrate that it kept a separate and individual register of the minor players attending the academy and that it did not cause CFC to provide such information in order for it to be able to comply with Article 19bis(3) RSTP, there is an evident breach of the separate reporting obligation contained in said provision, outside of the registration requirements prescribed by Article 19 RSTP.

c. The findings of the Panel

230. In accordance with Article 19bis(3) RSTP, each association shall keep a register "*comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies*". A failure of The FA to keep such register may not only be considered to be a violation of its obligation to cause clubs to comply with the provisions concerning minors in the RSTP, but in fact constitutes a direct violation of Article 19bis(3) RSTP.

231. The FA initially disputed that it was required to keep such register, because such register was kept by the Premier League, which acts under the auspices of The FA.
232. The FA, however, ultimately conceded that Article 19bis(3) RSTP requires The FA to keep such register itself. The FA provided evidence of the fact that it contacted the Premier League with a view to try and regularise the situation to comply with the requirements set forth in the RSTP. The Panel interprets this as a concession from The FA that it, at least in part, did not fully comply with its obligations under Article 19bis(3) RSTP.
233. The FA, however, still maintains that it did not infringe Article 19bis(3) RSTP because such provision does not impose any obligation on it, beyond keeping a record of whatever is reported to it by the clubs or academies.
234. The Panel finds that the responsibility of national federations goes further. By means of Article 14(1)(d) FIFA Statutes, The FA is obliged to cause its members to comply with Article 19bis(3) RSTP. Accordingly, not only was The FA required to keep a register, i.e. to register whatever is reported to it, but it was also required to cause its member clubs and the academies to report accurately and comprehensively the relevant players to it, which duty The FA failed to fulfil.
235. The registration system maintained by the Premier League of PLGP players is not considered sufficient.
236. Indeed, the Panel finds that The FA was negligent in this respect, because it should have caused its member clubs to report all players attending the academy, not only those that participated in the PLGP. The Panel finds it inappropriate of The FA that it failed to exercise any oversight over minors attending the CFC academy.
237. The Panel considers it particularly worrying that such players could play for CFC “under the radar” for relatively long periods of time. Indeed, Article 231 PLYDR provides that “*a Trialist may attend an Academy for up to eight weeks in any one season without being registered provided that: [...]*”. Without a proper register, The FA would not be in a position to exercise oversight control over such minors.
238. The term “academy” is defined as follows in the RSTP:
- “[A]n organisation or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the necessary training facilities and infrastructure. This shall primarily include, but not be limited to, football training centres, football camps, football schools, etc”.*
239. The Panel agrees with FIFA that the reference to “long-term training” in this definition refers to the objective of the academy as a whole and not to the type of training an individual player is receiving at such academy. Accordingly, all players attending an academy are required to be reported, not only those that actually stay there for a longer period and receive long-term training. This is necessary for national federations to keep oversight control.
240. As noted by FIFA, the prohibition of transferring minors is based partly on sociological reasons, according to which young football players are particularly vulnerable to exploitation and adverse

consequences to their personal development in foreign countries. Indeed, while international transfers might, in very specific cases, be favourable to a young player's sporting career, they are very likely contrary to their best interests as minors and that under such circumstances, the interest in protecting the adequate and healthy development of a minor as a whole must prevail over purely sporting interests. The personal development of minors requires, in particular, constant regular contacts with their parents, continuity in school and/or professional education and medical care, stability with regard to the people with whom they are acquainted and their social environment, practice of sport, in particular football, as a hobby and without the pressure of having to succeed.

241. There is no indication whatsoever on file that CFC would not have treated its players well, but the point is that The FA would not have found out if this had been the case, because it failed to keep a register and failed to cause its member clubs to provide the relevant information to it on the basis of which The FA could have exercised a certain form of oversight. This is one of the reasons why such register should not be kept by the Premier League, but by The FA. It is not an obligation that can be delegated.
242. For what it is worth, the Panel does not want to go as far as to state that The FA is required to exercise "*detailed control*" over underage players attending academies, as argued by FIFA. For such an obligation to exist, FIFA would indeed have to regulate the duties of a national association more concretely. However, the Panel finds that there is a general obligation of national associations to cause compliance, which is not necessarily violated in case a single insignificant "slip through the cracks", but is certainly violated in case of a general misconception that results in systemic failures and in many minors "slipping through the cracks", as is the case here.
243. Article 231 PLYDR, *inter alia*, provides that "*a Trialist may attend an Academy for up to eight weeks in any one season without being registered provided that: [...]*". The Panel considers an eight-week period a sufficiently strong connection and long-term training to require clubs to report such players to The FA, because the Panel considers it possible that such a long stay in a foreign country may already cause some of the sociological problems identified above.
244. The Panel does, however, note that Mr Newton testified that the Premier League carried out checks of players' photo ID cards, which he believed included spot checks at academies, and that The FA liaised with the Premier League in this respect. Mr Newton further testified that his team all had access to and were able to interrogate and review the information recorded in the register held by the Premier League. Although brought up relatively late in the proceedings, the Panel has no reason to doubt the veracity of Mr Newton's statements. Because the Premier League did monitor players' eligibility in this way, and is subjected to the oversight of The FA, the Panel finds The FA's failure to comply with Article 19bis(3) RSTP to be a relatively minor offence.
245. Consequently, the Panel finds that The FA violated its obligation under Article 14(1)(d) in conjunction with Article 19bis(3) RSTP, as it failed to keep a register and because it failed to ensure or cause compliance among its member clubs to report information to it.

vii. Proportionality of the sanction imposed by means of the Appealed Decision

a. The position of The FA

246. The FA submits that even if all or part of the Appealed Decision is upheld as to culpability, the sanction is unclear and unworkable. FIFA has ordered The FA to “regularise the regulatory framework in England applicable as to the transfer of minor players and the first registration of foreign minor players” within six months. However, the Appealed Decision says nothing about what it considers to be necessary to bring the regulatory framework into compliance. It does not identify any steps which The FA should take, nor does it identify with any clarity any defect in the existing arrangements which should be remedied.
247. If the basis of liability is that The FA should have prevented each and every breach by a club, such that it is separately culpable in the event of each such breach, then one reading of the sanction is that The FA must enhance its regulatory arrangements to such a point that no breaches of the RSTP can ever occur again. That would obviously be impossible: even with the most onerous and burdensome regulatory regime there will always be scope for things to happen without The FA’s knowledge. It would also be undesirable in principle for FIFA to require the sport of football to be regulated with a view to ensuring that absolutely nothing at any level escapes the association’s attention under any circumstances. If there is to be an order requiring The FA to regularise the regulatory framework, that order must specify the steps that must be taken.
248. The FA also submits that the fine of CHF 350,000 imposed on The FA is on any view excessive. The findings relate to scattered incidents occurring across a period of 10 years. During that time, The FA applied the rules as it reasonably understood them without FIFA ever having indicated that its understanding was wrong. If The FA is found to be liable, that will be a consequence of an interpretation of the RSTP as imposing an unusual kind of liability on The FA for breaches by its members, which The FA could not reasonably have anticipated. The breaches, if upheld, arise from reasonable differences of views as to the proper interpretation of the rules. This is not a case where The FA has serially failed to bring its organisational arrangements in line with the standards required. It is a case where the requirements were not clear. If there is to be a fine, it should be a modest one to reflect i) the fact that the breaches found involve little culpability on the part of The FA; and ii) the fact that The FA is and remains keen to obtain clear guidance from FIFA as to the changes FIFA considers it needs to make so that it can bring its arrangements into compliance with what FIFA requires and ensure that they remain world-leading in every aspect. A fine of this magnitude would be disproportionate and unfair by reference to sanctions imposed in other cases. Manchester City Football Club were recently fined CHF 370,000 by the Disciplinary Committee for multiple breaches of the RSTP in relation to the transfer and registration of minor players. Those breaches, unlike the breaches found in these proceedings, arose out of its own acts and directly benefitted its own interests. It would be wrong for the two fines to be commensurate.

b. The position of FIFA

249. FIFA submits that, in view of the relevance and the efforts that FIFA has put in the protection of minors in football, the severely reprehensible character of The FA's conduct and the fact that at all times it was free to avoid violating and/or placing the protected legal asset in danger, it has been rightfully established that The FA acted in a severely reprehensible manner and that its level of responsibility was the highest.
250. The Appealed Decision was passed taking into consideration the three main benchmarks that must "*be accounted for when measuring a "proportional" sanction*"; i) the gravity of the illegal act committed; ii) the power to dissuade the offender from repeating the same illegality in the future as well as iii) the importance of the rule of law that is being protected.
251. CAS jurisprudence has confirmed that violations of Article 19 RSTP are always grave and must be taken extremely seriously; many minor players are attracted by the prospect of becoming professional football players, which is the reason why member associations like The FA should not enable first-tier clubs to take advantage of such hope and engage young players from all over the world, disregarding the small probabilities of success that such players will have.
252. In this particular case, The FA's conduct enabled CFC to implement a modus operandi that purposely sought to avoid all the different check-points implemented by FIFA. To date, The FA is inexplicably withholding the files provided by CFC in order for the Sub-Committee to regularise the minor players for which the club was sanctioned.
253. As to the sanctions' dissuasive power, it is evident that in the absence of any remorse or clear recognition of guilt, a more lenient sanction than the one currently imposed would lack the necessary deterrent effect, since it would not stop The FA from repeating such conduct in the future.
254. A fine of CHF 350,000 cannot be considered as arbitrary, let alone, excessive. To the contrary, such disciplinary measure is entirely appropriate and proportionate taking into account the following factors: The FA i) breached Article 19(1) or (3) RSTP with respect to 27 minor players; ii) committed 123 infringements of other articles of the RSTP – 5(1), 9(1), 18bis(1), 19(4) together with Annexes 2 and 3, 19bis(1)¹ – with respect to a total of 67 minor players (including the abovementioned 27 players); iii) enabled CFC to circumvent the regulations on the protection of minors and to place its own sporting and financial interests before those of the minor players involved; and iv) has not accepted any responsibility whatsoever (not even after CFC's partial acknowledgement) and did not express any remorse for having breached the RSTP.

¹ The references to Articles 18bis(1), 19(4) together with Annexes 2 and 3 and Article 19bis(1) RSTP appear to be mistakenly derived from the proceedings between CFC and FIFA, as such violations were not recorded in the Appealed Decision and no submissions were made by the Parties in this respect.

c. *The findings of the Panel*

255. The Panel does not consider that The FA wilfully failed to cause its member clubs to comply with the provisions concerning minors in the RSTP. The large majority of violations with respect to CFC can be traced back to the mistaken interpretation of “organized football”. Although The FA could and should have done more to ensure that its interpretation of this concept was correct, this nonetheless appears to be a genuine misinterpretation and not a deliberately misreading taken with the intention of allowing its members clubs to circumvent the provisions concerning minors in the RSTP. Also, The FA’s role is only to cause compliance, whereas its member clubs have a separate independent duty to comply with the FIFA RSTP, which at least CFC failed to do.
256. Because the Panel finds that The FA contributed to the violations committed by CFC, it is considered incumbent to sanction The FA.
257. Furthermore, it can be derived from the above reasoning, that the Panel finds that The FA has wrongly interpreted the concept of “organized football”, with the consequence that CFC had players participating in “organized football” without being registered with The FA, and therefore also without any direct verification as to whether such players complied with the requirements set forth in Article 19(2) RSTP.
258. It is indispensable for The FA to adjust its wrongful interpretation of “organized football” and cause its members clubs to do the same. If it fails to do so, The FA faces the risk that its member clubs will continue failing to comply with the provisions concerning minors in the RSTP and that The FA itself will also be held responsible for failing to cause its members to comply with the rules, which will expose The FA to further disciplinary sanctions that may well be higher because that would comprise an act of recidivism.
259. The FA also misinterpreted Article 9(4) RSTP in the sense that it mistakenly assumed that it had no duty to verify whether players below 12 (or 10) complied with the requirements set forth in Article 19(2) RSTP. Although it appears that The FA has already taken steps to cure this flaw in 2019, it should be clear that The FA must verify whether minor players under 12 (or 10) that are to be registered for its member clubs or academies and/or that participate in “organized football” comply with the requirements of Article 19(2) RSTP. If The FA fails to undertake action in this respect, it may well be sanctioned again.
260. Furthermore, The FA failed to “*keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies*”, as it was required to do on the basis of Article 19bis(3) RSTP, although The FA apparently kept a certain level of oversight control based on the register held by the Premier League. Although the Panel understands that The FA is in contact with the Premier League with the aim of regularising this situation, it should be clear that The FA should keep such register itself and exercise direct oversight control. If The FA fails to undertake action in this respect, it may well be sanctioned again.
261. The Panel finds that The FA should regularise these three issues, i.e. The FA’s wrongs are to be corrected to prevent situations like this from occurring again in the future. Accordingly, the

Panel concludes that The FA was and is obliged to regularise its incorrect position in the above three respects to the extent that this has not already been done at the date of publication of this Award.

262. In order to emphasise the urgency for changes to be made, the Panel considers it appropriate to suspend part of the fine for a probationary period.
263. Combining these two elements, i.e. The FA's lack of intent and the urgency of righting its wrongs, the Panel considers it reasonable and fair that the fine in the amount of CHF 350,000 imposed on The FA by means of the Appealed Decision is confirmed, however, CHF 175,000 of this fine is to be suspended for a probationary period of 2 years. This should incentivise The FA to apply the provisions concerning minors in the RSTP correctly and cause its member clubs to do the same.
264. It is also considered reasonable and fair to leave the warning and reprimand as imposed by means of the Appealed Decision in place, as well the cost order of CHF 25,000 for the costs of the proceedings before the Disciplinary Committee and of CHF 3,000 before the Appeals Committee.

B. Conclusion

265. Based on the foregoing, the Panel finds that:
 - i. The FA can, in theory, be sanctioned for failing to comply with its obligations under Article 14(1)(d) FIFA Statutes.
 - ii. The PLGP comprises "organized football" in the sense of Article 5(1) RSTP, with the consequence that players were required to be registered before participating in the PLGP.
 - iii. The FA violated its duties under Article 14(1)(d) FIFA Statutes in conjunction with Article 5(1) RSTP, as it failed to ensure or cause compliance among its member clubs to register players prior to participation in "organized football".
 - iv. Finding The FA liable for infringing only Article 5(1) RSTP or for infringing Articles 5(1), 9 and 19 RSTP separately would not have an impact on the Panel's assessment of the proportionality of the sanctions imposed by the Appeals Committee.
 - v. The FA violated its obligation under Article 14(1)(d) in conjunction with Article 19bis(3) RSTP, as it failed to keep a register and because it failed to ensure or cause compliance among its member clubs to report information to it.
 - vi. It is reasonable and fair that a fine of CHF 350,000 is imposed on The FA, of which an amount of CHF 175,000 is suspended for a probationary period of 2 years. Furthermore, The FA should regularise the situation in respect of the three issues identified, a warning and a reprimand are imposed on The FA for its future conduct and the cost order of

CHF 25,000 for the costs of the proceedings before the Disciplinary Committee and of CHF 3,000 before the Appeals Committee are left intact.

266. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 2 September 2019 by The Football Association against the decision issued on 3 May 2019 by the Appeal Committee of the *Fédération Internationale de Football Association* is partially upheld.
2. The decision issued on 3 May 2019 by the Appeal Committee of the *Fédération Internationale de Football Association* is confirmed, save for paragraph 2.1-2.3 of the operative part, which are amended and replaced as follows:
 - a. The Football Association violated Articles 5(1) and 19bis(3) of the Regulations on the Status and Transfer of Players of the *Fédération Internationale de Football Association*.
 - b. The Football Association shall pay a fine in the amount of CHF 350,000 (three hundred fifty thousand Swiss Francs) to the *Fédération Internationale de Football Association*, of which an amount of CHF 175,000 (one hundred seventy five thousand Swiss Francs) is suspended for a probationary period of 2 (two) years starting from the notification of the present Award by courier.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.