



The Premier League and The Law
IV
Burnley Football Club -v- Everton
Football Club

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Preamble

1. On 10 June 2026, a Premier League Commission¹ published its written decision in respect of the compensation claim issued by Burnley against Everton. That claim was a direct consequence of the complaint pursued by The Premier League against Everton in March 2023 by which a points deduction was imposed for a breach of Profitability and Sustainability Rules (“PSR”) by £19.5 million for the season 2021/22. To the surprise of many, Everton have been ordered to pay c£35 million.
2. This is the fourth in a series of articles ² examining the litigation surrounding Everton Football Club. As a forewarning, it is written by an ardent Evertonian albeit with the intention of being (or at least appearing) objective. Its principle aims are two-fold: first, to strip back – the best one can – a 290-page written document for those football fans who, understandably, do not know where to start. Second, to gaze into a crystal (foot)ball in an attempt to predict what is likely to lie at the heart of Everton’s appeal against the decision which, in a statement released the very same day, it described as “*fundamentally flawed*”.
3. In doing so, it seeks to answer the following four questions: -
 - i. What was the claim about?
 - ii. How was it argued?
 - iii. Why did the claim succeed?
 - iv. What next?
4. References to paragraph numbers below correspond with the like-numbered paragraphs of the decision unless otherwise stated.

¹ Notably, the Commission Panel comprised the same three members who had initially found against Everton in that previous litigation and who Everton had (unsuccessfully) applied for recusal on the grounds of apparent bias.

² Previous articles can be found here: https://www.cobden.co.uk/barristers/gary_lewis/

i. What was the claim about?

5. In a nutshell, Burnley's claim was one of breach of contract with that contract being the Rules of The Premier League ("the Rules"). It alleged that Everton's breach of PSR in season 2021/22 – which, by its very happening, was deemed to have conferred a sporting advantage – caused its relegation from the Premier League (paragraph 2).
6. Notably, the claim did not proceed on the predicted loss of chance basis. Rather, it did so on the basis that, but for Everton's PSR breach, it (and not Burnley) would have been relegated from the Premier League that season. That in a context where, as Evertonians will recall (despite their best efforts to forget), Everton finished only two places and four points ahead of Burnley, albeit with a worse goal difference by four goals (paragraph 4).
7. As a result of which, Burnley's claim sought compensation from Everton in the sum of £51.7 million for the losses it alleged it had suffered as a result of relegation (paragraph 8).

ii. How was it argued?

8. Although Everton did not dispute that a sporting advantage had been conferred by its breach of PSR (a point which, realistically, it could not challenge in light of findings made in the aforementioned proceedings with The Premier League), it defended the claim on two principal grounds (paragraph 3): -
 - (a) Firstly, its breach of PSR had not caused Burnley's relegation;

and
 - (b) Secondly and in any event, Burnley's relegation to the EFL Championship did not cause it any loss.
9. In respect of the former, Everton's case focussed on three main arguments: -
 - (a) Counterfactual – first that, as a matter of law, the Commission was required to consider the hypothetical position as to what would have happened had Everton

not breached PSR and, in doing so, the hypothetical to be adopted was the one most favourable to Everton so long as it avoided any breach. As such, Everton argued that it could have generated the £19.5 million without impacting its performances on the pitch by selling players or, alternatively, by not signing others. Whilst Burnley accepted that legal position, it argued that the Commission was required to take a practical and realistic approach to the hypothetical and Everton was not permitted to adopt a “*wholly self-serving and unrealistic*” approach (paragraphs 22 – 30);

(b) Date of breach – second a simple point: that is, Everton did not cause Burnley’s relegation on 22 May 2022 because that event had already occurred before Everton’s breach of PSR which took place later when its financial year ended on 30 June 2022. Put another way, the occurrence of the event which was said to have caused the losses alleged occurred before the breach meaning that the breach could not possibly have caused the same. Again this position was grounded in law and the trite legal principle to the effect that no damages can be awarded to a party on account of any loss before the cause of action arose. Burnley contested the point on the basis that a purposive approach was required to PSR and that the concept of a breach was in existence before the end of Everton’s financial year (paragraphs 46 – 57); and

(c) Causation – third and in reliance upon expert evidence from a Mr. Derek Holt, Everton argued, amongst other things, that it was wrong to confine the entirety of the £19.5 million PSR overspend to season 2021/22 in which Burnley was relegated as a breach of PSR covered four seasons. Mr. Holt concluded that that Everton’s PSR breach “*did not materially contribute to Burnley’s relegation...which had resulted from sporting underperformance...[and] to a complex interplay of factors that determine success and failure in elite football*” (paragraph 77). Burnley instructed a Professor Rob Wilson and Mr. Will Daniels as experts who undertook a cumulative approach by way of complex statistical exercise in examining the link between player-related expenditure and points won in the Premier League before then applying the same to the case of Everton. Upon doing so, they concluded that Everton’s £19.5 million overspend had resulted in a gain of between 3.85 and 7.13 points and that it was otherwise

more likely than Burnley to be relegated. Interestingly, Burnley also relied upon a third (non-technical) expert in the form of a Mr. David Baldwin who endorsed that conclusion from what he described as his “*lived experience*” (paragraphs 67 – 78).

10. As to the latter and the issue of quantum, Everton argued that even if, contrary to its primary case, its PSR breached caused Burnley’s relegation, no losses were caused by the same.
11. Both parties again relied upon expert evidence to support their respective cases. Set against Burnley’s pre-interest claim for £51.7 million in reliance upon evidence from a Mr. Richard Boulton, Everton relied upon a Mr. Louis Dudney who opined that Burnley had suffered no loss. To the contrary, Mr. Dudney’s evidence was to the effect that Burnley’s relegation had, in fact, resulted in a gain of £18.1 million, or alternatively £6.8 million, before interest when taking account of the steps it took to mitigate its losses following relegation (paragraphs 145 – 165).³

iii. Why did the claim succeed?

12. The Commission rejected each of Everton’s three arguments with the following reasoning: -
 - (a) Counterfactual – neither of the hypotheticals advanced by Everton met the practical and realistic test advanced by Burnley. In doing so the Commission relied upon, amongst other things, the evidence of Everton’s former owner, Farhad Moshiri, in the complaint proceedings brought by The Premier League in which he confirmed that he had rejected an offer for an unnamed player⁴. Further, it relied upon findings by the Appeal Board in those same proceedings to the effect that Everton had invested heavily in players and (worryingly) was

³ Ironically, two of those steps included the free transfer of James Tarkowski to Everton in July 2022 as well as the sale of Dwight McNeil to Everton that same summer for €17 million – a sale which, no doubt to the surprise of some of the more cynical Evertonians, was found by the Commission to be at an undervalue (paragraph 189).

⁴ Although the player is not identified in the decision, Evertonians could be forgiven for pointing out that it could have been almost any player from the squad that particular season given the on-field performances of the team. Non-Evertonians would perhaps point out that the pool of Everton players actually worth £19.5 million at that time was a very small one.

likely to have performed better than it would otherwise have done (paragraphs 31 – 45);

(b) Date of breach – a purposive approach to interpretation was said to be required in circumstances where the Rules tie the annual accounts to the playing season. This meant, in turn, that Everton’s breach of PSR began before the end of the 2021/22 season and therefore before Burnley was relegated (paragraphs 58 – 62); and

(c) Causation – the Commission preferred the expert evidence of Professor Wilson and Mr. Daniels and their analysis by which the opined effect of overspending in breach of PSR was cumulative with the same benefiting Everton’s on-pitch performance in season 2021/22 to the extent that there was a greater probability of Everton rather than Burnley being relegated. Notably, it was further “*lent support*” by Mr. Baldwin’s evidence (paragraph 168). In doing so and unsurprisingly to Evertonians and football fans alike, the Commission acknowledged that that analysis process was an “*inexact science*” and, even more unsurprisingly to Evertonians, acknowledged Everton’s own evidence that in overspending it spent inefficiently on players (paragraphs 144 & 156). But, even with that said, a finding was made that Everton still performed better than it would have done had it not overspent (paragraphs 166 – 170).

13. In making those findings, the Commission also proceeded to prefer the expert evidence of Mr. Baldwin in respect of quantum, albeit adjustments were made which resulted in findings of pre-interest losses in the sum of £26 million (comprising £24.6 million for operating profit/loss and £1.4 million for player trading) and interest in the eye watering sum of £9.1 million which continues to accrue at a rate of 11.81%. The net result being that Everton was ordered to pay Burnley the sum of c£35 million with – no doubt equally as eye watering – legal costs still to be assessed (paragraphs 371 – 415).

14. Following which and by a supplemental written decision also dated 2 June 2026, the Commission determined consequential matters arising from its decision on those substantive issues. Notably in doing so, it: -

(a) Rejected Everton’s application for a stay of enforcement pending its appeal which was made on the basis of Burnley’s finances being “*so weak that there is a real risk that if the appeal were to succeed Burnley would be unable to repay [c£35 million] compensation that it would have received from Everton*”. Whilst the Commission accepted that it had jurisdiction to stay and that there was some merit in Everton’s concerns about Burnley’s financial position, that was outweighed by the fact that it was solvent, had survived financially for many years and that Everton would, in any event, be repaid under the Football Creditors Rule (supplemental decision, paragraphs 5 – 14);

and

(b) Also rejected Everton’s application to stay publication of the decision pending that appeal on the simple basis that the Commission had no jurisdiction to make such an order (supplemental decision, paragraphs 15 – 16).

iv. What next?

15. Turning finally to the most important question of all: what next?

16. In the immediate future, Everton’s appeal. We know that to be the case, not least because it is as of right and Everton made it abundantly clear that it would be exercising that right vigorously by its above-mentioned press release. In fact, we also know from the supplemental written decision that draft Grounds of Appeal were put before the Commission for the purposes of the stay applications (supplemental decision, paragraph 6).⁵

17. So to the sixty-four-million-dollar question: what is in those (“*arguable*”) draft Grounds of Appeal?

18. Before proceeding to try and answer that question, it is important for (rightly) aggrieved fans to understand that, like with the previous appeal against The Premier League, it takes the form of a review of the Commission’s decision by a new panel. It is not a re-hearing of the case. As such, Everton is prohibited by from relying

⁵ Interestingly, the Commission were satisfied that some of the draft Grounds of Appeal were “*arguable*”.

upon any new evidence. Also as such, any appeal is inherently unlikely to interfere with the Commission's findings in preferring Burnley's experts who they heard giving evidence.⁶ That means, in short, the starting point is that Everton are stuck with that which they put before the Commission.

19. So to succeed in its appeal, Everton will have to show that the Commission either:-

- (a) Made an error in law;
- (b) Took into account irrelevant factors;
- (c) Failed to take into account relevant factors;
- (d) Otherwise acted irrationally or perversely; and/or
- (e) There was some other procedural irregularity which renders the proceedings leading to the decision unfair.

20. To second-guess the Grounds of Appeal, one needs to look no further than Everton's club statement in which it declared: -

"This ruling sets a dangerous and unworkable precedent for English football, given it is constructed on a principle that a club can be in breach of financial rules at any point in a financial year."

21. It follows that, front and centre of the appeal, will undoubtedly be an allegation that the Commission erred in law in adopting what it considered to be a purposive approach to interpreting the Rules to the effect that Everton's breach of PSR began before it submitted its accounts on 30 June 2022 meaning it could, in the Commission's judgment, be causative of Burnley's relegation on 22 May 2022. Why? Because, if successful, it is a knock-out blow.

⁶ This point is subject to two important caveats which could feature in the appeal: first, the Commission gave weight to the opinion evidence of Mr. Baldwin in spite of both his previous employ with Burnley and his apparent lack of technical reasoning – such that it formed a *"provisional conclusion"* based upon that evidence alone (paragraph 81). Second, the *"inexact science"* which is the expert evidence of Wilson/Daniels appears to stand and fall with opinions based on a cumulative assessment of the overspend leading then allegedly leading to a benefit in season 2021/22 (paragraphs 144 & 353).

22. From a legal point of view, Everton's argument that the breach came after the loss and so was not causative would appear to have some merit. On its face, the Commission's interpretation appears to offend the legal principle that a party cannot seek to recover from another a loss or losses suffered before the breach occurred.
23. Indeed, taking an even wider point of view, that interpretation produces something of an absurdity and opens a very sizeable can of worms in exposing other teams in The Premier League on the basis that breaches of PSR can, on that basis, occur before the year end when the accounts are submitted for the purposes of any PSR calculation.
24. Everton's position will likely be that that absurdity simply cannot stand, not least in the inextricably linked circumstances set out in the counterfactual argument above where clubs not only have the opportunity to remedy any overspend in that time (including, for example, by the sale of players) but also where we now know that clubs have done just that.
25. In fact, we know that Everton, amongst other clubs, have, since PSR litigation became the norm, taken steps to remedy what could otherwise be PSR breaches by the sale of its women's team to a parent company in July 2025. Perhaps even more controversially, Chelsea sold hotels adjacent to Stamford Bridge to a sister company to comply with PSR with those sales being ratified by The Premier League in September 2024.
26. Ultimately, we also know that there will be many interested parties awaiting the outcome of the appeal. Not only Evertonians and fans of other clubs of The Premier League, but also The Premier League itself. It is arguable that the can of worms that has now been fully opened was first prised by The Premier League in the approach it took in pushing for sporting sanctions against Everton in its March 2023 complaint. It no doubt did so in consequence of all of the noise surrounding an Independent Regulator and in an attempt to show that it can self-govern by taking the Rules and their enforcement seriously. The unintended consequence which has followed is laid bare in the Burnley and Everton litigation and is one which is naturally harmful to its own brand. That is, football is no longer just played on the pitch by players, but by lawyers in the courtroom.

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