

APPEALS AGAINST THE IRISH FOOTBALL ASSOCIATION DISCIPLINARY COMMITTEE

BY CLIFTONVILLE FC & BALLYMENA UNITED FC

An IFA Appeal Board was convened under Art 14 IFA Articles of Association, to consider the above matter. In light of the restrictions imposed by the NI Executive due to COVID -19 , and having canvassed the view of the parties to the appeal it was decided, in order to deal with the matter as expeditiously as possible, that the matter would be dealt with on the paper submissions.

Background

Cliftonville Football Club and Ballymena United FC, ('the Clubs') lodged written submissions on 3rd July 2020 and 4th July 2020 respectively, against the decision of the IFA Disciplinary Committee ('DC') on 1st July 2020 which had confirmed that all active suspensions against their club players and a manager would stand.

The appeal submission provided by Cliftonville FC concerned the suspensions that two players had received. Jamie Harvey , had a two game suspension operative from 3/3/20. This player was able to serve his first suspension on 7/3/20. However, due to the extraordinary global pandemic that rendered football unable to be played in Northern Ireland the player has a remaining suspension. Garry Breen, who has active two match suspension from 7/3/20, has been unable to serve out his suspension due to the stoppage of football in Northern Ireland.

Ballymena United's appeal submissions concerned their manager, David Jeffrey , who was issued with an automatic suspension for one game on 7/3/20 having been sent off from the match, and their player Steven McCullough, who had a one game suspension issued on 7/3/20 . Once again, due to Covid-19 football in Northern Ireland was stopped and the manager and players' suspension remains active.

On 23rd June 'the Clubs' were notified by the Northern Ireland Football League (NIFL) that they would curtail the league season immediately. 'The Clubs' sought clarification from the DC as to whether the suspensions their players and the manager had received were deemed served as a result of the Danske Bank fixtures that had been 'cancelled' by NIFL .

'The Clubs' were told by emails from the IFA that the DC considered the suspensions still stood and further explanations behind the thinking of the DC was provided in that, the DC confirmed that all active suspensions must be served as they had applied the overriding objective as per Art 1.6 of the IFA Disciplinary Code in reaching its decision;

'The overriding objective of the Code is to maintain and promote fair play, protect the health and welfare of Players (and others involved in the Game , ensure that acts of indiscipline (on and off the field of play), or breaches of this code are dealt with expeditiously and fairly and that the image and reputation of football and the Irish Football Association are not adversely affected.'

and that the DC felt it would be unjust to allow infringements to take place without punishment. Furthermore, that would also be unfair to players/officials who had successfully maintained clean disciplinary records.

In addition, the DC outlined that all active suspensions must be served in either the Irish Cup (if applicable) or at the commencement of the 20/21 season as per Art 15.13

‘Any period of suspension which remains outstanding at the end of the playing season must be served at the commencement of the next playing season.’

DC also communicated their view that Art 15.3 was not written with a global pandemic in mind

‘Suspensions shall cover all domestic league and cup matches until such time as the team at which the player or official received the suspension has completed the required number of matches to enable the suspension to be served. A suspension (or part thereof) which has been imposed on a player or official will not be considered to have been served by a match that is abandoned, cancelled or forfeited. Unless, the cause of the abandonment ,cancellation or forfeiture of the aforementioned match has been determined prior to the player or official’s next game and it is found that the team to which the player of official belongs is not responsible for the facts that led to abandonment , cancellation or forfeit of the match. A suspension from playing in domestic league or cup match shall preclude the person so suspended from being present in or at the field of play and the areas immediately surrounding the same. The Committee shall have the power to determine where those areas are.’

‘THE CLUBS’ APPEAL SUBMISSIONS

1. The Clubs’ sought to challenge the DC decision contending that Art 15.3 of the Code is ‘clear, decisive, incontestable and not open to interpretation’. Furthermore, they claimed the use of the ‘wide sweeping ‘ Art 1.6 was in this instance misplaced. ‘The Clubs’ queried the previous application of Art 15.3 by the IFA in non pandemic scenarios and how this seems at odds with their approach in a global pandemic. They also questioned the use by the DC of Art 1.6 and highlighted that in their view Art 1.8 should be invoked to protect the mental well being of players, who are being prevented from playing.

‘In the event that a particular incident takes place for which there is no provision in this Code including (but not limited to) procedure , jurisdiction or sanction then the Committee may take such action that it considers appropriate in the circumstances in accordance with the principles of natural justice and fairness.’

2.‘The Clubs made reference to Art 13.13 which concerned the cautions amnesty and how this is at odds with the DC decision that suspensions must stand.

3. The Club contended that the IFA Code should follow FIFA Disciplinary code 19.4.

'If the suspension is to be served in terms of matches, only those matches actually played count towards execution of suspensions. If a match is abandoned, cancelled or forfeited (except for a violation of art 53), a suspension is only considered to have been served if the team to which the suspended player belongs is not responsible for the facts that led to the abandonment, cancellation, or forfeit of the match.'

5. Further, they contended the language in Art 15.3 , (referenced above) is de facto practical, legally sound and in language that speaks for itself. Finally, they posed the question under what circumstances would a match fall to be cancelled as per Art 15.3. The submissions concluded with a request this appeal committee deem the suspensions served.

DISCIPLINARY COMMITTEE REPLYING SUBMISSIONS

1. Within the DC replying submissions it was explained to 'the Clubs' that the all active suspensions must be served in either the Irish Cup or at the commencement of the 20/21 season as per Art 15.13 of the Disciplinary Code. That the DC in reaching its decision applied Art 1.6 .

That the DC had felt it was unjust to allow infringements to take place without punishment and that it would be unfair to players who had successfully maintained clean records. And that Art 15.3 was not written with a global pandemic in mind. They also submitted that this Art was written with footballing reasons in mind (for abandonment, cancellations and forfeitures)

2. The DC particularised the articles of the Disciplinary Code that they considered relevant to their decision making - 1.6 ,1.8, 1.1 ,15.3, 15.13 .

Furthermore the DC submitted that because the league officially concluded on sat 7th March at round 31 of the Danske Bank Premiership, that any fixtures after this date should not be considered as relevant in terms of serving suspensions.

3. The DC indicated that FIFA guidance was sought on the matter of outstanding suspensions within the domestic game and that a reply was outstanding.

4. That the appellants reference to other scenarios where Art 15.3 had been invoked and suspensions deemed served was distinguishable from the circumstances in this appeal, as the examples used concerned part played matches, and the circumstances at the times concerned footballing reasons, and further highlighted that they as a Committee are not bound by precedent. Art 1.11;

'Whilst the committee shall at times strive to act consistently, the Committee shall not have a doctrine of binding precedent, that is to say it is not formally bound by prior decisions of the Committee. Each case will be looked at and determined on its own merits.'

5. It was highlighted the amnesty for cautions is fair, (Art 13.13), and serves the purpose of maintaining the status quo as those who have received penalties before 1st April must serve them.

6. That the Scottish and Welsh Football associations had been consulted. FA of Wales replied that they had determined all suspensions were still operative and to be carried out on the resumption of football, and Scottish FA indicated they were likely to follow the same approach.

7. With regard to the Manager's active suspension, the DC referred to Art 62(3) and 62(4) of the FIFA Disciplinary Code which concerns an official who has been sent off,

'A sending off automatically incurs suspension from the subsequent match. The FIFA Judicial Bodies may impose additional match suspensions and other disciplinary measures.'

The automatic suspension and any additional match suspension must be served even if the sending off is imposed in match that is later abandoned, annulled forfeited and or replayed.

DC indicated the manager had an automatic one match suspension which must be served in the subsequent match, which happens to be the Irish Cup Semi – Final.

8. DC felt strongly that Art 1.6 should apply and that infringements must be punishable and that Art 1.8 provided for unforeseen situations amongst which the global pandemic falls.

FINAL REPLYING SUBMISSION

Cliftonville Football Club took the opportunity to respond to the 'DC' written submissions. These included:

1. That Art 15.13 was not referenced in the DC initial response to themselves and that reference to it at this stage of the proceedings was a distraction.

2. That DC was mistaken in assuming the season ended on 7th March as NIFL had not stated this. Furthermore, 'the Club' contended the status of the league was irrelevant and that the important point was the status of matches post 7th March 2020.

3. That it is only an opinion held by the 'DC' as to what behind the construct of Art. 15.3.

4. That the DC should have sought and waited on the FIFA response or sought other ways to obtain guidance.

5. 'The Club' contended DC was inaccurate in claiming the 'cancelled' matches were scheduled to take place after the league had concluded. That in fact, they had already been scheduled from the previous June 2019. Further, that due to their inability to be played they were deemed cancelled by NIFL.

6. That DC references to the other Football Associations and their approaches to active suspensions was at best misplaced .

Conclusion

There is no doubt the global pandemic has been an extraordinary event, as a result of which football was rendered impossible to play in Northern Ireland and throughout the UK from March 2020 until recently. It has been an understandably very difficult time for all involved with the sport.

These appeals requested the Appeal Board reject the decision of the Disciplinary Committee that the suspensions issued to the players and the manager involved with 'the Clubs' should stand.

'The Clubs' did quite rightly, avail of the opportunity to appeal the DC decision. 'The Clubs' placed emphasis on Art 15.3 of the IFA Disciplinary Code and the fact that matches that could not be played due to Covid-19 and accordingly those due to serve suspensions were unable to do so. There was debate between the DC and the appellants as to when the season finished and the relevancy of this.

It appears 'The Clubs' argument that the suspensions could be deemed served by virtue of Art 15.3 due to the stoppage of football has been outweighed by the 'DC' applying the fairness principle across the game of football. In the circumstances that sport and society is enduring, balancing the interests of the football community as a whole is difficult.

During the course of this appeal process, the DC properly provided the full details of which aspects of the IFA Disciplinary Code was in their thinking when they arrived at their decision. In particular, it stated that Art 1.6 was the strongest consideration in their decision making. This was in conjunction with Art 1.8 which allows the Disciplinary Committee to take steps not provided for within the Code which they consider appropriate in relation to a particular incident that takes place but this must be within the principles of fairness and natural justice. In the appeal before us, we do not accept the 'DC' decision to invoke the overriding principle was inappropriate. They explained that the exceptional situation of the global pandemic had been an event that required them to look at fairness to other players who had maintained clean disciplinary records. We consider this approach maintains and promotes fair play.

We consider it was appropriate for the DC to enquire as to other Football Association approaches to assist in their thinking. Furthermore, although the DC sought FIFA advice on the suspensions, this guidance arrived after the DC decision was made and in fact, the advice highlighted the autonomy of members to regulate their own disciplinary matters.

Therefore we reject these appeals and confirm the earlier decision of the DC that the automatic suspension of 'the Club' manager still stands and also those suspensions of the players named in this appeal.

Further, we would like to take the opportunity to thank all involved in this process for their assistance in this matter.

IFA Appeals Board

20/7/20