The Irish Football Association Appeals Committee

**In the matter of an Appeal by**

Portadown Football Club

**against a decision of the**

Irish Football Association Disciplinary Committee

**made on 11 April 2016.**

**The Chairman, Mr Joseph McCrisken** – (with whom all members of the Appeals Board agree)

Introduction

[1] This is an appeal pursuant to Article 14.2 of the Irish Football Association ('IFA') Articles of Association ('AoA') by Portadown Football Club ('Portadown') against a decision of the IFA Disciplinary Committee (‘DC’) made on the 11 April 2016 and communicated to Portadown on 12 April 2016.

[2] The appeal was heard on 26 April 2016 and judgment was reserved. Mr Mark Orr Q.C, Mr Trevor Marshall, Finance Director and Mr Roy McMahon, Chairman, appeared for Portadown and the DC Chairman, Mr Paul Livingstone, Vice-Chairman, Mr Dennis Hamill and Disciplinary Manager, Ms Rebekah Shearer represented the DC. We are indebted to all those involved for the considerable assistance that we derived from their carefully prepared, helpful and well delivered written and oral submissions.

Background

[3] This appeal concerns two allegations of a breach of Article 17 of the IFA AoA, as evidenced, in the submission of the DC, by breaches of Rule 38 (a) of Northern Ireland Football League (‘NIFL’) Rules and Regulations (‘Rules’) which says;

*“38. Undisclosed Payments*

1. *It is strictly forbidden to make any payment to a player, either directly or via a related party, which has not been detailed in the official players’ contract, lodged with the Irish Football Association, or not documented in line with related party transactions outlined in Sections 5 and 6 of the Salary Cost Protocol regulations.”*

[4] The case for the IFA can be dissected into two parts –

1. An allegation that Portadown made an undisclosed payment in November 2015 to Tim Mouncey, an amateur player, and
2. An allegation that Portadown made 14 undisclosed payments of £350 each to Gary Twigg which were not disclosed in the player’s contract in accordance with Rule 38(a).

[5] There was also a discussion before the IFA DC regarding the exact nature of the offences and the jurisdiction of the IFA DC to deal with the matter. The IFA DC considered it had jurisdiction and authority to deal with the matter under Article 17 of the IFA AoA. By Article 10.2 of the AoA the IFA Board may delegate any of its powers under the AoA. Article 13.3 says that;

*“The Disciplinary Committee will have full powers to deal with all disciplinary matters contained within terms of reference determined for it by the Football Committee together with those matters delegated to it by the Board under Articles 10.2 and 17, including the publication of a Disciplinary Code.”*

[6] Article 17 provides that

*“where any person or body has breached or caused or contributed to the breach of any of the Articles or brings the game of Association Football into disrepute, that person or body shall be liable to punishment or sanction as the Board may think fit and that the Board may delegate these powers to the Disciplinary Committee”.*

[7] The IFA case in relation to Tim Mouncey was opened by reference to the Executive summary of the NIFL Independent Assessment Panel report, and in particular to Appendix K of that report, relating to a payment seemingly made to Tim Mouncey on 28 November 2015. Appendix K showed a Portadown wage document dated 28 November 2015. The final name on the document, which also included other management and playing staff, was “Tim Mouncey” with an entry which suggested that Mouncey was paid, in that particular wage run, a sum of £150. As Mouncey was at that time an amateur player, this payment was not detailed in the player’s contract and, as the IFA DC found, therefore a payment in breach of Rule 38(a).

[8] The response from Portadown was that the payment to Mouncey was never made and that the DC had misconstrued the accuracy of the wage document, that the recorded date of 28 November 2015 on this document was the date on which the print out was produced and not the date of the actual wage run. It was, according to Mr Marshall, Finance Director, printed off on 28 November 2015 for the meeting with the Independent Panel on 30 November 2015. Mr Marshall also produced a document from a bank which he said showed Mouncey had not received payment.

[9] The IFA case in relation to Twigg was opened by reference to the summary section in an IFA report into undisclosed payments to players, dated 15 March 2016. Salary Cap Protocol records, disclosed by Portadown on 9 March 2016, showed that Gary Twigg, whose contract, lodged with the IFA, detailed that he was to receive a payment of £350 per week for 38 weeks, had in fact received that payment for 52 weeks of the year. That left 14 payments which were not detailed in the player’s contract.

[10] In relation to Twigg, Portadown said that payments for 52 weeks had been disclosed voluntary to the IFA under the Salary Cap Protocol. The club said that Twigg acted as an ambassador for the club during the fourteen weeks for which he was not paid under his playing contract. Some details of his duties were set out but the club did not produce any further documentary evidence.

[11] Mr Livingstone told us that, having heard all the evidence, the DC was satisfied that Portadown had made unauthorised payments to both Mouncey and Twigg.

**The Appeal.**

[12] The grounds of appeal put forward by Portadown can be summarised as follows;

Tim Mouncey

1. No payment was either made by Portadown or received by Tim Mouncey.
2. The NIFL Rules do not create an offence of ‘attempted overpayment’.
3. Since no payment was made or received the club cannot be guilty of bringing the game into disrepute under Art 17 of the AoA.

Gary Twigg

1. The payments to Twigg, not disclosed in his contract, were in fact disclosed by Portadown to the IFA as a result of the Salary Cap Protocol process.
2. Since Portadown actually spent £18,000 less than the salary cap, there was never any risk of the club exceeding the salary cap as a result of the payments.
3. Gary Twigg actually worked as an ambassador for Portadown during the 14 weeks which were not detailed on his contract.
4. That any breach of 38(a) was a technical one and, in any event, was not capable of bringing the game into disrepute under Article 17.

**Conclusions.**

[13] Bringing the game of football into disrepute is a standalone charge under Article 17 of the AoA. It was accepted during the appeal hearing that breaching Rule 38(a) of the NIFL Rules may indicate that a club has brought the game into disrepute but there may be circumstances in which technical breaches of Rule 38(a) may not amount to bringing the game into disrepute.

[14] The term ‘bringing the game into disrepute’ is not defined anywhere within the AoA, NIFL Rules or IFA Disciplinary Code. Article 17(2) of the AoA makes it clear that the IFA DC, when dealing with a charge of bringing the game into disrepute are the final judge of what constitutes `disrepute’. In this case, the IFA DC concluded that Portadown had breached Rule 38(a) on two occasions and that these breaches constituted disrepute. This Board is free, of course, to take different view. In determining what “disrepute” means we have adopted a common sense approach to interpretation. One dictionary definition is that it means acquiring a bad reputation or lack of respectability. It can also mean actions damaging the reputation of the NIFL. In this case, a finding that Portadown had deliberately not disclosed payments to a player would certainly adversely affect not just the club but also the NIFL.

Tim Mouncey.

[15] The evidence in relation to the charge involving an alleged single payment to Mouncey was not straightforward. Portadown made confusing and puzzling submissions to us in an attempt to demonstrate that it had not made a payment to Mouncey. Mr Marshall attempted to convince us that the document at Appendix K, the wage document, indicating that a payment had been made to Mouncey, was in fact a wage illustration from a week much earlier in the season, when an attempt to make a payment to Mouncey had been made. He explained that it bore the November date and tax week because he had printed it, in a hurry, in November 2015. He also produced a bank document showing that Mouncey had not been paid and he produced a letter from the club’s auditor and accountant which said that Mouncey had not received a payment in November 2015.

[16] While we were far from convinced by Mr Marshall’s explanations, we remind ourselves that the club do not have to prove anything. The burden of proving a breach of Rule 38 and a charge under Article 17 rests with the IFA DC. The standard of proof, before the Appeals Committee, is on the balance of probabilities. We were not shown any material by the IFA DC which convinced us to the required standard that Portadown had actually made a payment to Mouncey. For that reason the appeal against the charge relating to Mouncey is allowed.

Gary Twigg.

[17] The evidence in relation to Twigg was very straightforward. On 29 October 2012 Gary Twigg entered into a contract with Portadown which was to run from 1 January 2013 until 30 June 2016. The contract was counter signed by Mr Trevor Marshall and Mr Ronnie McFall. The contract indicated that payment would be £350 per week for 38 weeks. The contract does not disclose that Mr Twigg would actually be paid for 52 weeks and that the other 14 weeks he would work as a club ambassador.

[18] Mr Orr QC sensibly accepted, as he was bound to, that by not disclosing that Mr Twigg was in fact paid for 52 weeks, that Portadown had breached Rule 38(a). It was his submission that this was a technical breach and that the actions of the club did not amount to bringing the game into disrepute. We reject that submission.

[19] The purpose of the Salary Cap Protocol and the relevant NIFL rules is to ensure that clubs act in a fair and reputable manner. In football parlance, to create a level playing field for all clubs. Under sections 5 and 6 of the Salary Cost Protocol Regulations, Portadown could have paid Mr Twigg to act as an ambassador (or a barman, cleaner, door steward etc) for an additional 14 weeks. However, under those Regulations, the club would have had to inform the IFA that they intended to do so. The IFA could then have made an assessment of the purpose of paying a player for a non-playing task. The reason for this is obvious, to prevent clubs paying their star players, or any other player, for other non-playing roles so as to circumvent the Salary Cap Protocol.

[20] It is vitally important in maintaining sporting integrity in local football that clubs act in as transparent a manner as possible and comply with all relevant Rules and Regulations. It is our view that, in the case of Gary Twigg, Portadown did not act with the transparency and integrity which was expected of them. Accordingly, we have no hesitation in finding that by not detailing the additional payments to Twigg in his contract that Portadown not only breached Rule 38(a) but also brought the game of football into disrepute in breach of Article 17 AoA.

[21] The penalties for breaching Article 17 which are within the discretion of the IFA DC, and therefore this Appeals Board, range from expulsion to a fine. We do not consider that expelling Portadown from the Danske Premiership, relegating them or forfeiting points would be a proportionate or fair punishment for this particular offence. However, the offence committed by Portadown must be treated as a serious breach of sporting integrity. It is our view that, at the point of signing the contract, Portadown deliberately concealed the fact that Gary Twigg was to be paid an extra 14 weeks wages. This information should have been either disclosed to the IFA on the contract or under the Salary Cap Protocol Regulations.

[22] It is our view that a prohibition on signing new professional players from 12 April 2016 until 1 June 2017 and an immediate fine of £5,000 represents a fair and proportionate punishment for the single offence of bringing the game into disrepute in this case. This penalty should highlight the view which both the IFA DC and Appeals Committee take of this type of offence and should act as a warning and deterrent to other clubs. Portadown and other NIFL clubs would do well to consider the words of Dwight D Eisenhower, 34th President of the United States of America, when he said that,

*“The supreme quality for leadership is unquestionably integrity. Without it, no real success is possible, no matter whether it is on a section gang, a football field, in an army, or in an office”.*

**The Irish Football Association Appeals Committee**

**Appeals Board**

**Mr Joseph McCrisken – Chairman**

**Mr Ian Beggs – Football representative**

**Mr Adam Wood – Independent Member**

**29 April 2016**