

**IRISH FOOTBALL ASSOCIATION
APPEALS COMMITTEE**

In the matter of an appeal by Sandy Row Football Club against a decision of the Northern Amateur Football League

Appeals Committee:

Martin Wolfe KC (Chair)

Barry Finnegan

Maurice Bradley

DECISION

This is a decision of the IFA Appeals Committee ('the Committee') which was reached following a hearing which took place at IFA Headquarters on 20 June 2023. It concerns an appeal brought by Sandy Row FC ('the Appellant') against a decision reached by the Northern Amateur Football League as set out in its correspondence to the Appellant dated the 11 May 2023.

Having regard to the reasons set out below, the unanimous decision of the Committee is that the appeal shall be allowed. The Committee has determined that in accordance with Article 14(6)(e), the matter of the Appellant's application to join the NAFL shall be referred back to the Respondent to be properly considered in accordance with the directions set out below.

Representatives

1. The Appellant was represented at the hearing by Mr. Jamie Bryson. He was accompanied at the hearing by two Club officials, Mr. James McCann (Chairman) and Mr. William Gourley (Secretary).
2. The Respondent was represented at the hearing by Mr. Terry Pateman (Chairman) and Mr David Martin (Treasurer).

The Issues

3. The page references cited in this decision relate to the documents contained within the bundle which was prepared for the Committee for the purposes of hearing the appeal.

4. On the 26 March 2023, the Appellant completed and submitted a form which indicated that it was seeking membership of the NAFL (page 18).
5. On the 11 May 2023 the Respondent advised the Appellant by letter (“the decision letter”) that its application had been unsuccessful (page 13):

“I would refer to your recent application for admission to our League. Having had a successful season with minimal fall-out of clubs currently there are limited vacancies. In light of this, and taking into account the number of Belfast based clubs playing in the League for the incoming season, consideration will be confined to more provincial based clubs. Thank you for your application and should we in future years decide to expand our activities I am sure your club will receive consideration.”

6. The Committee has noted that the Respondent failed to advise the Appellant of its right to appeal this decision. For its part, the Appellant has complained that it was misled when it was told that they had no right of appeal (page 4, paragraph 4). The Respondent has challenged this assertion (page 27, para 4) and has commented in its written submission of 13 June 2023 that it was under no obligation to advise the Appellant that it may make an appeal under Article 14 of the IFA Articles of Association (page 27, para 3).
7. The Committee considers that this is a surprising stance for a League organisation to adopt and the Committee would invite the Respondent to reflect upon it. While it may overstate the position to suggest that the Respondent has a formal obligation in this area, it appears to the Committee that it is a basic tenet of fair administrative practice that participants in an application process should be told clearly and in writing by the convenor of that process that its decision may be appealed, and to signpost the applicant to the arrangements which shall govern an appeal. The Respondent should take steps to revise its practice in this important respect so as to avoid any risk of clubs being misled in future.
8. As appears from the materials made available to the Committee, the Respondent has stated that on the 10 May 2023, the day before the decision letter was issued to the

Appellant, it interviewed three clubs and those clubs were subsequently approved by the Board for entry into the League for the 2023-24 season. Those clubs are Antrim Rovers, Celtic Bhoys and Greencastle Rovers (page 17).

9. Having been advised that its application had been unsuccessful, the Appellant lodged an appeal dated 15 May 2023 (page 3). The grounds of that appeal were set out in detail in a written submission dated 29 May 2023 (page 4) which argued that the Respondent failed to comply with its 'policy statement on new team entry to League.' That submission was supplemented by a further written submission from the Appellant dated 15 June (page 33), which responded to the Respondent's submission (page 27-28).

10. The policy statement has been considered by the Committee (pages 11-12). It describes the criteria which the Respondent will apply when new clubs seek entry to the NAFL. We refer to the following key provisions of the policy statement:
 - a. Part A of the policy statement identifies 8 mandatory criteria eg. an applicant must demonstrate that the Club is affiliated to a Divisional Football Association. The policy statement provides that if a Club fails to meet any of the 8 mandatory criteria, it "**not**" be permitted to submit an expression of interest to join the NAFL. As we have recited, the word "not" has been highlighted in bold and underlined within the policy statement. Presumably this is intended to emphasise to interested clubs that if they cannot demonstrate compliance with all 8 of the mandatory criteria they will not be eligible to apply, and will not be allowed to advance an application.

 - b. Part B of the policy statement contains what is described as "additional shortlisting criteria." It is explained that those "Clubs who submit an expression of interest will be shortlisted based on the above mandatory criteria [ie the requirements set out in Part A] and the additional shortlisting criteria below [ie. the factors set out in Part B]." Part B of the policy statements refers to 11 additional shortlisting criteria. One of those 11 additional shortlisting criteria, and one which was the subject of particular consideration in the context of this appeal, has been formulated in the following terms:

"Consideration will be given to any detrimental impact on existing member clubs' / players that the Applicant Club might have."

- c. Part C of the policy statement addresses the situation where “there are a large number of expressions of interest for limited vacancies.” If that situation arises then the policy statement reserves to the Management Committee “the right to limit the number of interviews granted...” If it finds itself in that situation, as was said to be the case here, it must apply the approach set out in Part C. We will say something further about the required approach as part of our findings below.
11. As we have noted above, only three clubs were interviewed by the Respondent on the 10 May 2023. The Committee was told that the Appellant was one of a total of four clubs which had satisfied the mandatory criteria contained within Part A of the policy statement, and who were not granted an interview at that time (page 17), although that was change subsequently.
12. The issue which is at the heart of this appeal is consideration of why the Respondent, knowing that the Appellant had satisfied the mandatory criteria, refused to further consider its application by granting an interview on the 10 May 2023.

Findings

13. In its submissions, the Appellant recognised that the policy statement extended to the Management Committee a discretion to restrict the number of clubs who would be called to interview, even if those clubs had demonstrated compliance with the mandatory criteria.
14. It is the Committee’s view that those submissions correctly argued that the Respondent’s discretion to restrict the number of interviews is not unfettered (page 8, paragraph 19). Instead, the policy provides that the Respondent may limit the number of interviews only where there are a large number of expressions of interest for limited vacancies, and if those circumstances applied, those called to interview must be determined by reference to two factors: (1) the impact to the existing membership and (2) ranking under the criteria above.
15. In examining this issue, the Committee took as its starting point the decision letter which was issued to the Appellant on the 11 May 2023. The Committee acknowledges that such letters are generally intended to convey an outcome to a process in summary

terms only, and are rarely used to descend into the minutiae of the decision-making process. Nevertheless, the Committee considers that the terms of the letter are significant in that the Respondent emphasised that it was not considering Belfast clubs and would instead “confine” its consideration “to more provincial based clubs.”

16. The content of the letter gives rise to a suspicion that the Respondent failed to acknowledge or implement that part of the policy which obliges it to take into account ranking under the criteria. As we have accepted, it may be entirely understandable that the fine detail of how the policy was used is not elaborated upon within such a letter, and therefore Committee scrutinised the other material made available to it to assess whether the requirements of the policy statement were adhered to.

17. In his written submissions to this Committee, Mr Mervyn Martin (Co. Secretary), advanced the following argument on behalf of the Respondent (pages 27-28):

[6] The Respondent adhered to the terms of its letter referenced at paragraph 15 of the Appellant’s written submission. Notwithstanding paragraph 20 of that submission, the Respondent would refer specifically to Exhibit 1 of the Respondent’s policy statement where it says in italics:-

‘Consideration will be given to any detrimental impact on existing member clubs’ / players that the Applicant club may have.’

[7] Consideration to this was given and expressly set out in the letter of refusal of 11 May 2023....”

18. It is plain that Mr Martin’s submissions were directed to Part B of the Respondent’s policy statement. That is the section of the policy which contains the italicised words which he has referred to. Those submissions do not address the requirements of the policy statement which, as we have set out above, obliges the Respondent to shortlist by reference to all of the mandatory criteria (Part A) as well as the additional criteria (Part B). Those submissions strongly suggest to the Committee that the decision to shortlist for interview was reached by taking into account Part A of the policy, and only one of the additional shortlisting criteria contained within Part B, namely the provision set out in italics.

19. That this was indeed the approach adopted by the Respondent is confirmed by the contents of a note dated 25 May 2023 and signed off by Mr Pateman (page 23). This catalogued the various developments in the process by that date. So far is relevant, the following record was made:

“As by previous policy the Chairman arranged for a sub-committee to consider those clubs requesting membership of the League for season 2023-24. The Chairman, Conrad Kirkwood and Michael Mezza all Board members discussed the current situation on two occasions. On Wednesday 19th April it was agreed that with the number of clubs (2nd XI’s in particular) within the Belfast area failing to fulfil matches it would not be prudent to introduce more clubs at this time from within Belfast. It was agreed we would give consideration to Celtic Bhoys, Antrim Rovers and Greencastle Rovers from Downpatrick, Antrim and Newtownabbey respectively...”

20. Having considered this note in the context of the Respondent’s written submission, and taking into account the way in which the Respondent expressed itself in its decision letter, the Committee is satisfied that the Respondent has failed to correctly apply its own policy.

21. The note of the 25 May when read with the decision letter and the Respondent’s written submission clearly articulates the Respondent’s approach to determining which of the seven clubs would be interviewed for admission to the League. The note records that only one factor was in play, namely detrimental impact on existing member clubs’ (which is here expressed in terms of a desire to exclude clubs from within the Belfast area). While the Committee accepts that this criteria can be applied by the Respondent, and that it was open to the Respondent to define it by reference to a concern for the impact on existing Belfast based clubs, it is also clear that this factor should not have been used as a determining factor in isolation. As appears from Part B of the policy, the criteria in italics is only one of eleven factors, and all of them must be considered along with the mandatory criteria when conducting a shortlisting exercise. The material provided by demonstrates that the Respondent failed to do this.

22. The Committee has noted the terms of the last paragraph of Mr. Pateman's note. Here he records the outcome of the interviews of the 10 May, and recalls that the three interviewed clubs were also the clubs who were the highest placed in the scoring. The Committee's attention was also drawn to an extract from a minute of the Respondent's Board meeting from 6 June 2023. Here it is recorded that the scoring matrix was applied to each of the seven clubs who had satisfied the mandatory criteria, and that "it was agreed to interview the top three clubs for a maximum of three vacant spots."
23. In its submissions, the Appellant has highlighted that nowhere in this minute is any reference made to the exclusion of Belfast clubs, but rather that the explanation for the restricted interview pool has for the first time turned to placing a reliance upon the application of a scoring matrix and shortlisting based on a ranking of the applicant clubs. It has been emphasised to us that the introduction of this description of a scoring and ranking based approach has been introduced after an appeal has been commenced which challenged the unfairness of a determination which was initially explained by reference to the geographical location of the applicants only.
24. The Committee found itself perplexed by the varied and contradictory descriptions offered by the Respondent in support of its decision making. An ability to adequately explain how a policy was applied and how selection decisions were reached is basic stuff. When members of the Committee sought this explanation from the representatives of the Respondent at the appeal hearing we were met with a response which, whether it was intended or not, appeared dismissive and defiant, as if the Committee should simply accept the Respondent's written assertion that the appeal was "extraneous, redundant and an abuse..." (page 28, paragraph 14).
25. The competent administration of an application process such as this should be capable of producing a clear, coherent and consistent account when a disappointed participant within that process asks for an explanation. We were told that the Respondent's position was appropriately and comprehensively set out in Mr. Mervyn Martin's submissions, but that limited response revealed a failure to recognise that those submissions failed to adequately engage with the issues.
26. If the Respondent did apply a conventional scoring and ranking approach to limit the number of interviews as Mr Pateman maintained at the hearing of this appeal, the

Committee is entitled to ask why the explanation contained in his note of the 25 May instead emphasises the 'Belfast factor' as the sole determinant. Alternatively, why has the Respondent discarded the 'Belfast factor' entirely in its Board minute of the 6 June, and instead drawn attention to the application of a scoring matrix? This is a formal record of the Board's proceedings. There is an obligation to maintain an accurate record. Assuming that the minute is accurate, the Committee can only assume that those who engaged in the discussion at the meeting on the 6 June did not see fit to recall, for whatever reason, the explanations contained in the decision letter or in Mr. Pateman's note.

27. The Committee did not receive satisfactory answers to these questions. Neither the Respondent's written submission nor the Respondent's oral submissions were able to persuade the Committee that the policy statement had been complied with. On balance, the Committee is satisfied that the Respondent decided that it only wished to consider clubs from outside of the Belfast area, and in contravention of the policy statement failed to apply any other criteria.

Further Interviews

28. The minute of the Board meeting of the 6 June 2023 also records that its members had resolved to invite "*the remaining four applicant clubs*" to an interview because there was a possibility of a further vacancy. The minutes show that this decision was made in the full knowledge that this appeal had yet to be heard, and on one reading of the record it might be said that this further interview stage was organised because of the concerns raised by the appeal: "Following on from an appeal to the IFA and with the possibility of a further vacancy..."

29. The Committee expressed its concern to the Respondent's representatives that the Respondent should have proceeded to arrange a further stage in its selection process when this appeal was still to be heard. This called for an explanation, but apart from telling the Committee that this was what the Board had decided, no explanation was forthcoming from the Respondent's representatives.

30. It should have been clear to the Respondent Board, and we believe that it was clear, that this appeal had been brought by the Appellant to challenge an earlier part of a process which was inextricably linked to these further interviews. Those interviews

proceeded in the absence of the Appellant on the 12 June 2023. The Appellant recognised the proper order of things and the respect which is owed by participant Clubs and Leagues to the Appeals structure once that process is triggered. On a 'without prejudice' basis, the Appellant properly declined to attend the interview to which it had been invited. We believe that it was correct to do so.

31. We also believe that the Appellant was correct to signal to the Respondent in an email dated 10 June 2023 (page 31) that the arrangement of these interviews would be inappropriate pending clarification of the obligations of the Respondent and the rights of the Appellant through the mechanism of this appeal. This Committee is concerned that the Respondent failed to heed this warning and pressed on regardless. Its conduct in this respect is surprising and is to be deprecated.
32. We will address a further point in this context. The Respondent produced a paper marked "Position Paper of Application by Sandy Row Football Club" (page 15). The purpose of the paper was not explained to the Committee. It sets out a number of provisions from the Respondent's Articles of Association, specifically Articles 10 and 11. The Committee notes that the Respondent's written submission (at page 27, paragraph 5) draws attention to Article 11, and contends that (having regard to Article 11) "the Board has full discretion as to the admission and non-admission of any club to membership and shall not be bound to assign any reason for non-admission of any club to membership."
33. Those representing the Respondent at the appeal hearing did not make any submission with respect to Article 11, but for the avoidance of doubt the Committee takes the view that it does not afford the Respondent a carte blanche to behave as it wishes in matters concerning the admission of clubs to its League. The Board's discretion must be exercised in a manner which is compliant with its policies and procedures, including the 'policy statement on new teams entry to League,' unless it takes steps to lawfully set aside the requirements of those policies and procedures. As we have explained above, the Respondent was bound to apply the requirements of this policy statement but failed to do so.
34. Finally, the Committee was advised that the Board met on the 13 June 2023 and that Mr. Pateman proposed and the Board unanimously approved a resolution to the effect

that it would not exercise its discretion in favour of granting membership to the Appellant (page 29). The Respondent was unable to adequately explain to the Committee the reasons for and the timing of this meeting. The Appellant had been told on the 11 May, 4 weeks earlier, that its application for membership would not be granted. It would appear that this decision had been issued to the Appellant without the ratification of the Board.

35. Having regard to the conclusions reached by this Appeals Committee, the Board's decision and its timing may be of no practical significance. But it remains unclear why the Respondent would see fit to take such a step when it was aware of a live appeal.

Disposal

36. In the circumstances the Committee allows the appeal, the effect of which is to quash the Respondent's decision of the 11 May 2023 as it applies to the Appellant, and the subsequent decision of the Board (of the 13 June) which purported to ratify that earlier decision.

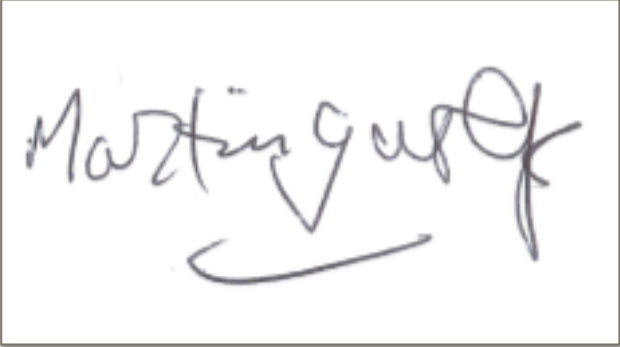
37. The Committee refers this matter back to the Respondent, and the Respondent is directed to reconsider the Appellant's application afresh, in accordance with the 'policy statement on new teams entry to League.' It is a matter for the Respondent to assess the effect of this reconsideration on other Clubs who have participated in the process to date, including any Club which has been granted membership of the League. It is the effect of the Committee's decision that the Appellant should not suffer any disadvantage as a result of the Respondent's original failure to comply with the requirements of the policy statement.

38. Further, the Committee has determined that the Respondent must not place the Appellant at any disadvantage as a result of its decision to decline to attend an interview with the Respondent on the 12 June 2023, while this appeal process was extant. The effect of this part of our decision is that no other Club should gain an advantage arising out of the Appellant's non-attendance at that interview.

39. It is the expectation of this Committee that it should be feasible for the Respondent to reconsider the Appellant's application afresh, to take any additional steps and conduct

any deliberations pursuant to that reconsideration, and to notify all relevant parties of the outcome, within 14 days of the date hereof.

Dated: 26 June 2023

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and appears to read "Martin Wolfe".

Martin Wolfe KC

On Behalf of the Appeals Committee