

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF SPORT RESOLUTIONS (“THE RULES”)**

**AND IN THE MATTER OF AN ARBITRATION AGREEMENT DATED 13 AUGUST 2020 (“THE ARBITRATION AGREEMENT”)**

Before:

Nicholas Stewart QC (Sole arbitrator)

**BETWEEN:**

**Donaghadee Football Club**

**Applicant**

and

**Irish Football Association**

**Respondent**

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**AWARD**

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## **Introduction and Background**

1. The essential context of this whole case is the severe disruption of the 2019-20 football season by the Covid-19 pandemic. That disruption, particularly the serious difficulties in completing

fixtures in both league and cup competitions, is well known to all involved in football in Northern Ireland, as in many other countries.

2. The applicant Donaghadee Football Club (“**DFC**”) is a member club of the Northern Amateur Football League (“the **NAFL**”). DFC’s first team played the 2019-20 season in section 2A of the NAFL.
3. The respondent The Irish Football Association (“the **IFA**”) is the governing body for association football in Northern Ireland. The NAFL is affiliated to the IFA, so the NAFL and its member clubs are bound by the rules and regulations of the IFA.
4. In this arbitration DFC challenges a decision of the IFA Appeals Committee made on 15 July 2020 (“the **July Decision**”) and asks for it to be quashed, as well as for declaratory relief discussed below.
5. The July Decision was itself made on appeal by DFC against a decision of the NAFL made by its League Management Committee on 7 May 2020 (“the **LMC Decision**”).
6. It is common ground between the two parties to this arbitration that it is by review and not an appeal. That means I can only set aside or otherwise interfere with the July Decision if I find there was an error of law by the IFA Appeal Board which heard the appeal (“the **Appeal Board**”)¹, including an unreasonable judgment or exercise of discretion or a procedural flaw which deprived DFC of a fair hearing. It is otherwise not for me to substitute my own views on any of the matters decided by the Appeal Board. However, if I disagreed with the Appeal Board’s interpretation of the relevant rules, that would mean there had been an error of law in the July Decision so the decision would be set aside.
7. I was appointed by Sport Resolutions as sole arbitrator on 17 August 2020. There was a videoconference directions hearing on 19 August 2020 after which I issued written directions

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<sup>1</sup> There is frequent confusion of the terms Appeals Committee and Appeal Board throughout the history of this matter. They are not the same. The distinction is explained in paragraph 88 of this award but the reader should please note that cited documents will still often have used the terms quite loosely, which is understandably then reflected in the parties’ submissions. The July Decision itself was a decision of an Appeal Board.

on that same day, with revised directions following on 27 August 2020. A full hearing, also by videoconference, was held on Wednesday 16 September 2020.

8. DFC was represented at the hearing by Mr Jamie Bryson of JWB Consultancy. Mr Bryson is a member of the DFC committee and has represented the club throughout the appeal and this arbitration. Mr Stephen Shaw QC appeared for the IFA, accompanied by its solicitor Mr Shaun Jemphrey. Mr Leigh Sillery of the IFA also attended. Mr Matt Berry of Sport Resolutions was present, acting as secretary to the tribunal and managing the videoconference facility.
9. The parties provided an agreed bundle of more than 500 pages, which gave me the full picture. While I have naturally taken all relevant material into account, in this award I set only as much detail as needed to explain the parties' positions and the reasons for my conclusions on the issues between them. In particular, there has been extensive correspondence between DFC and the football authorities since early April 2020 but it is only necessary to make express reference to a few of those items. The parties' positions have been set out clearly in their written and oral submissions. I especially appreciated the focused and concise oral submissions from both Mr Bryson and Mr Shaw.

### **The Northern Amateur Football League**

10. At the start of the 2019-20 season the NAFL included 13 levels of league competition: the Premier and Sections 1A to 1C, 2A to 2C and 3A to 3F. There were 91 clubs and 171 teams involved, many clubs having more than one team – for example, while DFC's first team is in section 2A, its second team plays in 3E.
11. The NAFL also organises five cup competitions each season. They include the Cochrane Corry Cup, which is the significant one here for DFC as it had reached the semi-final when the football shutdown arrived in mid-March 2020. It is the impact of the July Decision on DFC's participation in the Cochrane Corry Cup which is at the root of DFC's challenge in this arbitration.
12. The NAFL naturally has its own rules, including Constitutional Rules which provide for:

- An Annual General Meeting which must be held not later than 30 June each year.
  - The election by each AGM of a Management Committee, which is charged with the conduct of the business of the NAFL.
13. The powers and responsibilities of the NAFL Management Committee (generally referred to as the League Management Committee or **LMC**) are central to this arbitration.

### **The 2019-21 football season: Duration and suspensions**

14. The normal duration of the annual football season for men's football in Northern Ireland is 1 August to 31 May. That is not expressly stated in the IFA Article of Association or rules but is reflected in the express prohibition in IFA Football Regulation 36(a) of matches between 31 May and 1 August, except with written permission of the IFA Football Committee. In normal times, year in, year out that presents no difficulty: all league and cup competitions are completed by 31 May and there are then two months of close season.
15. However this year the Covid-19 crisis and the UK-wide shut-down in mid-March of organised sporting events meant that NAFL league games played on 7 March 2020 turned out to be the last games which could be played for several months. It quickly became obvious that completing all outstanding fixtures in NAFL's league and cup 2019-20 competitions was going to be extremely difficult, if not impossible. This was a problem faced by football and other sporting competitions in many countries and certainly those under the aegis of the IFA.
16. On 13 March 2020 the IFA announced suspension of the current season, though with the declared expectation that games would restart on Saturday 4 April. However, on 24 April 2020 the IFA suspended all matches until 31 May 2020.
17. On 30 April 2020 the NAFL wrote to its member clubs, noting the IFA suspension until 31 May 2020 but also that the IFA had indicated that, subject to government restrictions, it would consider on request applications to extend the season; and that, if granted, such extension would be to 31 July 2020 at the latest. The NAFL asked for its clubs' views on whether (A) the

LMC should seek an extension to the season; or (B) the LMC should accept that the season could not be finished.

18. The LMC met by Zoom on 7 May 2020. It was minuted that there had been a meeting of the League Emergency Committee on 5 May when the response from NAFL member clubs had been 25 for option (A) and 61 for option (B). It is unnecessary to go into technical detail about the League Emergency Committee, which only made recommendations to the LMC. Those recommendations were unanimously adopted by the LMC and are recorded in the LMC minutes as:

- (a) The League should inform the IFA that the majority of clubs have by majority poll instructed the LMC not to request an extension of the current season.
- (b) The committee acknowledges as of the 7<sup>th</sup> March 2020 when the last matches were played Rosemount Rec had completed their league programme and had obtained 64 points, a number no other club could attain. It is agreed that if season 2020-21 is possible that Rosemount Rec should play in Section 1B and at the end of the season that the bottom three teams will be relegated with two teams promoted from Section 1C.
- (c) The officers further recommend that due to the untimely finish to season 2019-20 and the possibility of a truncated season 2020-21 that the Annual Subscription fee for 2020-21 be set at zero.

19. The LMC minutes record the chairman's comment that clubs had been notified before the start of the current season that 2 May 2020 was the end of the season (by which he was meaning only the NAFL season, not the wider Northern Ireland season). He had noted that the current government restrictions would remain at least until the end of May so even if clubs wanted to play, they couldn't.

20. The LMC minutes made express reference to NAFL Rule 19, which is important in this arbitration:

"The meeting noted Rule 19 which was in the following terms viz "the Management Committee shall have power to deal with offending club or clubs, player or players, official or officials, as

they deem fit, and to deal with any matters not provided for in these Rules, and matters also noted in the attached appendices.”

The meeting having considered Rule 19 and in particular the second part of it was of the unanimous view that a pandemic which threatened the playing of football under the auspices of NAFL was a matter which was not provided for by the rules of NAFL and accordingly the League Management Committee could decide how to legislate for the playing of football during the pandemic.

The meeting then considered the three recommendations of the League Emergency Committee. It was resolved unanimously to accept the three recommendations.”

21. As the Rosemount Rec decision remains a live issue in this arbitration, I note here that it is accepted by everyone that Rosemount Rec *had* obtained 64 points and that no other club in Section 1C could have reached 64 points even if able to complete all its league fixtures.
22. The LMC’s 7 May 2020 resolution was notified to the NAFL member clubs by letter dated 9 May 2020, which added a note at the end: “You have the right of appeal to the IFA appeals board as directed in Article 14 of the Irish Football Association’s Articles of Association.” Donaghadee FC exercised that right on the day it received that letter.

### **Donaghadee FC’s appeal against the LMC Decision**

23. On 9 May 2020 DFC lodged an appeal under IFA Article 14<sup>2</sup> against the LMC decision. DFC appointed Mr Jamie Bryson of JWB Consultancy to represent DFC in the appeal.
24. The appeal was expressed as being against the substantive decision notice of the LMC Decision. The DFC notice of appeal stated the LMC Decision as:

- (a) not seek an extension to season 2019/20

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<sup>2</sup> All references to IFA Articles are to its Articles of Association.

(b) [to] amend the promotion/relegation criteria acting ultra vires of the NAFL Rulebook and arbitrarily applied the new criteria irrationally

(c) [to] unilaterally change Rule 15.1 (fees) without the power to do so.

25. The DFC appeal gave 9 May 2020 as the date of the impugned decision. It was strictly 7 May 2020 but nothing turns on that as the DFC appeal was clearly presented in time under IFA Article 14.

26. The notice of appeal was accompanied by an eight-page written submission. The primary relief sought by DFC from the IFA Appeals Committee was:

(a) an order quashing the decision of the LMC not to seek an extension of the 2019-20 season; and

(b) the IFA appeals panel to substitute the decision not to request an extension with a request for an extension under IFA Football Regulation 36(a) until 31 July 2020

27. The respondent to the appeal was the NAFL. There were three rounds of written submissions from the parties in that appeal, but there is no value in going into them in detail in this award. Points of continuing significance will be covered by reference to the issues and submissions in this arbitration.

28. The Chair of the IFA Appeals Committee eventually appointed a three-person Appeal Board, in accordance with IFA Article 14.5, on 2 July 2020. The Appeal Board rejected DFC's application for an oral hearing and informed the parties on 6 July that it would proceed on the papers only. Its decision - the July Decision - was issued on 15 July 2020.

29. Although it will be necessary to return later in this award to some of the intermediate events between 9 May and 15 July, at this point we can move forward to 15 July 2020.

30. By the time the July Decision was issued on 15 July 2020, issues (a) and (c) mentioned in paragraph 24 above were no longer live.

31. As to issue (a), on 26 May 2020 the IFA had extended the football season to 31 July 2020 and in a letter to the NAFL, undated but apparently sent on 8 June 2020, the IFA confirmed that the extension to 31 July applied to all leagues automatically if they wished to avail themselves of it, without any need for an application to the IFA. Issue (a) was therefore redundant some weeks before the July Decision.
32. Issue (c), concerning fees, was conceded by the NAFL during the appeal proceedings and therefore no longer needed determination. Nothing more need be said about that issue.
33. Accordingly, by the time the Appeal Board came to make its decision, the only issue which DFC was still asking it to determine was issue (b) mentioned in paragraph 24 above: DFC's complaint that the NAFL LMC had acted beyond its powers in amending the promotion/relegation criteria and arbitrarily applied the new criteria irrationally. That has remained a live issue right up to the making of this award. In the rest of this award, references to the LMC Decision above can be treated as referring only to the decision on point (b) in paragraph 18 above.
34. The appeal was resolved by a three-person Appeal Board, whose written decision was entitled as a decision of the Irish Football Association Appeals Committee and dated 15 July 2020. On that only remaining issue the Appeal Board dismissed DFC's appeal for reasons which I examine below when considering DFC's grounds to set aside the July Decision.

### **Donaghadee's Arbitration Referral & the Arbitration Agreement**

35. On 17 July 2020 DFC made a written **Arbitration Referral** under IFA Article 3.2(f), naming the IFA Appeals Committee as the sole respondent and Northern Amateur Football League as an Interested Party. The NAFL has been aware of this challenge by arbitration from the outset. The referral was clearly made within the time limit specified in IFA Article 3 and neither the IFA nor NAFL has taken any point on the validity of the referral or the identity of the parties. The current grounds of appeal, though not set out in the same order or exactly the same terms as in DFC's subsequent written submissions, were all included in the written referral.



36. On 18 August 2020 Donaghadee FC, the Irish Football Association and Sport Resolutions (UK) made a written arbitration agreement (the “Arbitration Agreement”), naming the Irish Football Association as the respondent. It was agreed that the arbitration should be heard by a single arbitrator appointed by Sport Resolutions (UK), who appointed me on 17 August 2020. This arbitration was to be governed by the Sport Resolutions (UK) Arbitration Rules and by the Arbitration Act 1996 save as specifically varied by the Arbitration Agreement (though there were no significant variations).

37. Two specific points in the Sport Resolutions (UK) Arbitration Rules are:

15.1: The seat of the arbitration shall be London, unless otherwise determined by the Tribunal.

15.3: Substantively, arbitrations under these Rules shall be decided in accordance with the law of England and Wales unless otherwise agreed in writing by the parties or unless otherwise directed by the Tribunal.

There has been no agreement of the parties under 15.3 and neither party has asked me to make any determination or direction under either provision. I see no practical need to do so. Accordingly, the seat of the arbitration is London. I apply the law of England and Wales. Neither party has asked me to do anything else. There is no serious possibility that the law of Northern Ireland differs from the law of England and Wales on any issue in this arbitration anyway, and no one has suggested that it might.

38. The Arbitration Agreement stated in clause 2 that the Arbitrator should have jurisdiction to decide the following three questions (**the agreed issues**):

- a) If the [AC] erred in upholding the decision of the [NAFL] made on 7 May regarding the promotion of Rosemount Rec to Section 1(B) for the Season 2020-21.
- b) If the AC erred in finding that the NAFL had not acted *ultra vires* [i.e. beyond its powers] by applying rule 19 rather than Rule 7.1.3 or 8.1 of the NAFL rule book regarding promotion of Rosemount Rec to Section 1(B) for the Season 2020-21.

c) If the AC erred in finding that the NAFL 2019/20 LMC did not act *ultra vires* in deciding that at the conclusion of the 2020/2021 season ‘the bottom three clubs would be relegated.

39. Clauses 2.1 and 2.2 of the Arbitration Agreement then continued:

2.1 The Parties agree the Arbitrator shall determine as a preliminary issue if he has jurisdiction to decide an additional issue raised by DFC, namely whether the AC fell into error by saying at paragraph 37 of its Decision dated 15 July 2020 that the NAFL decision to promote Rosemount Rec to Division 1(B) and amend relegation provision for 2020-21 “brings the season to an end, no matter how it is phrased” (“**the additional issue**”).

2.2 Since the additional issue was not expressed by the LMC on 7 May 2020 and lies outwith the issues agreed by the Applicant to be determined by the AC, the Parties agree that the Arbitrator should determine whether to seek representations from LMC in reaching his determination on the preliminary issue.

### **Donaghadee FC’s grounds of challenge to the July Decision**

40. I shall summarise DFC’s grounds of challenge then examine each in turn. My summary is:

**Ground 1(i):** The LMC was elected only for the season 2019-20 and could not exercise powers in relation to the conclusion of the 2020-21 season

**Ground 1(ii):** The LMS had pre-emptively made decisions which could only properly be made at the conclusion of the 2020-21 season.

**Ground 2(i):** The LMC was wrong in applying Rule 19 rather than Rule 7.1.3, alternatively Rule 8.1.

**Ground 2(ii):** The LMC had applied irrational criteria in its decisions on promotion and relegation

**Ground 3 (the “Additional Issue”):** The Appeals Committee had made an error of law in stating, at paragraph 37 of the July Decision: *“The decision made by the NAFL to promote Rosemount Rec and amend relegation provision for 2020/21, brings the season to an end, no matter how it is phrased.”*

**Ground 4:** The July Decision was reached by an unfair and improper procedure, placed under four headings in DFC’s Statement of Claim:

- (i) the manner by which the AC was appointed;
- (ii) the requirement to take all decisions solely on the interests of the IFA;
- (iii) the decision to ‘pause’ proceedings to facilitate the involvement of the IFA Boards; and
- (iv) the anonymity of the Appeal Board as the decision-making panel. DFC says that each of those four points on its own is enough for me to have to set aside the July Decision for apparent bias of the panel which decided the matter.

41. Ground 3 also raises the question of jurisdiction, which I shall consider together with the merits of the point in paragraphs 64 to 84 below.

**Grounds 1 (i) and (ii)**

42. NAFL rule 13.1 states: “The business of the NAFL shall be conducted by a Management Committee elected annually . . .”. Rule 12.2(vii) states that the AGM is to elect the members of the Management Committee (i.e. the LMC).

43. Mr Bryson’s submission for DFC is that as the members of the LMC only hold that position until the next AGM, which must be held at the latest by 30 June each year, the LMC cannot take decisions on matters beyond its current members’ own term of office – specifically, in this case, decisions by the 2019-20 LMC on what would happen about promotion or relegation at the end of the 2020-21 season.

44. Mr Bryson submits that the LMC is empowered to conduct the business of the NAFL “only for the annual term for which they are elected”. That is correct in the obvious sense that at the

end of their term they are no longer part of the LMC unless re-elected and can only take decision *during* their term of office. However, the fallacy is to conclude that the LMC therefore cannot take decisions with practical effect beyond the current members' term of office. The LMC is a continuing body, only with changing membership. Its decisions generally will have future effect, as that is an inherent aspect of conducting the NAFL's business. A body which took no decisions about the future would hardly be managing at all. Mr Bryson could offer no cogent answer to the observation that if his submission were right, an LMC meeting on a Wednesday, with the AGM to take place on the Thursday, could not make any valid decisions at all in relation even to the coming Friday or Saturday. That is plainly not so.

45. This submission by DFC is plainly wrong. As neatly put in the IFA's written submission, it confuses the LMC's temporal term of office with its powers.
46. This conclusion covers both limbs of ground 1, which I therefore reject

### **Ground 2 (i)**

47. It is this ground 2 which is at the heart of DFC's case and it requires scrutiny of a number of specific NAFL rules:

Rule 7: Promotion and relegation will apply in the First and Second Divisions subject to the following criteria:

.....

7.1.3 [which applied to the First Division]: The top two clubs of Section C will be promoted to Section B, whilst the bottom two clubs in section B will be relegated to Section C.

Rule 8.1: The Management Committee, in the best interests of the NAFL's development, may make proposals to the Annual General Meeting on the format of the various sections which take into account matters other than the league position gained by any club and expressed in the aforementioned.

Rule 19: The Management Committee shall have power to deal with offending club or clubs, player or players, official or officials, as they deem fit, and to deal with any matters not provided for in these Rules, and matters also noted in the attached appendices.

Rule 21: No alteration shall be made in these Rules, except at the AGM. Notice must be given to the League Secretary before the 30<sup>th</sup> April, in each year, of any proposed alteration in the Rules, the same to be forwarded to the Clubs at least seven days before the AGM for revision of rules. These Rules shall be in force until the AGM. A seventy-five per cent majority (3/4) of those present and voting shall in all cases be necessary.

48. Rule 21 was part of DFC's case before the IFA Appeal Board and before me in this arbitration, but can be quickly put aside. The submission by DFC was that the LMC Decision was not within the existing NAFL rules and that because no steps had been taken in accordance with rule 21 to alter those rules, the LMC Decision could not stand. However, the IFA's case in this arbitration, like the NAFL's case in the appeal, is that the LMC Decision was within the rules. The NAFL did not rely on any altered rules or even contend that any attempt had been made to alter the rules. Accordingly, NAFL rule 21 is not relevant.
49. Similar comments apply to rule 8.3. The IFA does not rely on the LMC having made any proposals to the AGM under rule 8.3; and neither has the NAFL at any point. Accordingly, rule 8.3 need not be considered further.
50. The key question is whether the LMC Decision was within the powers given to the LMC by NAFL rule 19, and specifically within its power in rule 19 to "*deal with any other matters not provided for in these Rules*".
51. DFC say that the matters of promotion and relegation dealt with by the LMC were provided for in rule 7.1.3, so that rule 19 could have had no application and the LMC therefore had no power to make the LMC Decision on those matters. Mr Bryson referred to the principle of interpretation that specific provisions are to be given greater weight than general provisions. In support he cited a decision *Cliftonville v IFA* 26 July 2020 where the arbitrator Mr David Casement QC applied that principle. But the principle is not in dispute. While Mr Casement's decision is convincing on its own facts, it casts no useful light on the different facts of this case.
52. DFC's case is that in the First Division, promotion and relegation are expressly and fully covered by the specific provision in rule 7.1.3, leaving no room for the application of the general rule 19.

53. The first point to note about rule 7.1.3 is that it does not say in express terms *when* the top two clubs (or the bottom two) are to be ascertained. I note that the equivalent provision for the Second Division, in rule 7.2.2, does say “*at the end of the Season the top two clubs in a section will be promoted whilst the bottom two clubs will be relegated*”. I attach no weight to the inclusion of the words “at the end of the Season” in rule 7.2.2 but not 7.1.3. That is simply one of those slight drafting imperfections found in many if not most rules of sporting and other associations. It is obviously implicit in rule 7.1.3 that it is talking about the top two and bottom two clubs at the end of the season. While the meaning of “season” and “end of the season” raises other difficulties when we come to Ground 3 and the Additional Issue, rule 7.1.3 (as does rule 7.2.2) obviously contemplates that the end of the season is when all teams in that particular section have played all scheduled matches – meaning, importantly, that they have all played the same number of matches. The NAFL follows the familiar system of each team playing each other team once at home and once away.
54. The essential flaw in DFC’s submission is that while rule 7.1.3 would have fully covered section C promotion and relegation in a normal year, when the season had ended with all matches played, it did not adequately deal with the position where many matches remained unplayed and there was no confident expectation (to put it mildly) that they ever would be. That is where rule 19 came into play.
55. It would have made no sense simply to promote the teams who happened to have been the top two when matches were stopped after 7 March 2020. That was not what rule 7 ever contemplated. As the season had not ended in the way contemplated by rule 7, as described in paragraph 53 above, rule 7 did not enable identification of the teams to be promoted; nor the teams to be relegated.
56. In the exceptional circumstances of the Covid-19 pandemic, the NAFL rules specifically dealing with promotion and relegation did not answer the crucial question of whether any teams should be promoted or relegated and, if so, which ones. Without recourse to rule 19, the answer to those questions was plainly “a matter not provided for in these Rules”. Accordingly, the LMC had the power given to it by rule 19 to deal with that matter in whatever way it judged suitable in its discretion. As with all such powers and discretions, the LMC was required to consider all

relevant facts and circumstances and to avoid making any unreasonable decisions. But as long as it did that, those decisions had been entrusted to the LMC and would be valid.

## **Ground 2(ii)**

57. Under this ground, DFC does say that even if (as I have held) rule 19 did give the LMC power to make decisions on promotion and relegation, its decisions were based on irrational criteria and should be set aside.

58. As far as the promotion of Rosemount Rec is concerned, I see nothing irrational whatever in the LMC's decision. As I read DFC's submissions, that is not the focus of its attack here anyway. DFC's basic submission in its Statement of Claim is:

"The LMC applied an irrational criteria. The reasons given for deciding to promote only one team, by the AC, was that Rosemount Rec had an "unassailable lead". There were a number of other teams who were both mathematically certain of promotion and mathematically certain of relegation, yet despite this reality the LMC did not promote, or relegate those sides. If the LMC are to apply a standard, then the same objective standard must be equally applied."

59. I accept that very last point. There is a well-established principle that the exercise of powers and discretion must be consistent and must treat like cases in a like way: Differences in outcome must be justified by differences between the cases.

60. That basic submission was fleshed out in a further written submission from DFC, referring to three cases:

- (1) Bangor Swifts, in the same section 1C as Rosemount Rec, who were mathematically certain of relegation having completed all 24 of their fixtures and ending up with only eight points.
- (2) Drumaness Mills FC in the Premier Division, who had played and lost 23 of their scheduled 24 games so were also mathematically certain to end up bottom and be relegated.

(3) Belfast Celtic YM, who were mathematically certain to win Division 3F but were not promoted by the LMC.

61. The IFA make the point that the LMC's decision that there would be no relegation before the end of the 2020-21 season was not part of this arbitration. They are right about that, and the same applies to the question of promotion of Belfast Celtic YM. None of those questions falls within the scope of the agreed issues set out in the Arbitration Agreement (and they are clearly no part of the additional issue). I also note that the position of those three clubs was not raised in any of the three rounds of DFC's submissions on its appeal to the IFA against the LMC Decision. It is also not mentioned in the July Decision, except just arguably in a tangential way which does not need further consideration.
62. The IFA has submitted brief answers on the position of all three clubs and they do raise points of substance. I am not saying that DFC would have succeeded on this submission if it had been within the scope of the arbitration; nor that it would have failed. But there are quite enough questions which *are* within the scope of this arbitration without my going into a question which is not.
63. My conclusion on ground 2(ii) is that DFC has established no reason for me to interfere with the July Decision.

**Ground 3 (the "Additional Issue")**

64. My directions issued on 19 August 2020 included:
2. The Arbitrator will invite the League Management Committee of the Northern Amateur Football League to make representations on the additional issue mentioned in paragraph 2.1 of the Arbitration Agreement (noting that the Arbitrator nevertheless will still have to determine as a preliminary issue whether he has jurisdiction to decide the additional issue).



3. The Arbitrator may state either before or in his final decision whether he has jurisdiction to determine the additional issue and, if so, his decision on the additional issue will be included in his final decision.
65. Through Sport Resolutions I did invite the LMC to make representations but the Director of the NAFL replied by email on 8 September 2020 that the NAFL did not wish to make any submissions.
66. Given that there was no practical benefit to the parties in my deciding the jurisdiction question before the main hearing, I decided to deal with the question of jurisdiction in this final award, after hearing oral submissions.
67. The Arbitration Agreement correctly identifies paragraph 37 of the July Decision as a key issue. The first questions which arise are:
- (1) What did the AC decide in paragraph 37 on the ending of the season?
  - (2) Whatever it did decide, was that decision correct?
68. Paragraph 37 stated:
- “A narrow interpretation of the league rules will not assist the functioning of the league in the current crisis, and the AC is more than satisfied that Rule 19 was not designed to be narrowly interpreted. NAFL had every reason to look at Rule 19 when faced with how to determine the end of the season, and this very crisis is the situation for which it is designed. The appellant spends much time focussing on leaving the season unfinished, which is unacceptable to the appellant. The AC is not persuaded by this line of argument. The decision made by NAFL to promote Rosemount Rec and amend relegation provisions for 2020/2021, brings the season to an end, no matter how it is phrased.”
69. I have set out paragraph 37 in full. Although the first two sentences express the part of the July Decision on which I have already stated my conclusions under ground 2(i), it is important to see

the context of the pronouncement in the last sentence. It is that sentence which is in point for the additional issue.

70. DFC say that the last sentence of paragraph 37 expressed a decision of the Appeal Board that the LMC Decision had ended the NAFL 2020-21 Cup competitions as well as its league competitions. In practical terms, that is the crucial issue for DFC. As far as the league competitions were concerned, as an NAFL member club DFC is entitled to have the NAFL rules correctly interpreted and applied. However, when matches were suspended after 7 March 2020 neither of DFC's teams in the NAFL leagues still had any hope of promotion or was at any risk of relegation. For 2020-21 the league did not really matter any more to DFC. It was the Cochrane Corry Cup which did matter. DFC was already in the semi-final so was naturally keen for that competition to continue.
71. The parties agree that there is no single, simple meaning of the "season"; and that there is a distinction between the league season and the cup season. That is obviously right and would be well understood by anybody involved or at all seriously interested in football.
72. So what was the Appeal Board saying when it pronounced that the LMC Decision had brought the season to an end? Did the Appeal Board mean (i) just the NAFL league season, or was it saying (ii) that the LMC Decision had also ended the cup competitions, including the Cochrane Corry Cup? The IFA says it was (i). DFC says it was (ii), but that the Appeal Board was wrong on that point.
73. Some additional context is given by paragraph 25 of the July Decision:

The appellant forms the view that both league and cups remain unfinished, and with the ability to play football from 17<sup>th</sup> July 2020, the respondent must act to conclude the competitions. However, the appellant does make it clear that this is not a matter for the AC to determine, but rather for the respondent [NAFL] to deal with after this AC has quashed its decision on promotion and relegation, and more properly dealt with via Rule 8.1 at the AGM.

74. However, once the Appeal Board had decided *not* to quash the LMC Decision, DFC's discouragement of the Appeal Board's making a determination about the end of the season had lost much if not all of its force. Although it is was not essential for the Appeal Board to make any such determination, it is easy to see why it did add that last sentence to paragraph 37. It was implicit in recommendation (b), adopted by the LMC as set out in paragraph 18 above, that both the League Emergency Committee and the LMC regarded the league season as already ended. If it had not been, there would have been no need for a decision about Rosemount Rec on 7 May, as everyone could have simply waited to see when and how the season did end.

75. It is clear to me, however, that in that last sentence in paragraph 37 the AC was only talking about the league season. The AC was alive to the distinction between league and cup competitions, as shown by paragraph 25 of its decision, and the whole thrust of paragraph 37 was that it was dealing with the league.

76. The irony is that this correct view of paragraph 37 was clearly asserted by Mr Bryson in a letter to the NAFL dated 16 July 2020, which included these two observations:

- The 'independent' IFA Appeals Panel issued a 'judgment' this morning (16 July) in relation to the curtailment of the league season.
- The aforementioned decision expressly did not deal with Cup competitions.

77. The main point of Mr Bryson's letter was that he was pressing for a decision from the NAFL on whether the Cup competitions would be continued to a finish (which was obviously DFC's wish) or be declared void.

78. In response Mr Bryson received a letter from the NAFL secretary dated 22 July 2020 saying:

Thank you for your correspondence dated 16 July 2020 ref Cochrane Corry Cup. The League refer you to the IFA Appeals Committee decision dated 15 July 2020 and refer you in particular to paragraph 37 of same.

79. By the time he received that response from the NAFL, Mr Bryson had already submitted DFC's Arbitration Referral dated 17 July 2020, which in paragraph 13(c) described one error of law in the July Decision as:

The Appeals Committee erred in finding that a decision specific to one division (the decision on Rosemount Rec) amounted to a decision to end the league season and all Cup Competitions.

That remained DFC's position throughout this arbitration, although it was inconsistent with Mr Bryson's position in his 16 July 2020 letter.

80. However, that change of position is not itself significant and it was deftly handled by Mr Bryson at the hearing on 16 September 2020. The important point is that, as I have held in paragraph 75 above, the correct position was the one reflected in Mr Bryson's 16 July letter. There was accordingly no error of law by the Appeals Committee as alleged in paragraph 13(c) of the Arbitration Referral.
81. Mr Shaw's submission for the IFA was that such a conclusion would mean that I did not have jurisdiction to decide the additional issue, because on a proper understanding of the July Decision, particularly paragraph 37, the Appeal Board had not made a decision to the effect alleged by DFC.
82. However, although the practical result is the same in the end, I find that I do have jurisdiction. Unlike IFA Article 13, which requires a *decision* before there can be an appeal, the position on arbitration is different. IFA Article 3 provides for arbitration:

"In the event that there shall arise a dispute or difference between two or more members of the [IFA] (which shall include for the purposes of this article the [IFA])."

This arbitration reference was under IFA Article 3. There is unquestionably a dispute or difference between the parties on the additional issue of whether the Appeals Committee fell into error in the last sentence of paragraph 37. It is also precisely the point identified in paragraph 13(c) of the Arbitration Referral.

83. Mr Shaw submitted that what DFC should have done was challenge the decision of the NAFL reflected in its 22 July 2020 letter, rather than the point in the July Decision on which the NAFL was relying. It may be that the 22 July 2020 did amount to notification of an NAFL decision which was open to challenge by DFC. I express no view, as that is not a matter before me. What is before me is a dispute or difference relating to paragraph 37 of the July Decision, i.e. the additional issue. On the preliminary issue I have decided that I do have jurisdiction over the additional issue. My decision on the additional issue itself is then in favour of the respondent IFA, as stated in paragraph 80 above.
84. I do have some sympathy for DFC's and Mr Bryson position. The crucial error lay not in paragraph 37 of the July Decision but in the NAFL's apparent misunderstanding and misapplication of that paragraph on which it based its response in its letter dated 22 July 2020. Although I have reached a firm conclusion, it is easy to see how that last sentence of paragraph 37 could have been misunderstood. Nevertheless, if the NAFL decided to curtail the 2019-20 Cochrane Corry Cup competition in reliance on paragraph 37 of the July Decision, that was a flawed basis for such a decision. However, as explained in the previous paragraph, that is not a matter for any ruling by me in this arbitration.

#### **Ground 4**

85. This ground contains the four separate lines of attack noted in paragraph 40 above. They are all put forward in support of DFC's contention that the July Decision should be set aside on the ground of apparent bias of the Appeal Board which heard and decided the appeal.
86. There is no allegation of actual bias. On apparent bias, there is no dispute between the parties on the principles. The question, as stated in clear and simple terms by Lord Hope in the UK Supreme Court in *Porter v Magill* [2002] 2 AC 357, is:

whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased

I add only that the principle is to be applied in context. That notional observer in this case is taken to be reasonably informed about Northern Ireland football and its basic organisation— not

in detail or as an insider, but as an ordinary follower of Northern Ireland football who would know, for example, that the IFA was the governing body on the national level.

87. Mr Bryson correctly states the two-stage approach which I should follow: first, identify the facts giving rise to the apparent bias; secondly, apply the test set out in *Porter v Magill* (above). That is what I now do on each of his four lines of attack.

88. In this particular part of my award, it is well to be rigorous about the terminology. The July Decision was issued in the name of the IFA Appeals Committee and was headed and then described in paragraph 1 as an appeal before the Appeals Committee. However, the strict position is that under IFA Article 14:

- There is an Appeals Committee of 12 members, six of whom are appointed by the IFA Council (a wider body than the IFA Board) and six by the IFA Board. From the six IFA Board appointees, that Board appoints one member – who must be legally qualified – as Chairman (sic) of the Appeals Committee. Throughout these events that legally qualified member was Ms Eileen Larkin.
- On receipt of an appeal, the IFA Chief Executive forwards it to the Chairman of the Appeals Committee, who appoints an *appeal board*, consisting of at least three members of the Appeals Committee, to hear and decide that appeal.

It is clear that the Appeals Committee as a whole has no power to interfere with the decision of the appeal board appointed for a particular case. Under Article 14.8:

Upon conclusion of each appeal the appeal board shall submit a written report on the outcome of the appeal to the Appeals Committee and Football Committee.

I refer to the appeal board in this case as **the Appeal Board**.

Point 4(i): The Manner by which the AC was appointed

89. That distinction between the Appeals Committee and the Appeal Board is particularly important to keep in mind on DFC's point (i) under this ground 4. The DFC Statement of Claim heads this point "The Manner by which the AC was appointed" as a ground of apparent bias.
90. The essential points made here by DFC are:
- (1) The LMC which took the NAFL Decision on 7 May 2020 included members of the IFA Board, among them the IFA President and Vice-President.
  - (2) DFC's appeal was to an Appeals Committee which had been appointed by IFA bodies (including the IFA Board) which themselves included prominent members of the LMC which had made the original impugned decision.
  - (3) Those charged with adjudicating DFC's appeal owed their positions to those who appointed them. (I note here that DFC originally alleged that these positions were remunerated but now accepts that they are not and that the members of the Appeal Board receive no remuneration for their work as members of the Appeals Committee or on particular cases. Whether that would have made any difference anyway is another matter which I do not need to consider.)
91. I note that IFA Article 14.1 expressly prohibits any IFA Board member from being on the Appeals Committee and the six Appeals Committee members appointed by the Board (who will include the Chairman) cannot be members of any club playing football in Northern Ireland. There is also in Article 14.5 an express prohibition of any person sitting on an appeal which involves himself of any club in which he has an interest.
92. It is to all those facts that I apply the test from *Porter v Magill* stated in paragraph 86 above.
93. My firm view is that on those facts the fair-minded and reasonably informed observer, as described in paragraph 86 above, would not see any real possibility that the Appeal Board had been biased. I reach that conclusion just on the facts presented by DFC, without any need for

recourse to the brief information provided by the respondent IFA about the individual members of the Appeal Board (although that information would reinforce my view). An overlap of functions, as outlined by DFC and summarised in paragraph 90 above, is inevitable in sporting organisations such as the IFA. They could hardly work efficiently without those connections. But there are quite sufficient lines drawn between the executive organs of the IFA and the members of appeal boards to allay any concerns about bias in the judicial decisions of those appeal boards. The IFA Board has no control over the appointment of the appeal board for any case. I do not believe that the notional fair-minded and reasonably informed observer would be in the least troubled by the fact that appeal board members knew that future renewed appointments to the Appeals Committee were in the hands of the IFA Board. The notional observer can safely be assumed to have enough confidence in appointees to appeal boards and the system of appointments not to see that as a problem.

94. This is not at all the same position as in the Pinochet case cited by Mr Bryson: *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte* (No 3) [2000] 1 AC 147. That was a case where Lord Hoffmann, a member of the Supreme Court sitting on the appeal, had been a director of an Amnesty International company where Amnesty International was an intervener in the appeal (and his wife worked for Amnesty International). That was a close connection with a party (treating an intervener as a party), which is not a feature of the case before me.
95. There is an additional point which is also central to Point 4(ii) under this ground but can conveniently be dealt with here: By IFA Article 21, all members of the Appeals Committee are bound by the IFA Code of Conduct, which states a principle of Selflessness which requires that all members should:

“take decisions based solely on the interests of the IFA and should not be influenced by any benefit for yourself or anyone else”

96. Mr Bryson submits that an appeal board member who took a decision in favour of a club and detrimental to the IFA would be in breach of this duty. He or she would then be liable to punishment for that breach and at risk of not being reappointed to the Appeals Committee. I



accept that if he were correct in that submission, the conflict of interest would be obvious and there would be a clear apparent, if not also actual, bias.

97. But it is not correct. I reject that submission unhesitatingly on two grounds, either of which is enough on its own:

- First, that provision in the Code of Conduct cannot reasonably be understood as requiring a member of an appeal board to depart from the ordinary principles of fair and independent justice.
- Secondly, departure from those principles could not be in the interests of the IFA anyway, whose integrity and standing as the governing body for football in Northern Ireland would be severely damaged by such an overt bias by its judicial organs.

I have no doubt whatever that this is exactly how it would be seen by all the members of the Appeal Board in this case (and any other IFA appeal board). It follows that they would have had no concern whatever about jeopardising their positions on the Appeals Committee by reaching an unbiased and independent decision in the proper way. That is also how the fair-minded and informed observer would see it.

Point 4(ii): The requirement to take all decisions solely on the interests of the IFA

98. I have dealt with the question of the IFA Code of Conduct in paragraphs 95 to 97 above and there is nothing to add here.

99. Although DFC's heading of this point uses the wording of the IFA Code of Conduct, it is a different submission from point 4(i). Under this separate point, DFC relies on a letter sent on 19 August 2020 by the IFA Head of the Chief Executive's Office Mr William Campbell to another club Ardglass FC, who had also challenged the independence of the IFA Appeals Committee. Mr Campbell wrote that the Appeals Committee was independently selected and chaired by legally qualified personnel and there were no grounds whatsoever to challenge the panel's independence.

100. I have already dealt with the question of independence and appointment and selection of the Appeals Committee and IFA appeal boards and there is nothing to add here.
101. DFC attach significance to the fact that it was Mr Campbell who was defending the independence of the Appeals Committee, suggesting that it amounted to a link which cast doubt on that independence. I consider that suggestion far-fetched. Although I have not been provided with the Ardglass FC email to which Mr Campbell was responding, I see nothing in the least inappropriate in his being the person to have responded on the question of independence.
102. DFC adds that Mr Campbell also acts as secretary to the Appeals Committee, suggesting that this is a further compromise of the independence of the Appeals Committee. The IFA Articles say nothing about his acting as secretary to the Appeals Committee. Nevertheless, accepting that he does in practice, I still do not see that as affecting the independence of the Appeals Committee or any appeal board hearing a particular case. There is no evidence or any other indication whatever that Mr Campbell has had any involvement in the deliberations or decision of the Appeal Board in this case or any other IFA appeal board.
103. Accordingly, I dismiss this ground 4(ii).

Point 4(iii): The decision to 'pause' proceedings to facilitate the involvement of the IFA Boards

104. DFC relies on the following matters in support of this point:
- (1) On 29 May 2020 the NAFL sent an open letter to the IFA Board and its Football Committee asking their views on a number of questions. DFC say that the Appeals Committee permitted the NAFL to send that letter – despite members of the LMC being members of the IFA Board – asking the IFA to answer questions of law properly before the Appeals Committee at the relevant time.

(2) On that same day 29 May, the DFC submitted to the Appeals Committee a written objection to that open letter, in which DFC complained that the NAFL was asking the IFA Board to answer questions of law (procedure and fact) which were clearly within the ambit of its appeal and under the jurisdiction of “this Panel”. DFC described that as “a blatant effort to remove jurisdiction over questions of the exercise of the [NAFL’s] powers from the independent Panel and instead place it within the ambit of the IFA Board”.

(3) By an email to DFC on 3 June 2020, Mr Campbell wrote: “The Appeals Board are now awaiting the IFA responding to the questions posed by the NAFL in their ‘open letter’”. (I note here again the confusion of terminology, as no appeal board had yet been appointed.)

(4) On 8 June 2020 (or it may have been 3 June, as this letter is undated) the IFA Chief Executive Mr Patrick Nelson replied on behalf of the IFA to that open letter. He gave the IFA’s view on a number of points. Other points he declined to answer, saying they were matters for the NAFL.

105. DFC’s comment on NAFL’s 29 May letter is an oversimplification so far as it suggests that it was dealing specifically with the questions of law raised in the appeal. It set out a wider-ranging series of questions. They were not specifically directed to DFC’s appeal, though some clearly did relate to issues dealt with by the LMC on 7 May. There was no reason why the IFA, as the governing body for Northern Ireland football, should not express its views on the questions raised by the NAFL.

106. DFC also attaches importance to an email sent to Mr Campbell on 1 June 2020 by Ms Eileen Larkin as the chair of the Appeals Committee, in which she wrote:

Dear William

The Appeal Board has conferred and a decision has been made to allow the Respondents [NAFL] the opportunity to obtain a reply from the IFA to questions they posed, and which are now the subject of social media coverage by the Appellant [DFC].

We would like to take this opportunity to remind all parties to the case and any stakeholder, that in order to make a fully informed and robust independent decision the Appeal Board must have all the pertinent facts placed before them.

Unfortunately, at the moment the above named case is incomplete and not ready to be dealt with and therefore will be postponed.

We anticipate the IFA will avail of legal advice on the questions posed by the Respondent (NAFL) and seek legal guidance on the Appellant conduct of their case via the medium of social media.

Furthermore, as rules 14(2) IFA Articles of Association state, the Appellant has to exhaust all procedures available unless satisfactory grounds can be show for not doing so. In light of the IFA Football Committee's decision to extend the playing season until 31<sup>st</sup> July 2020 the Appeal Board seek legal confirmation they are the appropriate venue in the first instance for this appeal.

On the basis of the aforementioned, tonight's scheduled Teams preliminary meeting will not be necessary and will be rescheduled in due course.

IFA Appeal Board

107. Noting the repeated confusion of terminology, with Ms Larkin's email expressed as written on behalf of the IFA Appeal Board, I have set her email out in full because it is used in DFC's further written submissions dated 8 September 2020 to support DFC's contention that, as Mr Bryson put it, the Appeals Committee was prepared to "sub-contract" its decision-making on a core question to the IFA Board. There is nothing which supports that contention. The questions in the appeal were all properly left for decision by the Appeal Board. DFC had fully taken the opportunity to make submissions to the Appeal Board, with whatever supporting material it thought fit. There is nothing to suggest that the appointed members of the Appeal Board did anything other than properly consider all the material before them and make the July Decision themselves without any outside influence.
108. There are certainly criticisms which may be made of Ms Larkin's 1 June 2020 email. While there was clearly a lot going on which has not found its way into evidence in this arbitration, it is hard to see the justification for the delay from DFC's presentation of its appeal on 9 May 2020

to the appointment of the Appeal Board on 2 July 2020. Although I accept that the Appeals Committee needs to ensure that a case is in some basic order before passing it into the hands of an Appeals Board, that preparatory phase should be no longer than strictly necessary. It would have been better for the Appeals Committee to respond to DFC's 29 May 2020 objections by getting on with the appointment of an appeal board and letting it take over the handling of the case, including the task of ensuring that it had all the pertinent facts.

109. I have not referred to all the detailed communications on this issue or to every point in the submissions, although I have taken them all into account. My conclusion is that despite my criticisms in the previous paragraph, there was nothing which the fair-minded and informed observer would see as raising the possibility that there was any improper influence on the presentation of the case to the Appeal Board, its handling of the case or its decision. The Appeals Committee's case management could have been improved by an earlier appointment of the Appeals Board but I do not consider that this deficiency would have led the fair-minded and informed observer to see a real possibility of bias in the Appeals Committee once appointed.

110. Accordingly, I reject ground 4(iii) as a basis of apparent bias.

Point 4(iv): The anonymity of the Appeal Board as the decision-making panel.

111. This point can be quickly dealt with. Although it is best practice to inform the parties as soon as possible of the composition and identities of members of the tribunal, the simple fact is that when it was not done here, DFC never even asked. I am sure that if DFC had asked, it would have been told straight away.

112. The fact that DFC did not know the identities of all three Appeal Board members until after the decision does not amount to any indication at all of apparent bias, or any other denial of natural justice by the Appeal Board.

113. Accordingly, I reject this ground 4(iv).

## Decision on this arbitration

114. My overall conclusion is that there was no error of law in the 15 July 2020 decision of the Appeal Board, whether on the substantive legal questions or on the fairness of the process. Despite DFC's numerous objections, it was given a fair hearing and the decision was correct in law.
115. All the applicant DFC's claims for relief are dismissed.

## Costs

116. Paragraph 7 of the Arbitration Agreement states:

As per Article 3.2 of the Irish Football Association Articles of Association and its reference to arbitration costs, the party losing the hearing will pay the full costs of the hearing (including, when appropriate, both parties' legal costs).

117. The applicant Donaghadee FC is plainly the party losing the hearing.
118. I invited the parties to say if either of them contended that the words "when appropriate" gave me any discretion over legal costs; and if I did have any discretion, to make submissions on its exercise.
119. The IFA has submitted that I do not have discretion and that the losing party must pay the full costs of the hearing including the other party's legal costs. DFC has submitted that I do have discretion and that, if it has lost, I should make no order for DFC to pay the IFA's legal costs.
120. The words "when appropriate" do appear on a simple reading to imply situations where it would be *inappropriate* to include the other parties' legal costs in the costs to be paid by the losing party; and that in turn would imply a discretion in the arbitrator. However, looking at the whole of paragraph 7 (and the Article 3.2 to which it accurately refers), I understand the words "when appropriate" as meaning "where applicable", i.e. where there *are* legal costs incurred by the parties (which there were in the case of the IFA here, although Mr Bryson has represented the DFC throughout for no fee). Accordingly, I do not read paragraph 7 of the Arbitration Agreement as giving me any discretion to relieve DFC of the payment of the IFA's legal costs.

121. Even if that were wrong, and I had been left a discretion, I should have exercised it anyway by ordering DFC to pay the IFA's legal costs. DFC has failed on every one of its grounds of challenge to the decision of the Appeal Board. I have considered the parties' submissions and the fair course would be that DFC should pay those costs as well as the other costs of hearing. The only point on which DFC has succeeded is the preliminary issue of jurisdiction over the additional issue, but that would not have led me to adjust that discretionary costs order. The preliminary issue added only a tiny amount of extra work and time and DFC then lost on the additional issue anyway.
122. I order the applicant Donaghadee Football Club to pay the full costs of the hearing of this arbitration including the legal costs of the respondent Irish Football Association.

This award is issued in London, England, on 24 September 2020.



**Nicholas Stewart QC**

**Sole Arbitrator**

1 Salisbury Square London EC4Y 8AE [resolve@sportresolutions.co.uk](mailto:resolve@sportresolutions.co.uk) 020 7036 1966

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