**The Irish Football Association Appeals Board**

**In the matter of an Appeal by PSNI FC**

**Against the Decision of the**

**Northern Ireland Football League**

**Made on 6 October 2020**

**Appeal Board –** Carley Shields (Chair), Adam Wood and Ian Beggs

**Introduction:**

This is an appeal before the Appeals Board pursuant to Article 14 of the Irish Football Association (IFA) Articles of Association by PSNI FC (PSNI) against a decision of the Northern Ireland Football League (NIFL) to use a points per game model to determine the outcome of the 2019/20 season.

In light of the ongoing pandemic the Appeals Board decided that it would be appropriate to deal with the matter by way of paper submissions.

The decision taken by NIFL in June 2020 was in respect of the curtailment of three different leagues, the Premiership, the Championship and the Premier Intermediate League. PSNI is a member club of NIFL and during this season participated in the Championship.

On 13 March 2020 the IFA Board issued a statement to confirm that there would be a suspension of all football in Northern Ireland until 4 April 2020 due to the Covid-19 outbreak. It was indicated that this decision would be kept under review. The suspension was subsequently extended and on 25 May 2020 the IFA Football Committee confirmed that the 2019/20 season would be extended until 31 July 2020.

Following the IFA announcement on 13 March 2020 NIFL held meetings of the Premiership, Championship and Premier Intermediate League Management Committees on 18 March 2020 to update all clubs following the suspension of the season. Following these discussions the NIFL Board set up an internal Covid-19 Steering Group to assess the impact of Covid-19 and the consequences for all clubs. The Steering Group was asked to examine relevant calendar issues and devise solutions to allow for the resumption and conclusion of the 2019/20 season in a safe manner.

**Timing of Appeal:**

The appeal was submitted by PSNI on 30 June 2020. In its initial submission they stated they had 17 grounds of appeal (to be discussed further in due course) and a request was made for discovery of all documents relevant to the decision. A response was received from NIFL on 7 July 2020, but no documents were provided, except those referred to by hyperlink in the body of the submissions. On 13 July 2020 PSNI submitted a formal request for discovery, seeking *'discovery of all documents which are relevant to the decision which has been made including, but not limited to, minutes of any committee or Board meetings, correspondence, emails, attendance notes, etc.'* This request for discovery was rejected by the Appeal Board on 11 August 2020 as it was deemed to be too generic in nature and not specific enough to establish its relevance.

A further written request for discovery was made by PSNI on 19 August 2020. To the credit of PSNI, in an effort to focus matters, it reviewed its grounds of appeal and having considered NIFL's response to same, consequently abandoned points 2, 3 and 15 of its grounds of appeal. The Appeal Board considered the arguments of PSNI and the responses of NIFL to the further request for discovery and on 2 September 2020 confirmed that we saw no reason why NIFL should not provide the documents as set out in the Schedule to PSNI’s request dated 19 August 2020, and if NIFL should not have the requested documents then they should simply state that is the case in response.

On 9 September 2020 NIFL provided their response to the request for discovery and a link with access to the relevant documents. We understand that the link to the documents was sent to an incorrect PSNI email address on 10 September 2020 by the IFA. This was indeed unfortunate but we are advised that once this error was discovered the link was then sent to a new email address on 23 September 2020. PSNI were then afforded time to review the documents and provide their final submissions, which they did on 2 October 2020.

We note that PSNI has considerable concerns about how the appeal has been handled to date. We do not, however, accept these concerns. The Appeal Board has managed the appeal to date as expeditiously as possible in the circumstances. With regard to the Institute appeal, the Appeal Board was within its rights to progress that appeal separately, regardless as to whether or not there were common issues arising, as each appeal ought to be determined on its own individual facts. In any event we do not believe that any of the concerns outlined in the PSNI submission in relation to alleged delay on the part of the Appeal Board have a material bearing on this appeal and therefore do not propose to comment on same any further.

**PSNI Submissions:**

PSNI filed their appeal on 30 June 2020 and stated their grounds of appeal to be as follows:

1. The decision is in breach of the principle of sporting integrity;
2. The Appellant is doubly prejudiced by the decision as not only does the PPG formula see it relegated but the decision has led to another club, Loughgall, dropping an appeal (as there were not to be play offs) in relation to the alleged fielding of an ineligible player against Knockbreda which saw Knockbreda awarded a 3-0 win. If that appeal had been proceeded with and was successful then PSNI would have finished one point above Knockbreda and Knockbreda would be relegated.
3. The Appellant understands that there may be other outstanding disciplinary issues from this Championship season (specifically in respect of Ballinamallard) and these will require to be dealt with before any final placings are determined.
4. The Respondent failed to have proper regard to the submissions made by the Appellant regarding how the season should be ended;
5. The Respondent has failed to adequately consult with member clubs, particularly those below premiership level, before reaching its decision;
6. The Respondent’s decision breaches its own Articles of Association;
7. The Respondent’s decision breaches the NIFL Championship Rules & Regulations 2019/20;
8. The decision made is ultra vires. It is not clear the basis on which it is asserted that the Respondent has the power to take the decision it has made;
9. Conversely, if the Respondent does contend that it has discretionary power to take the decision it has fettered its discretion by failing to adequately consider a range of options;
10. The decision making was procedurally unfair. There is an appearance of bias given the make-up of the Respondent’s Board and various committees involved in the decision making process.
11. The Respondent has failed to manage potential conflicts of interest in the decision making process;
12. The Respondent has breached the legitimate expectation of the member clubs that their views, particularly with respect to relegation, would be taken into account;
13. The Respondent did not provide adequate reasons for the decision to the Appellant;
14. The Respondent failed to conduct an adequate enquiry before reaching its decision;
15. The Respondent has failed to adequately consider that the NI executive has now provided for a safe return to football from 17 July 2020;
16. The decision of the Respondent was unreasonable in all the circumstances;
17. The use of the chosen mathematical formula relying on PPG to determine final league standings was an academic exercise as it did not change the positions of any club (bar one) and did not allow for consideration of home games or relative strength of opposition.

As stated above, in their further written request for discovery dated 19 August 2020 PSNI helpfully confirmed that they were abandoning their grounds of appeal at points 2, 3 and 15 above. The Appeal Board need not therefore concern themselves with same.

Following receipt of discovery from NIFL, PSNI provided the Appeal Board with further submissions, setting out in more detail their grounds of appeal, to which we will refer to again below.

In conclusion, PSNI contend that the appropriate course of action for the Appeal Board, given the length of time until the commencement of the new season, would be to direct NIFL to cancel the relegation of PSNI.

**NIFL Submissions:**

For ease of reference we will use the same numbering as the grounds of appeal stated above, omitting the NIFL response to grounds 2, 3 and 15.

1. NIFL denies there has been a breach of the principle of sporting integrity. It states that sporting integrity was one of the three key principles which was considered by NIFL and applied throughout the decision making process.
2. NIFL state that the submissions from PSNI were considered alongside those received from other Championship clubs and that it made its decision after taking all relevant factors and considerations into account.
3. In its submissions NIFL states that it has set out the background and chronology of the steps taken by NIFL, its Board and the League Management Committees throughout the decision making process.
4. NIFL argue that this allegation is wholly incorrect and is disputed. NIFL relies on Article 50 of the Board’s Articles of Association.
5. NIFL argue that this ground of challenge is unfounded and incorrect. It states that the Board has the power under Rule 42 of the Championship Rules & Regulations Season 2019/20 to *'at any time during the present season implement and make changes to the league format and structure which would then become affective prior to the commencement of the following playing season and nothing in these rules and regulations will so prevent the Board from introducing and formulating any such structure provided that the Board hereby undertakes to enter into a full consultation exercise with the member clubs of the league before any such changes are made'.* NIFL say that it is clear from their submissions that it entered into a full consultation exercise with the clubs before making any changes.
6. NIFL rely on Article 50 of the Board’s Articles of Association and Rule 42 of the Championship Rules & Regulations Season 2019/20.
7. NIFL explain that a Steering Group was set up on 18 March 2020 and its objectives were (i) to assess the impact of Covid-19 and the consequences of the pandemic for clubs and (ii) examine relevant calendar issues and devise solutions in order to allow for the resumption and conclusion of the season. The Steering Group carried out research and due diligence and clubs were invited to engage in a consultation process. NIFL go on to state that a range of options were considered.
8. NIFL deny this allegation. The Steering Group included an independent NIFL director and an additional independent member. NIFL was conscious of ensuring that there was impartiality with tin the Steering Group.
9. The Steering Group included an independent NIFL director and an additional independent member. NIFL was conscious of ensuring that there was impartiality withtin the Steering Group. Further, prior to making any decision on 22 June 2020, the NIFL Board agreed that all members should declare any conflicts of interest and should not participate in any discussion on their respective division. NIFL also explain that the statement issued by the Board on 26 June 2020 confirmed that the task of identifying and engaging the independent third party that was to be instructed to apply the mathematical model was carried out by NIFL's two independent Board members, in conjunction with NIFL's Managing Director.
10. NIFL deny this allegation. NIFL say the views of the member clubs were taken into account at all stages of the process and that proposals to avoid automatic relegation were considered and assessed. NIFL state that the majority of Championship clubs voted in favour of curtailing the season with no further matches and using a mathematical model to determine final positions.
11. NIFL deny this allegation and state that as part of the presentation to member clubs on 9 June 2020 NIFL explained how it had decided upon the recommendations being put forward.
12. NIFL deny this allegation and state that their submission has explained the various steps that were taken by the Board, the Steering Group and the League Management Committee in reaching their decision. They have set out the various stages of the consultation process, highlighting the opportunities afforded to clubs to provide feedback, comments and input into the process.
13. NIFL deny this ground and state that they took great care throughout its decision making process to ensure that all clubs were treated equally, and to ensure that all possible options and alternatives were investigated, researched and considered to ensure that a balanced and proportionate decision was reached.
14. NIFL explain that an independent body named 21st Club was appointed by two independent directors of the NIFL Board, and instructed to recommend an appropriate model to determine the final league positions for the 2019/20 season. NIFL did not make the decision in respect of the model that was used, that was the independent provider's decision.

In conclusion, NIFL considers that there is no merit in the appeal submitted by PSNI and believe that all grounds of appeal are unfounded. NIFL asks the Appeal Board to dismiss the appeal and that the decisions of NIFL should be upheld.

**Discussion:**

The Appeal Board has considered in full the detailed submissions of both PSNI and NIFL, and given the number of grounds of appeal, feel that in fairness to both parties it should give their views on each ground of appeal separately.

**1. Sporting Integrity:**

Sporting integrity can be defined as the ethics and values which promote confidence in sports, including fair and honest performances, which is not affected or influenced by bias, and it was one of the three key principles which NIFL considered and applied throughout the decision making process. The Appeal Board accepts that it can be seen from the disclosed documents that in the options appraisal it is noted that in relation to the mathematical model option that sporting integrity (is/could be) significantly compromised. However, we do not accept that sporting integrity was compromised.

PSNI argue that whilst sporting integrity does not have any formal definition, it relates to ensuring that rules are followed, that the outcome mirrors what would happen on the pitch insofar as possible and that a 'least harm' approach is adopted. It goes on to argue that this would have been ensured by a 'no relegation' model advocated by the club and others.

It can be seen from the correspondence submitted by the Premiership clubs and the minutes of their management committee meetings how difficult they found it to put forward a solution that all clubs were in agreement with, and in the end no agreement could be reached by the Premiership Management Committee.

It can also be seen from the submissions of NIFL that their preferred option would have been to return to conclude the season in a condensed 33 game format, however in light of the three key principles agreed following the meetings on 11 May 2020 (Protecting the health and well-being of all individuals in line with government guidance and medical advice; ensuring the financial sustainability of member clubs; and preserving the sporting integrity of the leagues), it was decided by NIFL that the most reasonable, proportionate, fair and appropriate way of curtailing the Championship was to end the season immediately and adopt a mathematical model to determine final league placings.

What the above goes to demonstrate is that there was no simple, one size fits all answer. The Appeal Board is satisfied that there was no breach of the principle of sporting integrity and are further satisfied that NIFL did all within its power to ensure that was the case.

**4. Failing to have proper regard to submissions made & 5. Failing to consult adequately & 14. Failure to conduct an adequate enquiry**

PSNI state that on a fair reading of the discovery provided it does not suggest any real engagement with the substance of the submissions of the club, and the Championship and the PIL clubs being an afterthought.

The Appeal Board does not accept that contention. It is clear from the discovery provided and the detailed submissions of NIFL that due consideration was given to the submissions received from all clubs and that there was adequate consultation. From the outset NIFL openly set out how it would go about finding a solution to the problem that Covid-19 had beset upon it. Indeed meetings took place between member clubs and management committees during the week commencing 11 May 2020 to discuss how to conclude the season. The objectives of those meetings were to provide a forum for representatives from all clubs to communicate and feedback their clubs views to the Steering Group and for the Steering Group to provide member clubs with an update on the work they were carrying out, including providing updates further to its discussions with the European Leagues, the Department for Communities and Sport NI.

On 22 May 2020 NIFL sent an email to all member clubs as well as releasing a statement on its website confirming that NIFL supported member clubs continued desire to conclude the season by playing all remaining fixtures, subject to the considerations of protecting the health of all, ensuring the financial viability of clubs and preserving the sporting integrity of the leagues. NIFL communicated that the Steering Group was to fully appraise the ‘season end’ options and make a recommendation to the NIFL Board by 30 June 2020 and member clubs were advised that the process would include further consultation with the clubs to ensure that all views are considered and clubs were encouraged to provide any feedback or comments.

On 9 June 2020 a presentation was given to member clubs by NIFL via League Management Committee meetings and all clubs were invited to take part. As part of its presentation NIFL advised that

1. The Steering Group had appraised a number of options available to either resume or curtail season 2019/20 against the key principles of health, finance and sporting integrity alongside the impact on the football calendar and timeframe;
2. Throughout the process the Steering Group continued to recognise that the optimum option to ensure sporting integrity would be to conclude all matches in each division; and
3. Taking into consideration a) confirmation that the UEFA deadline for the nomination of clubs for participation in UEFA Club Competitions would be 3 August 2020; b) confirmation that the IFA was exploring a return to football from week commencing 20 July 2020 to conclude the Irish Cup and c) the reluctance of clubs to conclude their remaining fixtures behind closed doors, it was considered that an alternative sporting model should be considered.

It is noted in the submissions of NIFL that the Steering Group was challenged by the options it had appraised because all options impacted upon the three key principles in some way or other.

As is well known, the recommendation was to end the 2019/20 season immediately and develop a mathematical curtailment model to determine final placings. Such a model would be developed and implemented by an independent panel and must ensure as close as possible that sporting merit is achieved as required by UEFA. It was also recommended that promotion and relegation would only apply to the automatic positions with no playoffs.

Following the presentation on 9 June 2020, each club received a recommendation paper and asked to provide their responses by 11 June 2020. It is noted that NIFL received correspondence from various clubs, including PSNI, setting out their views. This correspondence included requests for further consideration to be given to the prospect of play-off games to determine final league positions and some parties queried whether there were other ways to avoid or cancel automatic relegation. There is no evidence before the Appeals Board of member clubs not being afforded the opportunity to make representations.

It is noted in the NIFL submissions that there was a greater of level of discontent emanating from the responses from the Premiership clubs. The Appeal Board notes the time afforded for further proposals from those clubs, and that after further discussions no agreement could be reached by the Premiership Management Committee in relation to a more suitable alternative. This again highlights to the Appeal Board the difficult job faced by NIFL.

The NIFL Board met on 22 June 2020 and acknowledged that no decision could be made to fully satisfy each and every club but it believed that the decision it reached was the fairest in the circumstances. The decision made was as follows:

1. It was confirmed that the current league seasons would end immediately;
2. A mathematical model would be applied to determine the final standings in each division;
3. The mathematical model would be determined by an independent football data consultancy (21st Club) and any model adopted would have to follow best practice across other leagues in Europe and be in accordance with UEFA principles; and
4. In line with previous proposals, there will be titles awarded to the winners of each division and automatic promotion and relegation between divisions. It was noted that this would not be confirmed until the determination to be carried out by the independent consultants was finalised.

This decision was communicated to all clubs on 23 June 2020.

The Appeal Board is satisfied that sufficient meetings and communications took place between member clubs and League Management Committees to discuss and highlight the options for concluding the 2019/20 season and the future of football in light of the pandemic.

It is clear from the submissions of NIFL and the discovery provided that NIFL were concerned to keep its member clubs fully updated and involved in the process. Clubs were encouraged to provide NIFL with any feedback or comments they had in respect of the outcomes of the Management Committee meetings throughout.

**6. Breaching the Articles of Association & 8.The decision was ultra vires**

PSNI argue that Articles 49 & 50 are not a carte blanche for the NIFL Board to take any step the Board desires and that its powers are further limited by Article 8.2.4 which provides that *'the making and adoption of or any amendment to, removal of or waiver of any of the provisions of the Rules which relate to (b) the number of Members and promotion to and relegation from the 'Northern Ireland Football League'’* can only be done with the consent in writing of the special shareholder. We do not believe that any Rules of NIFL were affected as provided for in that provision and therefore reference to same is irrelevant.

The Appeal Board is satisfied that NIFL had the powers to take the decision that was taken pursuant to Article 50 of its Articles of Association. The Appeal Board also notes that in accordance with Article 50.4 members were asked to vote in favour or against the recommendation and in the case of the members of the Championship, a distinct majority of its members and clubs voted in favour of the recommendation.

**7. Breaching the NIFL Championship Rules & Regulations 2019/20**

NIFL rely on Rule 42 as the basis on which it is entitled to make changes to the Rules during a season. PSNI suggest that what is envisaged by this Rule is that the Board may consult on Rule changes during the course of one season with a view to them coming into place for the beginning of the following season. We accept that interpretation is sound, and is what in fact was done. The Appeal Board is satisfied that it is clear from the submissions of NIFL that it entered into a full consultation exercise with the member clubs before making any changes to the league structure and format which would then become affective prior to the commencement of the following season. The decision taken by NIFL was within its power pursuant to Rule 42. It is further noted by the Appeal Board that the majority of the Championship clubs voted to accept NIFL’s recommendations and proposals following the consultation exercise.

**9. NIFL fettered its discretion & 16. The decision was unreasonable in all the circumstances**

PSNI’s fundamental objection is based on their suggestion that by the time any proposal was put to the Championship teams only one option was considered and that NIFL failed to engage with the Championship teams on the range of options available. We do not accept this argument. It is clear that NIFL were conscious of the need to research the matter and consult those affected before exercising its powers. The fact that a Steering Group was created, clubs were invited to engage in a consultation process via their respective leagues and could give feedback or commentary to their respective management committees/NIFL at any point during the process is evidence of this. The Appeal Board is content that the Steering Group considered a number of different options with a view to making a recommendation to the NIFL Board. As is discussed above, in terms of the Premiership numerous options were considered, and not one of those could be agreed between the clubs themselves. The reality is that NIFL were faced with an unenviable task to come up with a solution to the ending of the season that would satisfy all member clubs. The truth of the matter is that was never going to be possible. It is once again noted by the Appeal Board that in terms of the Championship, NIFL made a recommendation based on the factors considered and the majority of clubs voted in favour of that recommendation, which indicated there was a consensus on the way forward.

The Appeal Board is satisfied that NIFL took all steps to ensure fairness and that all clubs were treated equally. We are further satisfied that having been presented with such a difficult task it made sure that all possible options and alternatives were considered, investigated and researched to ensure the fairest and most equitable decision could be reached.

**10. Procedural unfairness/appearance of bias & 11. Conflicts of interest**

The Steering Group initially consisted of five members of whom three are members of the NIFL Board. PSNI say that the possibility of bias is obvious and that there was no consideration of the issue of potential conflicts of interest prior to the meeting of 22 June 2020. This is not accepted by the Appeal Board. The Steering Group also included an independent NIFL director and subsequently an additional independent member. The very fact that there are independent members on the Steering Group is a clear indication that thought was given to ensure that any suggestions of bias and conflicts of interest are eliminated.

In addition the fact that NIFL asked the independent members of the Steering Group to identify and engage the independent third party demonstrates that they were at pains to ensure there would be no suggestions of bias or conflicts of interest in relation to the whole process.

**12. Breach of legitimate expectation**

PSNI contend that they had a legitimate expectation that the views expressed by it about ‘least harm’ and ‘no relegation’ would be taken into account. The Appeal Board agrees with this sentiment, and is convinced that those views were taken into account by NIFL. NIFL confirm in their submissions that proposals to avoid automatic relegation were considered and assessed. Further, when considering all of the correspondence received from the clubs in response to their recommendations, the NIFL Board noted the impact that increasing the number of clubs in the Premiership and the Championship would have on the overall structure of the three divisions and it considered the affect it would have on all three leagues. It is clear from the papers that consideration was given to various ways in which the leagues could be concluded and how it would affect clubs at both the top and bottom of the leagues.

**13. Failure to provide adequate reasons**

PSNI are of the opinion that the reasons as set out in the proposal presented to the Championship Management Committee were insufficient. We cannot accept that ground of appeal. It is clear to the Appeal Board that the clubs were kept fully appraised of the thinking of NIFL around its decision making process. NIFL confirmed that having taken all factors into account, it considered its recommendation to be the fairest, and it specifically referred to guidance that had been received by the IFA following discussions with the Department for Communities. It was made clear that NIFL’s preferred option was to complete the season by playing any outstanding matches, however the guidance received indicated clearly that this would not be possible in practice due to time constraints as well as other considerations around the ‘R’ number, the number of games that could be accommodated and the Regulations in place in response to the Covid-19 pandemic.

**17. The use of the PPG formula was an academic exercise**

PSNI are of the view that the mathematical formula adopted was only but an academic exercise and a blunt tool which took no account of the form of teams, where they had to play etc. and it made little or no difference to the league table. We do not accept this. NIFL engaged 21st Club, who are noted as the market leading football data consultancy which has experience working with clubs and leagues globally. NIFL asked 21st Club to recommend the fairest, most equitable and appropriate model based on the following – alignment with UEFA principles of applying an objective, transparent and non-discriminatory procedure that is based on sporting merit; alignment with other curtailed European Leagues; and assessment of model appropriateness based on their statistical expertise. Having made the decision to end the season and determine clubs final positions using a mathematical model, the Appeal Board is satisfied that NIFL did what was appropriate and that was to instruct a third party provider with significant experience in that field.

**Conclusion:**

Given the above, the Appeal Board has unanimously found against the Appellant and therefore the appeal is dismissed.

IFA Appeal Board