

**IRISH FOOTBALL ASSOCIATION
APPEALS COMMITTEE**

***In the matter of an appeal by Donegal Celtic Football Club against a decision of the
The Committee of the Ballymena and Provincial League***

Appeals Committee:

Martin Wolfe KC (Chair)

Emma McIlveen BL

Stephen Shaw

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 9 February 2023.

It concerns an appeal brought by Donegal Celtic Football Club ('the Appellant') against a decision reached by the Committee of Ballymena and Provincial League ('the Respondent') on the 24 January 2023.

Having regard to the reasons set out below, the unanimous decision of the Committee is that the appeal shall be upheld so that the decision of the Respondent is set aside and the penalty imposed quashed. However, in the circumstances also set out below, the Committee determined that in accordance with Article 14(6)(e) of the Rules, this is an appropriate case to be referred back to the Respondent to make a fresh decision after affording the Appellant a fair opportunity to make representations in its defence.

Attendees

1. The Appellant was represented at the hearing by Mr. Owen Baggley (Club Manager) and Mr. Campbell Scott (Club Representative).
2. The Respondent was represented at the hearing by Mr. Billy McIlroy (League Secretary) and Mr. Robert Fenton (League Vice Chair).

3. The Committee wishes to express its gratitude to the parties for their attendance at the hearing and for their helpful written and oral submissions.

Preliminary

4. In correspondence sent to the Committee it was suggested on behalf of the Respondent that the Appellant's appeal had been lodged outside the time limit provided for in Article 14(4) of the Rules. In particular it was asserted that the Appellant was in receipt of the impugned decision by email on the 24 January 2023, and that by despatching the appeal by special delivery six days later on the 30 January, the Appellant had brought its appeal outside of the four day time limit specified in the Rule.
5. However, after further consideration of its records, the Respondent advised the Committee that it was accepted that the Appellant had not received the decision until the 26 January. It was clear to the Committee that the Appellant had despatched its letter of appeal by special delivery within 4 days of the date on which they were notified of the decision in writing. Accordingly, the Committee was satisfied that the appeal was lodged in time for the purposes of Article 14(4).

Facts

6. On the 5 November 2022 Coagh United played Donegal Celtic in a BPL Intermediate League fixture. This was a home game for Donegal Celtic and they won the game.
7. The Committee finds from the documents presented to it by the Respondent that shortly after the game, the Secretary of the Respondent received a telephone call from the Secretary of Coagh United. She raised a query about the eligibility of one of the Appellant's players (Eamon O'Halloran) who had reportedly entered the field of play as a substitute during the game.
8. From documentation presented to the Committee at the hearing (Exhibit 1) the Secretary of Coagh United wrote to the Respondent on the 7 November 2022 and elaborated upon her concerns. She said in the correspondence that "*there are a number of issues with this registration, that would mean the player was not eligible to play in the match on Saturday...*" This correspondence ought to have been disclosed to the Committee and the Appellant in advance of the hearing as it was clearly a relevant document. It is regrettable that this wasn't done.

9. The Committee finds that upon receipt of this correspondence the Respondent took steps to investigate whether the player named Eamon O'Halloran had played in the game against Coagh United, and whether he was eligible to do so. The Committee finds that as a result of this investigation the Respondent received information that a player named Eamon O'Halloran appeared on the Donegal Celtic team-sheet for the game against Coagh United, had participated in that game as a substitute, and that he was not registered as a Donegal Celtic player on the Comet system as of the date of that game.

10. The Committee also finds that having conducted this investigation the Respondent wrote to the Appellant on the 15 December 2022. The letter indicated that the Respondent had concerns in relation to the eligibility of Eamon O'Halloran. The Appellant was told that the Respondent would be convening a meeting in early January 2023 to which it would be invited to address the questions which had arisen. The letter did not suggest that the Respondent had made any findings or reached any conclusions at that stage, and nor did it indicate that the Appellant had been sanctioned. The clear impression created by the letter is that the Appellant would be invited to a hearing to make representations and state its case before any decision would be reached.

11. The Committee finds that the Respondent convened a meeting in order to determine this matter without inviting the Appellant to that meeting, or without otherwise seeking representations from it. As appears from its decision letter dated 24 January 2023, the Respondent concluded that Eamon O'Halloran played in the game against Coagh United when he was not eligible to participate. The Respondent penalised the Appellant by deducting three points from the Appellant, awarding three points to Coagh United and imposed a financial penalty of £100.00.

Issues Raised by the Appeal

12. The Appellant raised two main points in support of its appeal:
 - a. The decision of the Respondent was reached without due process since the Appellant was not afforded the opportunity to attend a hearing and make representations in its defence; and

- b. The Respondent failed to ensure that the requirements of Rule 17(a) of the BPL Rules for season 2022-23 were followed by Coagh United before proceeding to consider and reach a decision in connection with the eligibility of the player concerned.
14. For its part the Respondent accepted that it had made a decision as to the eligibility of Eamon O'Halloran and to sanction the Appellant without hearing from the Appellant. In submissions to the Committee, it was suggested on behalf of the Respondent that it was unnecessary to hear from the Appellant before reaching a decision because there was clear evidence that Eamon O'Halloran had played in the game when he was not eligible to do so.
15. The Appellant responded to this submission by contending that if it had been invited to a hearing it would have substantive points to advance in defence of its position.
16. The Respondent accepted that Coagh United had not followed the requirements of Rule 17(a). However, it was explained by the Respondent that there was no need to do so as this was not a a Rule 17 case. Instead, it was contended that having received correspondence from the Secretary of Coagh United on the 7 November which raised concerns about the eligibility of the player, the Respondent was entitled to proceed by way of Rule 8(c) and to conduct an investigation into the eligibility issue. Rule 8(c) (of the 2022-23 Rules) provides as follows:

“Irrespective of anything in any rule or any matter that is brought to the attention of the Committee in writing will be investigated by the Committee who will deal with the matter as they may determine.

This includes the eligibility of players registered or taking part in matches under the league's jurisdiction.....”

Decision and Reasons

17. The Committee was satisfied that the Respondent was entitled to conduct an investigation concerning the eligibility of Eamon O'Halloran to play in the fixture between Donegal Celtic -v- Coagh United on the 5 November 2022, after issues concerning his eligibility had been brought to its attention in writing by Coagh United on the 7 November 2022.

18. Rule 8(c) empowered the Respondent to proceed in this fashion “irrespective of anything in any [other] rule” and notwithstanding the availability of Rule 17(a) which would have permitted Coagh United to raise a formal protest or claim using the procedure contained in that Rule. The only condition precedent to the invocation of the investigation provision in Rule 8(c) is that the League Committee’s attention shall be drawn to an issue “in writing.” It is clear that this condition was satisfied in this case.
19. The refusal or failure of Coagh United, for whatever reason, to advance a protest under Rule 17(a) did not prevent the Respondent from investigating the issue using the approach provided for in Rule 8(c). On the contrary, it appears to the Committee that in many circumstances it would be entirely appropriate for the League itself to conduct an investigation into an eligibility issue, without placing an onus on a member club to raise a formal protest or a claim. In any event, the Committee rejects the Appellant’s contention that there was anything improper in the Respondent’s use of Rule 8(c) to conduct an investigation, and nor was it necessary to receive a Rule 17 compliant protest from Coagh United before proceeding.
20. However, the Committee was also satisfied that having decided to conduct an investigation using Rule 8(c), the Respondent was obliged to do so fairly, by observing the basic principles of due process. This appeal is upheld because the Respondent acted unfairly and in the absence of due process.
21. In its correspondence of the 15 December 2022 it appears, at least on the face of it, that the Respondent recognised the importance of those principles in the form of permitting the Appellant an opportunity to make representations in respect of the issues raised by the investigation before conclusions would be reached. It is clear that no such opportunity was given. Findings which were adverse to the interests of the Appellant were arrived at and a sanction applied without hearing from the Appellant. The Respondent failed to provide any adequate explanation for its approach other than to suggest that they considered this to be a case in which the Appellant would be unable to avail of a valid defence.

22. Such thinking betrays a far from adequate appreciation of the requirements of procedural fairness and is to be deprecated. It is important that administrators approach issues of controversy with an open mind, and by demonstrating a sincere preparedness to listen to any defence which might be raised, before reaching evidence based conclusions. In removing from the Appellant the opportunity to present its defence, the Respondent fell into error. The Committee found it surprising that the Respondent failed to appreciate this.

Conclusion:

23. For the reasons set out above, this appeal is upheld. The consequence of this decision is that the decision of the Respondent is set aside and the penalty imposed on the Appellant is quashed.

24. Nevertheless, there are important issues raised by the Respondent's investigation which require full consideration and proper adjudication. Accordingly, it is also the decision of the Committee that this case should be referred back to the Respondent so that a hearing can be convened and a fresh decision can be reached after affording the Appellant a fair opportunity to make representations in its defence. The Appellant advised the Committee that it has substantive points to advance in support of its position, and the Respondent is directed to provide the Appellant with an adequate opportunity to make those representations.

25. It is important that this hearing is convened and concluded as quickly as is practically possible. The fixture which gave rise to these issues took place more than 3 months ago. It should not have taken the Respondent more than 2.5 months to investigate this matter and reach a decision. In matters such as this it is important that investigations are conducted promptly and that hearings are convened and decisions reached quickly thereafter. Further delay is in no one's interest.

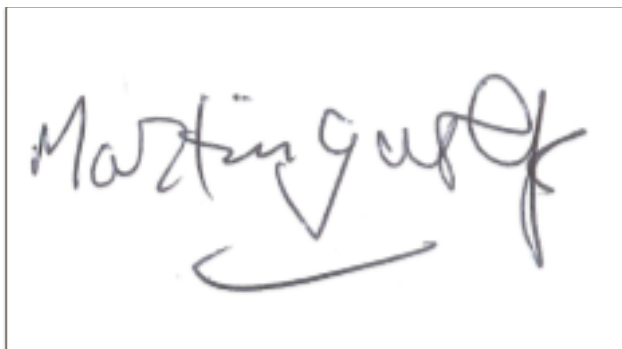
26. Ideally, this hearing will take place before a newly constituted panel, one whose members would have played no part in the original decision which has shown to be reached using a process which was demonstrably unfair. The Respondent may wish to seek advice as to how this might be achieved. If it is not possible to assemble a new panel,

the Respondent is reminded that those who are charged with the responsibility of taking part in the decision making process must act with scrupulous fairness and approach the matter with open minds.

27. Finally, it appears to the Committee that Rule 8(c) of the 2022-23 BPL Rules may contain a typographical error in its first line. Certainly, the drafting of the Rule could be improved. The Committee suggests that the Rule might be better drafted by deleting the word 'or' (from the first line), and by inserting a comma after the word 'rule' so that it would read as follows:

“Irrespective of anything in any Rule, any matter that is brought to the attention of the Committee in writing...”

Dated: 10 February 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