

**IN THE MATTER OF AN APPEAL UNDER CHAPTER 3 OF THE
IRISH FOOTBALL ASSOCIATION CHAMPIONSHIP LICENCE MANUAL**

Between:

WARRENPOINT TOWN FOOTBALL CLUB

Appellant:

-and-

THE LICENSING COMMITTEE OF THE IRISH FOOTBALL ASSOCIATION

Respondent:

LICENSING APPEAL COMMITTEE MEMBERS

**Mr Finbar Lavery B.L. (Chairman);
Mr Philip McDonagh
Mr John Toner
Mr Ross Thompson**

DECISION ON APPEAL HEARD ON THE 10 AND 17 APRIL 2023

The hearing of this appeal was in relation to a decision taken on the 26th April 2023 by the Licensing Committee of the IFA. The Appellant's application was for a Championship Club Licence and a Promotion Licence. The decision of the Licensing Committee was to refuse the application on the grounds that the Committee were not satisfied that Warrentpoint Town Football Club had met all of the required standards for the reward of a Championship Club Licence. The Committee were not satisfied that Warrenpoint Town Football Club had met the criteria at F.07 of the IFA Championship Licence Manual and Promotion Licence Manual for Award of Licences for Season 2023/24, Version 1.6. This is a requirement that the licence applicant must prove that, as of the 31st March 2023, it had no overdue payables to social / tax authorities (HMRC). The Licence Committee were not satisfied that the Applicant had proved this criterion and, as it was a graded "A" requirement, the Licensing Committee refused to grant the licences sought.

The Licensing Appeal Committee listened to the Appeal and a summary of the hearing is set out below. This is not to be considered a full account of what was said but to give an indication of certain matters relevant to the Appeal hearing. The Licensing Appeal Committee took all relevant matters into account that were raised at the hearing.

The appeal was scheduled to take place on the 10th May 2023. The Licensing Appeal Committee convened and representatives from Warrenpoint Town Football Club and from the Licensing Committee were present. On the 10th May 2023, Warrenpoint Town Football Club were represented by Mr John Turley from Turley Legal Solicitors. The Licensing Committee were represented by Mr Peter Hopkins B.L. instructed by King & Gowdy Solicitors.

On the 10th May 2023, some preliminary issues were raised. On the afternoon of the 10th May 2023 the Appellants served additional submissions including evidence and legal authorities further to the submissions that they had forwarded on the 28th April 2023. The introduction of these further submissions, evidence and law were objected to by Mr Hopkins on behalf of the Licensing Committee.

Mr Hopkins referred to Section 3.2.7.1 of the Licensing Manual and the “*Procedure of Decision Making*” at paragraph (e). At paragraph (e), it states the time limit to appeal and time limit for requests. It was noted that the time limit to appeal is four days after the date of the Licensing Committee at which the decision appealed against was taken unless, for any reason, it was not made known to the Appellant at such meeting, in which case it must be within four days after that date on which the decision was intimated in writing to the licence applicant / licensee.

At paragraph (f), under the heading ‘Form of Appeal’, it is stated that the appeal must be submitted in writing. The statement of the appeal must mention:

- (1) The decision appealed against.
- (2) The grounds for the appeal (facts and / or law).

Mr Hopkins submitted that these further submissions and their attachments as they include further grounds and facts, as well as law, should not be allowed to be considered by the Licensing Appeal Committee.

Mr Turley, on behalf of the Appellant, indicated that these submissions should be allowed given the tight timeframe in relation to submitting the appeal.

Mr Hopkins also indicated that he did not have a chance to read the further submissions and the case law that had been forwarded. Mr Hopkins indicated that if the Appeals Committee were to allow the further submissions he would need to ask for an adjournment to consider these.

Mr Turley also indicated that he had only received the hearing bundle immediately prior to the appeal hearing and had not considered it. Mr Turley stated that he would not have time to consider the bundle and also asked for an adjournment to consider same.

The Licensing Appeals Committee then considered what each party had stated. The Licensing Appeals Committee’s decision was that the further submissions of the 10th May 2023 should not be admitted. The Licensing Committee though were cognisant of ensuring that there was a fair hearing and decided to adjourn the hearing to allow Mr Turley to consider the hearing bundle. There were also some requests for documentation by Mr Turley and agreement was reached that these would be considered by the Licensing Appeal Committee before the Appeal reconvened. These issues centred around whether another Club in a previous application which was allowed a licence had fulfilled the F.07 criteria.

The matter was then adjourned to the 17th May 2023. Prior to that the parties had been notified that the Licensing Appeal Committee were satisfied that the query in relation to a previous Club’s licensing decision, the Club had fulfilled the criteria of F.07.

At the reconvened hearing, Warrenpoint Town Football Club were now being represented by Mr Wayne Atchison B.L., instructed by Turley Legal Solicitors. At the hearing, Mr Atchison made submissions on behalf of Warrenpoint Town Football Club. Mr Atchison made forceful detailed submissions to the Licensing Appeals Committee. From the outset, Mr Atchison was

very candid in indicating that there was no dispute that Warrenpoint Town Football Club did not fulfil the criteria of F.07, in that they still had outstanding liabilities to HMRC by the 31st March 2023. The main points that Mr Atchison made were that there should be proportionality in relation to what he termed was a “*sanction*” in Warrenpoint Town Football Club not being granted the licences and the effect that it would have upon them and that the Licensing Appeals Committee would have a discretion given the unique circumstances that Warrenpoint Town Football Club faced in attempting to comply with the licensing process. Mr Atchison argued that the Licensing Manual would allow the Licensing Appeal Committee a discretion in relation to granting the Appellants a licence and that the refusal of a licence was not mandatory for a failure to fulfil the criteria of F.07. Mr Atchison made these submissions despite the manual indicating that F.07 was a grade “A” criterion which meant it was “*essential*” and must be fulfilled in order for a licence to be granted.

In particular, Mr Atchison referred to Section 3.2.4.6. Under this section, it states;

“The Licensing Committee has the authority to review the Club Licensing criteria and to deal with any matter not provided for in this manual.”

Mr Atchison tried to persuade the Licensing Appeals Committee that the Licensing Committee erred in not considering that they had a discretion given the unique circumstances that he suggested that Warrenpoint Town Football Club had been in at the time the licence application was made. Mr Atchison submitted that the Licensing Committee could have made another decision other than refusing to grant Warrenpoint Town Football Club the licences sought. Mr Atchison put forward the point that Warrenpoint Town Football Club only became aware that they had outstanding liabilities to HMRC after the 31st March 2023 deadline but that this was rectified before the decision taken by the Licensing Committee on the 26th April 2023. Mr Atchison argued that latitude should be given and the 31st of March 2023 date was arbitrary.

During the hearing and without any notice, Mr Atchison asked to refer to some authorities in relation to UEFA decisions. These amounted to approximately eighty pages in five separate decisions. Mr Hopkins strenuously objected to the introduction of these authorities, indicating that they should have been served when the initial appeal was being lodged but also the fact that they were being given in the middle of an appeal hearing without any prior notice and that they were matters that should not be considered by the Appeals Committee.

It was indicated to Mr Atchison that it was very unsatisfactory the manner that these authorities were now being produced. This was not Mr Atchison’s fault as he was only instructed shortly before the hearing. Mr Atchison asked that he at least be allowed to make some oral submissions generally in relation to the authorities as he felt that it was important for the Appellants and for the fairness of the hearing. It was indicated to Mr Atchison that he could make short submissions in relation to the law generally but that it would be considered later whether these authorities should be accepted for consideration by the Committee.

Mr Hopkins then made further submissions on behalf of the Licensing Committee.

Mr Hopkins had already prepared written submissions which detailed the areas he wanted to cover which had been read by the Licensing Appeal Committee and duly considered. Mr Hopkins then expanded his submissions in relation to the now newer matters that were being raised by Mr Atchison which were not contained within the original submissions made by the Appellants.

Mr Hopkins indicated that there were two points which were of importance. Firstly, he indicated that the Appellants put forward that the penalty "*that the Appellants are trying to make out is a result of their failure to comply with F.07 is a "sanction"*". Mr Hopkins pointed out that this was not a sanction nor a penalty, but was a consequence of not complying with F.07. Mr Hopkins pointed out that failing to comply with other criteria not an "A" category should allow for "*sanctions*", but this was not open to a category "A" criteria.

The second point that Mr Hopkins made was that given the submissions now being made by the Appellants is that they are attempting to re-write the Licensing Manual. Mr Hopkins' submissions were that Warrenpoint Town Football Club were trying to rely on points in the manual that did not count.

In relation to the authorities that Mr Atchison tried to introduce, Mr Hopkins repeated that he objected to these being allowed. He noted that the judgments were about fines after licences had been given and failure to comply. Mr Hopkins indicated though that in this case this was a licensing matter in which there are mandatory obligations.

Mr Hopkins made a noted point that if the Licensing Manual was to have a discretion at F.07 then why does it not mention it within the manual? Mr Hopkins indicated that it was a clear indication that F.07 was mandatory and that no discretion could be applied.

Mr Hopkins further stated that the submission that the 31st March 2023 deadline was arbitrary is not the case. He noted that the 31st March 2023 was the closest date to allow for almost a month for the submissions to be prepared before going to the Licensing Committee which would have met on the 26th April 2023. Mr Hopkins indicated that the Licensing Committee sits as late as possible and therefore the 31st March 2023 is not just an arbitrary date.

Mr Hopkins also indicated that to give a discretion when it comes to licensing and not meeting a category A criteria would be unfair to other Clubs.

The Licensing Appeal Committee thanked the representatives for their helpful submissions and then considered the matters.

The Licensing Appeal Committee found the following:-

1. In relation to the request to introduce the UEFA Judgments, the Licensing Appeal Committee considered that, as the further submissions that the Appellants had attempted to submit on the 10th May 2023 were not allowed, the further authorities could not be considered. The Licensing Appeal Committee considered 3.2.7.1, the procedure of decision making, and, in particular, the time limits for making the appeal including the grounds of appeal (facts and / or law) which should be made within the time period for entering an appeal. The Licensing Appeal also considered the timing of the attempt to introduce the Judgements after the adjourned hearing in the middle of the reconvened hearing.
2. The Licensing Appeal Committee then considered paragraph 2.1.1.2., the criteria graduation. The Licensing Appeal Committee noted that where there is an "A" criteria then that this is an "*essential*". They noted that the Manual states that if the licence applicant does not fulfil any "A" criteria then it cannot be granted a Championship Club Licence or a Promotion Licence. The Licensing Appeal Committee were of the opinion that this was a mandatory criterion. The Licensing Appeal Committee were of the

opinion that according to the Manual if this criterion was not fulfilled then a licence cannot be granted. The Licensing Committee were of the opinion that this is not a sanction but is a consequence of not fulfilling the criteria.

3. The Licensing Appeal Committee then considered whether the Licensing Committee had made an error. The Licensing Appeal Committee were of the opinion that no error was made by the Licensing Committee when they came to their decision on the 26th April 2023. The Licensing Appeal Committee were satisfied with the decision of the Licensing Committee finding that the Appellants had not complied with the "A" criteria was correct. The Licensing Appeal Committee were of the opinion that no other decision could have been made. The Rules are clear and meant to be clear that they cannot be interpreted so as to prevent a different interpretation of the Rules being made so that they are clear to all persons involved in the licensing process.
4. The Licensing Appeal Committee then reviewed the decision of the Licensing Committee as is their requirement. The Licensing Appeal Committee agreed with the decision made by the Licensing Committee and that the decision should remain unchanged.
5. The Licensing Appeal Committee would though like to state that they have taken into account all the mitigating circumstances of Warrenpoint Town Football Club. The Licensing Appeal Committee understood the circumstances of how they came to the position they were in. At no stage was the Licensing Appeal Committee wanting to penalise Warrenpoint Town Football Club, but the decision was a consequence of not fulfilling the criteria. The only issue was that Warrenpoint Town Football Club did not meet the criteria and therefore there was no other decision that could have been made.

Finbar J Lavery B.L.
Chairman
18 May 2023