

**IRISH FOOTBALL ASSOCIATION
APPEALS COMMITTEE**

In the matter of an appeal by East Belfast FC against a decision taken by IFA Football Committee

Appeals Committee:

Emma McIlveen BL

Rachel Best KC

Barry Finnegan

THE APPELLANT was represented by Jamie Bryson, (JWB Consultancy) and Thomas Matthews Secretary East Belfast FC

IFA FOOTBALL COMMITTEE was represented by Laura King BL instructed by Shaun Jemphrey, and Andrew Raffan (King and Gowdy Solicitors), Neil Jardine Chair IFA Football Committee and Andrew Johnston IFA Head of Competitions and Football Governance

DECISION

This decision of the IFA Appeals Committee was reached following a hearing held on 10th September 2024.

The primary issue in this appeal concerned the validity of the new Article 23 of the Disciplinary Code. However, after the appeal was lodged, the IFA withdrew the revised version of Article 23. As a result of this withdrawal, the substantive issue at the heart of the case essentially became academic.

Nevertheless, both parties requested that the case proceed to address the remaining issues, specifically regarding the jurisdiction of the Appeals Committee and the delegation of powers in relation to amendments to the Disciplinary Code.

Therefore, this is not a typical appeal decision with a clear winner or loser. This judgment is being published to provide clarity on those outstanding matters.

Had Article 23 been the sole issue, the Appeals Committee would have considered the appeal to be purely academic and would have declined to hear the case, given that the Article no longer exists. However, the need to resolve the other jurisdictional and procedural issues justified the continuation of the hearing.

Background

1. This appeal was initially an appeal against a decision of the IFA Football committee, notified to the Appellant on 25th July 2024. This letter notified Clubs of several changes to the Disciplinary Code.
2. The appeal initially focused on the amendments made to Article 23 which dealt with discrimination. In a nutshell, the Appellant alleged that the new version of Article 23 essentially redefined discrimination “to give it a definition which is so broad and expansive, it is unknown to the law of discrimination”.
3. Following the challenge to Article 23, Neil Jardine on behalf of the IFA Football Committee sent correspondence to the IFA Appeals Committee on the 9th of August 2024 which stated:

“... The IFA Football Committee does not consider that Article 14 of the Articles of Association permits a club to permit a club to appeal against a proposed amendment to a rule. A member of club lacks standing to do so until the point in time that such a rule has been applied to that individual. Article 14 is an avenue of appeal; it is not a mechanism for pseudo- judicial review.

The IFA football committee therefore considers that it has strong grounds to contest this appeal and had it done so, it would have succeeded. This is particularly bearing in mind that the amended wording of its anti-discrimination provision was the same as that adopted by FIFA.

Nonetheless, anti-discrimination is of the utmost importance to the IFA, and it is with that importance in mind that we wish to ensure that our anti-discrimination provisions are as robust as possible. Therefore, while it does not accept the appeal as being meritorious or legitimate, the IFA Football Committee do not intend to content this appeal and is willing to consent to the amendments to Article 23 of the August 2024 Edition of the Disciplinary Code being set aside. The wording of the previous Article 27 (Discrimination)- now Article 23- will therefore apply for the 2024/2025 season, with a view to it being reviewed ahead of the 2025/2026 season”

4. In response, Mr Bryson responded:

I note the clubs have been advised that the IFA are abandoning the new wording of Article 27 of the Code.

The appellant does accept this disposes of the matter, and therefore requests the appeal proceeds for the following reasons:

(i) in the correspondence the IFA continue to contest ‘procedural and jurisdictional issues’. This is a matter of importance which needs clarity.

(ii) the appeal was mounted on two grounds namely (a) there was no valid power to change the Disciplinary Code (the vires ground); (b) to the issue in respect of the wording of the new article. The IFA correspondence ‘concedes’ on (b) but has not conceded on (a). This issue is obviously not academic, because all the changes made to the code for 2024 raises the same issue.

In light of above the panel should hear the issue in respect of the delegation point (which has not been conceded and is an issue of significant importance) and clarify any jurisdictional points the IFA wishes to make for the benefit of the season ahead providing clarity as to jurisdiction and procedure.

We would therefore ask the appeal proceeds, and if any issue is taken with this course of action, it is requested the appellant be afforded the opportunity to make submissions in respect of same.

5. The Appellant sent correspondence to the Appeals Committee on the 9th of September which stated:

As will be appreciated, the substantive issue is a pure question of law which will continue to arise in disciplinary cases (including some already extant which have been stayed by the disciplinary committee pending outcome of this case, for example Ballymena United FC) in so far as clubs will assert the Code isn’t lawfully in force.

Naturally, in a case whereby there was a disciplinary charge, no conceivable issue of jurisdiction would arise and therefore the issue which is before the panel now will have to be determined at some point.

It may on one view be felt better to wait and determine it in such a case, but that is likely to be a minimum of 5-6 weeks away and, if indeed it is held the Code isn't lawfully in force, that is another 5-6 weeks' worth of disciplinary charges (at every level of football in NI up to and including the NIFL Premiership) which would all be retrospectively invalid. The later in the season this issue is determined, the more consequential for the administration of local football if the appellant's argument is well founded.

In this case the respondent has went to the expense of securing the services of solicitor and experienced counsel, and the extant substantive issue has been fully argued by both parties in detailed written submissions (with presumably merely supplementary oral submissions required) therefore, in the appellant's view, as a matter of good administration and practicality the panel should determine the extant substantive vires issue regardless of what determination is arrived at in respect of the jurisdiction issue, which is obviously an important matter which ought to be determined in its own right to provide clarity and certainty to all.

Whilst the panel is (obviously) not the Supreme Court, by way of analogy to demonstrate the approach suggested is entirely orthodox, see the comments of Lord Mance at para [42] (c) in the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) and Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland):

“(c) It follows that the Supreme Court has no jurisdiction to give any relief in respect of the challenge to Northern Ireland abortion law. But that challenge has been fully argued, and evidence has been put before the Court about a number of specific cases. It would, in the circumstances, be unrealistic and unhelpful to refuse to express the conclusions at which I would have arrived, had I concluded that the Commission had competence to pursue the challenge.”

6. The Appeals Committee sought written submissions from both parties on the remaining issues.
7. As part of the written submissions, the IFA confirmed that it was “in the best interests of all involved” for the Appeals Panel to determine the issues presented by this appeal.

Remaining points of Appeal

8. For clarity, the points of appeal which remained for the Appeals Committee to determine were as follows:
 - a. Does the Appeals Committee have jurisdiction to hear the remaining issues within the Appeal? (Jurisdiction issue)
 - b. Is the amended Disciplinary Code lawfully in force? (Delegation issue)

Findings

9. At the outset, the Panel would like to express its appreciation to both representatives for their meticulous preparation. Their well-prepared and thoughtful written and oral submissions, along with their ability to address complex issues, were of great assistance to the Panel. Both representatives conducted themselves with professionalism, and their efforts are duly acknowledged.
10. The Panel fully appreciates the significance of the issues raised in this appeal. The weight and complexity of the matters presented were evident, and the Panel took great care in thoroughly considering each point.

Jurisdiction

11. The Appellant presented multiple potential "routes" to establish the jurisdiction of the Appeals Committee to determine this matter.
12. In response, IFA made the following key points:
 - a. The decision to amend the Code is not capable of appeal under Article 14 of the Articles of Association
 - b. The Appellant does not have standing to bring any such appeal
 - c. The jurisdiction of the Appeals Committee is limited to the powers given to it by Article 14
 - d. There is an alternative remedy available to the Appellant in this circumstance, namely that members can seek a special resolution. It is therefore important to read Article 14 in line with section 21 of the Companies Act
 - e. An appeal hearing shall not be by way of re-hearing
 - f. A person cannot invoke Article 14 to challenge a general point of governance within the Association
 - g. The Appeals Committee is appellate in nature and does not have supervisory jurisdiction
 - h. There was no decision imposed upon the Club because of the rule changes
13. The Appeals Committee was of the view that the key provision to be examined in relation to the issue of jurisdiction is Article 14(2) of the Article of Association. For ease of reference, it provides:

Other than an appeal by a Member against its expulsion, a player, official, referee, Club, Associate Member, Organisational Member or League has the right to appeal to the Appeals Committee against any decision of a Club, committee, League or other such body within the Association which is imposed upon him or it, provided that the appellant has exhausted such appeals procedures as were available to the appellant consequent upon the decision in question, unless satisfactory grounds are given for not having done so. For the avoidance of doubt, an appeal by a player must be submitted either:

 - (a) By the player personally, setting out the grounds for the appeal in writing; or
 - (b) By the player's Club on the player's behalf, setting out the grounds for the appeal in writing, and countersigned by the player.
14. The Appeals Committee took a great deal of time examining Article 14(2) and considering how to interpret it.

15. The Committee closely examined the letter dated 25th July 2024, which stated: *"I write in respect of the above and specifically to advise that following a review undertaken by the IFA Disciplinary Committee, the IFA Football Committee approved an updated Disciplinary Code at its meeting of 25th July 2024."*
16. The Panel was particularly persuaded by various factors, including:
- a. There is a distinction between jurisdiction and standing.
 - b. Article 14(2) addresses the issue of jurisdiction of the Appeals Panel.
 - c. The current rules are silent on the issue of standing.
 - d. As currently drafted, the key question under 14(2) for the purposes of this appeal is as follows: Was there a decision imposed by a Committee upon East Belfast?
 - e. The Oxford Dictionary defines "impose" as follows:

to introduce a new law, rule, tax, etc.; to order that a rule, punishment, etc. be used

 - impose something The UN Security Council imposed sanctions in 1992.
 - to impose a penalty/fine/sentence/ban
 - impose something on/upon something/somebody A new tax was imposed on fuel.
 - f. While there may be an alternative route to challenge the amended Disciplinary Code through a special resolution, this is not a prerequisite for lodging an appeal with the Appeals Committee. In future, the Appeals Committee encourages Clubs to be aware of this mechanism and consider using it.
 - g. The absence of a first instance hearing in this case does not preclude the appeal, as Article 14(2) provides a clear basis for appealing any Committee decision. There may be cases where there has been no first instance decision given the nature of the appeal.
 - h. There is no other appeals mechanism available within the wider Judicial Committee structure to determine this issue.
 - i. It is also important to note that a player cannot play football under the jurisdiction of the IFA unless they agree to be subject to the Disciplinary Code (see 1.4 of the Code-Edition: August 2024)
 - j. Ultimately, the Panel concluded that the Football Committee had taken a decision at their meeting on 25th July 2025 to impose an amended Disciplinary Code upon East Belfast FC.
17. As a result of these considerations, and after much debate, the Panel determined that the Appeals Committee has jurisdiction to hear and determine this appeal.

Delegation

18. The Appeals Committee then moved to consider the delegation issue.
19. The Appellant highlighted the following relevant provisions of the IFA Articles of Association:

Article 10 (2) of the Articles provides:

“The Board may delegate any of its powers under the Articles to such person or committee and in such manner as it thinks fit. It may make rules of procedure (in the form of Standing Orders or otherwise) governing its members and any person or committee to which it delegates powers. This shall include an Independent Dispute Resolution Panel of three persons, to which the Board may refer any disputes that cannot be resolved using any other mechanism. The terms of reference of such a panel to be agreed by the Board and stated in the Standing Orders.

Article 11 (1) provides, inter alia:

“The Board may delegate to the Football Committee and its sub-committees the organisation and management of all matters to do with the playing of Association Football. Subject thereto, the operation and playing of Association Football in Northern Ireland shall be undertaken by the following Divisional Associations... (underlining added)”

Article 13 (3) provides:

“The Disciplinary Committee will have full powers to deal with all disciplinary matters contained within terms of reference determined for it by the Football Committee together with those matters delegated to it by the Board under Articles 10.2 and 17, including the publication of a Disciplinary Code. (underlining added)”

Article 17 (1) provides:

“Where any person or body has breached or caused or contributed to the breach of any of the Articles or brings the game of Association Football into disrepute, that person or body shall be liable to expulsion, suspension, fine and/or such other penalty or sanction as the Board may think fit. The Board may delegate these powers to the Disciplinary Committee”

20. In this regard, the Appellant made the following points:

- a. The board has a general power of delegation found in Article 11(1)
- b. The board could delegate the power to alter and publish the Disciplinary Code to the Football committee
- c. The delegation would require a formal delegation from the Board with a written record consistent with Standing Order 17 of the IFA Standing Orders
- d. There does not appear to be any such delegation
- e. The Football Committee has acted ultra vires in that they acted without appropriate delegation and were accordingly not empowered to make the impugned changes
- f. If the Appellant is correct, then all the changes and the entire code is of no force or effect as it was never lawfully amended or published

21. In response, IFA made the following key points:

- a. The Disciplinary Committee is established by Article 13 of the articles
- b. The Disciplinary Committee does not obtain its authority from a Scheme of Delegation
- c. Article 13 simply lists the places from which the Disciplinary Committee can derive its authority
- d. The Disciplinary Committee takes its authority from 3 places
 - i. Terms of Reference as determined for it by the Football Committee
 - ii. Matters delegated to it by the Board under Article 10.2 and 17

- iii. Directly from the articles insofar as it mandates that its authority includes the publication of a Disciplinary Code
 - e. There is no issue of delegation in this case. This was not a matter delegated to the Disciplinary Committee by the Board
 - f. The Disciplinary Committee's authority to amend the Code and the Football Committee's authority to approve the Code was taken directly from the Terms of Reference. The TOR provide the Disciplinary Committee with its authority to act.
 - g. Article 11(1) deals with delegation by the Board to the Football Committee (not the Disciplinary Committee) and are irrelevant to this appeal.
 - h. No written delegation is required. Article 10(2) provides that "The Board may delegate any of its powers under the Articles to such person or committee and in such manner as it thinks fit"
 - i. Delegation can occur informally
22. Firstly, the Appeals Committee acknowledges that the Articles, as currently drafted, contain ambiguities and uncertainties, particularly in relation to delegation of powers.
23. With regards to the points raised within this appeal, the following was established:
 - a. The letter dated 25th July 2024 indicated that the IFA Disciplinary Committee had conducted a review, and the IFA Football Committee subsequently approved changes to the Disciplinary Code.
 - b. Minutes from the Disciplinary Committee's meeting on 12th June 2024 showed that the Disciplinary committee agreed upon and approved the changes/updates to the Code and subsequently sent the new version to the Football Committee for final approval.
24. The challenging areas, relevant to this appeal, were as follows:
 - a. The Articles are silent on the process for making changes to the Disciplinary Code
 - b. There was no evidence before the Appeals Committee of express delegation from the Board to the Football Committee in relation to amendments to the Disciplinary Code
 - c. The Articles are silent on what delegation means/how it should occur
25. The Appeals Committee therefore accept that it is technically arguable that the Football Committee had no explicit delegation to approve the amendments to the Code.
26. However, the Appeals Committee considered the following factors:
 - a. Article 10(1) establishes that the primary role of the Board is to set strategy and oversee its implementation by the Chief Executive.
 - b. Article 10(2) allows the Board to delegate any of its powers to a committee as it deems appropriate.
 - c. According to the dictionary definition, delegation can mean to entrust (a task or responsibility) to another person.
 - d. Article 11(1) specifically provides that the Board may delegate the management of all matters relating to the playing of Association Football to the Football Committee.
 - e. Article 10(2) provides that "The Board may delegate any of its powers under the Articles to such person or committee and in such manner as it thinks fit"
27. Ultimately, the Appeals Committee were of the view that it is part of its role to clarify the practical application of the Articles, without overstepping its jurisdiction or undermining the

authority of the Board.

28. Considering this, the Appeals Committee carefully examined the intended "flow of power" within Northern Ireland football structures.
29. The Appeals Committee also recognised that there is no alternative actor within the current IFA governance structure capable of fulfilling the function of amending the Code.
30. After much debate, the Appeals Committee held:
 - a. Football management decisions were intended to be handled by the Football Committee.
 - b. Amendments to the Disciplinary Code evidently come under football management decisions
 - c. Although there was no evidence of express delegation, the Football Committee nonetheless was, and is, the most suitable body to handle such responsibility.
 - d. Given the fact that the Articles of Association are silent on how delegation should occur, it was vitally important to adopt a pragmatic approach
 - e. It was accordingly necessary, in all the circumstances, to find that the Football Committee had the implied authority to approve changes to the Disciplinary Code.
 - f. Ultimately, implied delegation was essential to ensure the overall functionality of the Articles of Association, as well as to maintain effective governance and business operations.

Conclusion

31. For the reasons stated herein, the unanimous decision of the Committee is that:
 1. The Appeals Committee has jurisdiction to determine the remaining issues
 2. The Football Committee had the power to approve the amendments to the Disciplinary Code and the Disciplinary Code is therefore accordingly properly in force

Dated: 25th September 2024



Emma McIlveen BL
Chair of the Appeals Committee