

**IN THE MATTER OF THE APPEAL BOARD OF THE
FOOTBALL ASSOCIATION**

BETWEEN:

MARLOW F.C. (Appellant)

-and-

ISTHMIAN FOOTBALL LEAGUE (Respondent)

WRITTEN REASONS

1. The Appeal Board conducted a hearing on Tuesday 23 April 2024 to determine an appeal by Marlow F.C. ("**the Appellant**") against the decision of the Board of the Isthmian Football League ("**the Respondent**") made on 29 February 2024 and notified to the Appellant on 6 March 2024.
2. The Respondent's Board had determined on 29 February 2024 that pursuant to Rule 8.40 of the Standardised Rules, the Appellant was at fault for the postponement of the match between the Appellant and Chertsey Town F.C. on 16 January 2024 and should pay Chertsey Town F.C. compensation in the sum of £129.60.
3. The appeal hearing was a personal hearing held by MS Teams, the Appeal Board comprising Mr Christopher Stoner KC (Chair), Mr Daniel Mole and Mr Roger Burden. Mr Shane Comb of Wiltshire FA acted as secretary to the Appeal Board. We are most grateful to Mr Comb for his assistance.
4. The Appellant was represented Mr Ian Benfell, the Chairman of the Appellant, whilst the Respondent was represented by its Chair, Mr Nick Robinson. Ms Kellie Discipline, the Respondent's C.E.O. was also in attendance.

5. The Appeal Board wish to thank Mr Benfell and Mr Robinson for their submissions and assistance both during the appeal hearing and in the documents within the Appeal Bundle.
6. The parties were orally informed of the outcome of the Appeal by the Appeal Board after it had retired to consider the matter, which outcome was confirmed in a Decision Letter, sent by email by Shane Comb on behalf of the Appeal Board and dated 23 April 2024, that the Appeal Board had unanimously allowed the appeal, that no order had been made as to costs and that the appeal fee is to be returned to the Appellant. The Decision Letter confirmed that the ground on which the Appeal had been allowed was that the Respondent had failed to give the Appellant a fair hearing.
7. This document contains the written reasons for the Appeal Board's decision.

Background

8. The context of the decision appealed against is Rule 8.40 of the Standardised Rules. This provides:

“8.40. In the event of a match having to be postponed and one Club is found to be at fault then opponents for that match shall be compensated by the Club at fault. In the case of a visiting Club where it has undertaken all or part of its journey then travelling expenses and meal allowances may be claimed based on the total mileage involved in the whole journey. In exceptional circumstances, expenses for overnight accommodation up to a maximum of 18 persons may be claimed. In some instances compensation may also be claimed when neither of the Clubs is at fault. The Board will determine the amount of compensation payments to be made, if any.

All claims for compensation by either Club in the case of either an abandoned match or a postponed match must be received by the Competition Secretary within 14 days of the date of the match to which the claim relates.”

9. As Mr Robinson on behalf of the Respondent accepted during the hearing, the decision to award compensation in this case was based on the Respondent finding the Appellant at fault. Put another way, this was not a case which was considered to fall into the category of compensation being paid when neither of the clubs involved was at fault. Mr Robinson's position in the hearing was consistent with the contents of the

minute recording the decision of the Respondent's Board, which notes that *"It was agreed that the home Club should have had an early inspection"*.

10. The relevant match was due to be played on 16 January 2024 and was ultimately called off by the Match Referee after his arrival at Marlow's ground at 6:30pm, by which time Chertsey Town's players, officials and supporters had travelled for the fixture.
11. An initial email dated 17 January 2024 from Mark Turner of Chertsey Town F.C was placed before the Respondent's Board when considering the issue of compensation. He said:

"I wanted to drop you a line on yesterdays events and my thoughts leading up to the late postponement of our fixture at Marlow last night.

Now before I start I would like to say I know from first hand experience how hard it can be in making the right call as you can be damned if you do it to [sic] early and damned if its to [sic] late and we all known what the British Weather can do That was not the case yesterday, everyone in the south of England was aware of the deep frost from the previous night the cold day on the Tuesday and the impending drop in temperature due from 4pm. It was the coldest day of the year and we know this as every other club took precaution and had early inspections and then made the sensible but also correct calls to call the games off and all of them by around 3pm to save anybody travelling, leaving work early etc etc

We spoke to Marlow several times during the date but much to our astonishment we was [sic] told that pitch is fine and playable several times and the game would go ahead, we are then advised of a pitch inspection at 3pm and we are all then expecting the inevitable when a qualified official inspects the surface. We get the all clear from Marlow around 3:20pm and everyone is informed and normal match day preparations begin, supporters, players, management are advised and all systems go.

My management team arrived at the ground just before 6pm, the changing rooms as you know are near the entrance with home and away next to each other, my manager approaches the away side and 2 Marlow Coaches are just outside then home and the first words they say are ... NO Chance of us playing on that tonight. This is only 2 hours and 40 minutes from when what we thought a qualified ref had called the game on.

We then get told that the Marlow official who I believe was the Chairman conducted a Virtual inspection with the match referee and demonstrated that a Pitch pole, the type that are used as markers went into the ground in most areas ! These Poles are designed to go into the ground and have a sharp metal end, hardly surprising that they did. So no official pitch inspection just a Marlow official with a pole to determine on the coldest night of the year that the game should go ahead. The match linesman was at the ground in advance of the referee and he told us that he offered to come to the ground to inspect but his offers were declined as the pitch was playable.

The match referee arrived at around 6:30pm, the game was announced as off within 10 minutes at 6:40pm!

Now I am not saying that Marlow acted deceitfully in any way but there [sic] actions were not what I think we should reasonably expect given all of the options and information available, my team and supporters have wasted [sic] their time and money needlessly, we have support that travels some distance to watch us play from as far as Bournemouth and Southampton, they had a wasted journey as did many others. Like I said the British weather can sometimes catch you out either way but last night that wasn't the case, everyone knew the game had no chance, well everyone except the Marlow official anyway.

Moving forward, I would like my supporters compensated somehow, free entry at the re match if that's possible? I would also like clarify on Virtual inspections as this can not be allowed again for the good of the game and relations between clubs especially when you announce a pitch inspection is taking place.

No real relevance but my supporters were also on the wrong end of it last week and some travelled to Guernsey early to make a long weekend of it, only to find the game was off. Guernsey however acted impeccably on this front and made the right decision in good time to avoid an even worse situation. This unlike the Marlow debacle was just unfortunate and no one has made a single complaint ... unlike last night !!

Thanks for listening."

12. The Appeal Board observes that it does not consider, although it did not hear argument and did not have to determine the point, that Rule 8.40 would cover compensation for spectators and that, accordingly, no claim for compensation was actually made in the above cited email.

13. However, a claim was duly made by the Chertsey Town club secretary by email dated 25 January 2024. That claim was also presented to the Respondent's Board and said:

"Following the late postponement of the Marlow v Chertsey Town match on Tuesday 23rd January [which the Appeal Board notes was clearly the wrong date], Chertsey Town wishes to make a claim for reimbursement of expenses under league rule 8.40.

Following what can be termed as a virtual mid afternoon pitch inspection with the match referee who was not on site, and no-one else called in, assurances were given that the pitch would be playable that evening. It was understood that one of the referee's assistants volunteered to check the pitch but his offer was declined. In fairness, that last statement is not verifiable.

The team, some club officials and of course supporters (the club is currently enjoying substantial away support, often to double the home side's average) were either at the ground or well on their way when the pitch was declared unfit at around 6:45pm.

There was earlier scepticism by many at my club when the mid afternoon pitch fit pronouncement was made as all other league matches being played on grass were called off around 3:00pm due to heavy frost which was forecast to return after dark.

It is appreciated that the state of any pitch nearly always makes for difficult calls but it is felt that the eventual outcome was virtually certain and should have been foreseen. Therefore, the claim is that unnecessary and expense was endured by many at Chertsey Town and that those travelling should not be expected to bear the full cost of the postponement.

It is impossible to say what the exact costs were, but the following detail explains the logic behind the claim which hopefully will be accepted as fair despite not covering everything.

Travel – based on FA Cup Rule rates

Team – 27 miles each way X 48 pence per mile X five cars equals £59.48.

Spectators – 27 miles each way X 48 pence per mile X ten cars equals £118.96.

Refreshments – Based on Guernsey arrangement allowance

Team – 25 persons X £5 equals £125 for refreshments.

Total

£303.44

Under these circumstances, it is suggested that instead of awarding £303.44, Marlow issues 15 free tickets for Chertsey Town supports, and compensates Chertsey Town FC itself for £184.48.

This can be seen as far from unreasonable considering the probable real costs, but Chertsey Town is not looking to be punitive or taking undue advantage.”

14. Kellie Discipline, the Respondent's C.E.O informed the Appellant by an email dated 25 January that the claim had been received and asked the Appellant for any comments or observations and stated that the claim would go before the Board at the February meeting. It is not clear to the Appeal Board whether both emails recited above and referred to the Board were shown to the Appellant, or only the actual claim email.

15. In any event, Mr Benfell was able to provide a full response on behalf of the Appellant which was dated 30 January 2024 and was also presented to the Respondent's Board. It stated:

“The board of directors of Marlow FC are very disappointed that Chertsey Town FC should submit a claim given that they are already aware of the circumstances, which I shall reconfirm for clarity.

- Due to the cold weather, MFC conducted their own pitch inspection at 8pm on Monday evening. The temperature at the time was -2c and the pitch was soft and in the opinion of the club, playable.*
- At 9am on Tuesday, the club conducted another inspection and there was one area that was hard on the surface but the majority of the pitch was soft. In the opinion of the club, the pitch at this time was borderline and it would depend on what happened to the weather during the day. The temperature was 0c.*

- *At 11:30 a further inspection was carried out. At this time the hard area had reduced by around 50% with the rest of the pitch being soft. The vast majority of the pitch took a stud and when spiked the ground was not hard below the surface. The goal areas were slippery with wet mud. At this time it was noted that the temperature was +3c and the forecast was for it to rise to +4c at midday and remain at that temperature until 4pm before dropping solely to 0c at 9pm. The cloud was moving away and there was clear blue sky and sunshine by midday. After discussion with the referee he determined that the decision would be taken at 3pm.*
- *At 3pm the temperature was +4c, as forecast. The sun had been shining on the pitch since midday, the sky was still clear. The pitch was wet and soft, including the area that was still hard at 11.30. The only area that was hard and would not take a stud was the strip when [sic] the assistant referee runs down the side of the pitch on one side. The match referee was not concerned about this and stated 95% playable is good enough. We questioned whether this was wise given the hard area just off the pitch and he said it would be fine. The forecast at that time was +2c at 6pm and 0c at 9pm. We discussed the forecast and the appointed MATCH REFEREE stated that the game would be on.*
- *On returning to the ground at 6pm the temperature had dropped to -2c, the pitch was now white with frost, and the wet mud in the goalmouth had hardened. The pitch still took a stud, everywhere except the goalmouth and the strip mentioned above. On arrival at the ground the appointed MATCH REFEREE confirmed it was now -2c. The Chertsey manager told the referee he was not willing to play. The referee decided that the game would not go ahead.*

Additional points

- *As the appointed official lives in the Hayes area, so Marlow FC offered to arrange a local referee (either Kieran Bailey or Matt Downey) to come to the ground instead. The appointed referee declined this offer and stated that he would make the call himself.*
- *The appointed match referee did not then attend the ground at 3pm and wanted to make the call remotely by video. I was not happy with this, but, as a club, we are unaware of any circumstances where the club can overrule the appointed match referee, even if we do disagree.*

- *I called and spoke to Chertsey Town officials 4 times during the date and kept them fully apprised of the situation, including that the referee had decided to make the call without attending. They did not question that the referee had chosen to do this.*
- *Contrary to the claims made by Chertsey Town in person, on the phone and on social media, ALL decisions were taken by the MATCH REFEREE*
- *Also contrary to the claims made by Chertsey Town, there was no act of deliberately making them drive to Marlow 'to wind them up'. Our own players and supporters had to travel as well.*
- *Marlow FC has no authority to overrule the MATCH REFEREE who is the authority as stated in Law 5.*
- *The FA Standardised Rules states: 'No **Club** shall postpone a Competition match on account of the apparent state of the ground.' This clearly confirms that Marlow FC had no authority to postpone the fixture.*
- *Neither the match referee, nor Marlow FC, could have foreseen that the local forecast would be so incorrect. A drop of 4c from the forecast temperature and 6c from sunset could not be predicted.*
- *The vast majority of the pitch was still playable. After the referee call the game off we held a training session on the pitch instead.*
- *When I returned home in the evening my screen still had my last weather check displayed. I took the attached screenshot.*
- *The club has gone well above expectation to monitor the pitch and weather, starting 24 hours before scheduled kick off, and has done everything within its control.*
- *The club has already suffered losses as a consequence through the wasted food purchased and having to pay the officials 50% of their fees.*
- *The weather that week was quite variable, impacting on the ability of the match referees to judge playability. This problem has occurred a number of times the same week, including (in our own division) Ashford (Mx) Town who had an*

inspection at 11am and the game was on, but then called off at 2pm despite Badshot Lea already being there.

As a club, Marlow FC has done everything within its control, but the decision of the match referee, and changes in weather from that forecast are both well beyond our sphere of influence.”

16. At this stage the Appeal Board notes that the key points of the Appellant’s response were that the decisions were taken by the Match Referee, whom the Appellant did not consider it could overrule. That included, critically in the Appeal Board’s view, the statement that the Appellant had offered to contact a local referee, offering two names, to make an inspection, but that the Match Referee had declined that offer and said that he would make the call himself.
17. The Appeal Board also understands from the foregoing, that it was the Match Referee’s decision to hold a virtual inspection, something the Appellant was not happy about.
18. The Appeal Board also notes Chertsey Town’s point of view. The Appeal Board has at all times in this appeal been conscious that Chertsey Town was not before it, but that on any view it was an innocent victim of the late postponement, having travelled to the game. The Appeal Board also notes that Chertsey Town F.C. suggests in both its emails that an assistant referee had offered to inspect the pitch, but that offer had been turned down. Not only does Chertsey Town F.C. very fairly state in the compensation claim email that this is not verifiable information, but equally it does not state in either email to whom that offer was made and, accordingly, by whom it was turned down: especially, whether it was alleged to have been turned down by the Appellant or by the Match Referee.
19. The focus of attention then becomes the ‘evidence’ of the Match Referee, both in so far as it was and was not put before the Respondent’s Board.
20. By an email dated 30 January 2024 and timed at 6:42pm, the individual the Appeal Board was told was the Match Referee emailed Mr Benfell and said:

“I want to inform you that the decision to cancel or not the game is up to the main referee of the game. I made the decisions, not Marlow, according to the laws of the game #5 the referee’s decisions.”

The Appeal Board were informed by Mr Benfell that this email was written in response to a call he had with the Match Referee. Time wise the Appeal Board understands this to have been a discussion in respect of the compensation claim (with the Respondent having invited the Appellant's comments on the claim by email on 25 January 2024). It was not, however, an email written in response to any earlier email posing any particular question(s).

21. In its Response to the Notice of Appeal, the Respondent stated, at paragraph 2.6:

"It is correct that an email from the Referee timed at 6:42pm on 30 January 2024 was not provided to the Board as it was felt that this was irrelevant as it stated the Laws and this was a matter of League Rule in any event (Rule 14.2)."

22. The Appeal Board noted that the reference to Law 5 in the Match Referee's email (also made in Mr Benfell's emailed response to the claim recited above) was possibly incorrect. However, not least in the circumstances referred to below the Appeal Board considers that it was wrong that this email was not provided to the Respondent's Board. Whether the reference to 'decisions' was in fact a reference to the single decision to call the game off being the Match Referee's, which was not in dispute, or had a wider application to decisions made on the day was not a matter which could even be considered by the Board.

23. Instead, the Respondent's Board was provided with an extract from an email titled: 'Referee's comment, supplied via the FA'. We were told this was contained in an email from Chris Kay of The FA, although we do not (as the Respondent's Board did not) have the original email.

24. The Appeal Board notes in fairness that consistently with the other emails recited above, a document was produced for the Board which extracted the text of the email, although the Appeal Board also notes that copies of the other emails were also supplied to the Board in their original form (see page 17 of the Appeal Bundle), but not that containing the Referee's comment.

25. The Appeal Board is also unaware of when exactly the email was received from Mr Kay, although as the Appeal Board understands it the contents of the email were not passed on to the Appellant for comment. The extract of the email contained in the Board's papers states:

“I have spoken to the match referee, he did have a look at the pitch virtually just to see what the conditions were but this wasn’t an ‘official’ inspection. He did suggest to the club that they find a local official but they said they couldn’t find a local referee so he told them he would have a look at the pitch when he arrived which he did. It was then that he decided to postpone the game.”

26. This was plainly in direct conflict with the statements of Mr Benfell on behalf of the Appellant, as recited above. In particular, he says that the Appellant suggested a local referee look at the pitch and identifies the names suggested. However, in his comment through The FA, the match referee says he suggested a local referee look at the pitch, but the Appellant said they could not find one. A starker contrast on the evidence, the Appeal Board found difficult to imagine.

27. The manner in which it is said by the Respondent this contrast was dealt with by it’s Board was identified in the Response to the Notice of Appeal at paragraph 3, when it was said:

“3.1. The Board were privy to a message from the referee which went against the report submitted by the Club which said that the Club had taken decisions earlier in the day.”

28. Pausing there, Mr Robinson on behalf of the Respondent confirmed in the hearing that the ‘message’ referred to was that recited above as the Referee’s comment obtained via The FA.

29. The Response document continues:

“3.2. The Match Referee said he did have a virtual inspection and asked for a local referee to inspect but the Club said they couldn’t find a local referee.

3.3. The Club stated that it offered to arrange a local referee to come to the ground but that the appointed referee declined this offer. The Match Referee said he suggested that the Club find a local official but the club said they couldn’t find a local referee.

3.4. The Board preferred the Match Official’s version of events”

30. How the Board came to the decision it preferred the comments of the Match Referee is not documented anywhere. In submissions Mr Robinson, on behalf of the Respondent, said the Appellant had not asked for detailed reasons. In the Appeal Board's view that comment was defensive and disingenuous. In fact, by an email dated 8 March 2024 the Appellant had asked a number of questions and sought provision of information about the decision made including requesting:

"The report of findings that justify the outcome, including the rationale if the club was not deemed to be at fault."

In response, it was simply said *"The Club was deemed to be at fault"*.

31. The Appeal Board also notes that the Appellant sought the evidence submitted against it, to which it was told that this would be supplied if an appeal were lodged.

32. The Decision itself was contained in the Minutes of the Respondent's Board dated 29 February in the following terms:

"Chertsey Town F.C. – The Club's claim under League Rule 8.40 for compensation for the postponed game at Marlow FC on 23rd January was considered. It was agreed that the home Club should have had an early inspection and that Marlow FC be instructed to pay Chertsey Town FC the sum of £129.60 (54 miles return journey x 5 cars at 48 pence per mile = £129.60)."

Discussion

33. The Appeal Board was conscious that, as stated at the outset and as accepted by Mr Robinson in the hearing, for the purposes of the compensation claim in this matter the Respondent's Board sought to find the Appellant at fault for the postponement. This is consistent with the terms of the decision recorded in the Minute recited above, which says the Appellant should have had an early pitch inspection.

34. In such circumstances the Appeal Board has some sympathy with the Respondent's Board, because ultimately it was presented with wholly conflicting accounts of what happened on the day from the Appellant and the Match Referee. It was not hearing a disciplinary matter, but it did not have the benefit of any comments from the Match Referee or Mr Benfell on the other's conflicting account, as no such comments were

sought. Furthermore, there was not any supporting documentation to assist, save for the screenshot of the weather report referred to by Mr Benfell, which does not help.

35. However, the Appeal Board is at a complete loss to understand how the Respondent's Board could fairly, in all the circumstances, conclude that it preferred the evidence of the Match Referee over that of the Appellant. This is exacerbated by the fact that how this conclusion was achieved is not recorded anywhere.
36. The Appeal Board is unaware whether the Respondent's Board even considered the option of not being able to find fault given the conflict of 'evidence', because the decision was only recorded in the minute as recited above and the Appellant's request for a more fulsome explanation contained in the email dated 8 March 2024 was, in the Appeal Board's view, essentially rejected pending any appeal. The Appeal Board then notes that once the appeal has been advanced, there has been no real explanation of how the decision was made.
37. Equally, it does not appear from the terms of the Minute containing the decision, as recited above, or Mr Robinson's submissions, that the Respondent's Board considered whether this might be a case where compensation should be paid when neither of the clubs were at fault, as permitted by Rule 8.40 (also recited above).
38. During the hearing Mr Robinson suggested a reason the Respondent's Board preferred the 'evidence' of the Match Referee was because the Appellant could have called in a local referee to inspect the pitch. However, the Appeal Board did not consider that this could in any way be an adequate explanation. That is because it does not deal with the very point at the heart of the conflict itself. That is that the Appellant says it did offer to do so (and refers to relevant names of local officials), but also says the Match Referee declined the offer and said he would make the decision, whilst the Appellant also says it did not feel it could overrule the designated Match Referee, against which the Match Referee himself says that he asked the Appellant to find a local official, but they said they could not find one.
39. Instead, it appears the Respondent's Board simply chose one side over the other without any identified or identifiable rationale for doing so.

40. The Appeal Board's concern was exacerbated by the lack of transparency over how the comments of the Referee were obtained, in the sense of what he was asked and whether the stark conflict of evidence might potentially even be explained by the Match Referee having confused the postponement on the 16 January with another unconnected match.
41. There was also the failure to present to the Respondent's Board the email of 30 January 2024 from the Match Referee to the Appellant. Mr Benfell placed great emphasis on this during the hearing, although the Appeal Board considered that the terms of the email are sufficiently ambiguous as to prevent it of itself being decisive.
42. However, in all the circumstances and given the conflict of evidence, the Appeal Board are satisfied that it should have been included in the pack of documents presented to the Board. At the very least this would have highlighted to the Respondent's Board that the Appellant had a statement from the Match Referee says the 'decisions' were his, whatever that may ultimately mean.
43. The Appeal Board returns to the basis on which this appeal is advanced. The first ground is that the Respondent did not give the Appellant a fair hearing. In all the circumstances identified above the Appeal Board is unanimously and clearly of the view that this was the case and allows the appeal on that basis.
44. Ultimately, the Appellant's version of events was starkly contradicted, as was the Match Referee's. Yet the Appellant was disbelieved. However, that was in circumstances where the Respondent's Board failed to seek further comment on the conflict and chose one version of events without any apparent or identified rationale and does not appear to have even considered that it could have determined that fault could not be allocated or, indeed, need not be allocated.
45. Although the second ground does not in the circumstances arise, if it had of done the Appeal Board would also have concluded that the Respondent's Board made a decision which no reasonable body could have come to on the basis of the documentation before it, as distinct from concluding in all the circumstances that fault could simply not be established.

46. Finally, we must return to the position of Chertsey Town F.C. who will not now receive compensation. Whilst an option was for us to remit the matter to the Respondent's Board for reconsideration, given all the circumstances and the steps that will now be needed if this matter were to proceed, we consider that it would be disproportionate in a claim for £129.60 other than to simply allow the appeal and set aside the Board's decision.

47. Accordingly, as confirmed in the Decision Letter, the Appeal Board orders:

47.1. That the appeal is dismissed and the decision of the Respondent's Board dated 29 February 2024 appealed against is set aside;

47.2. That the Appellant has its appeal fee returned, but there be no other order as to costs.

48. Pursuant to Rule 22 of the Non – Fast Track Appeal Regulations, the decision of the Appeal Board is final and binding.

Christopher Stoner KC

As Chair and for and on behalf of the Appeal Board



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24 April 2024.