THE FOOTBALL ASSOCIATION

APPEAL BOARD

PERSONAL HEARING

of

MICKLEOVER FC (Appellant)

&

SOUTHERN FOOTBALL LEAGUE (Respondent)

REASONS OF THE APPEAL BOARD

These are the written reasons of the decision of an appeal board (the "Appeal Board"), having considered the matter as a personal hearing held online via the video platform MS Teams on 26th April 2024.

Introduction

1. The Football Association ("The FA") had received an appeal against a decision of the Southern Football League ("SFL") finding a charge proven against the Appellant.

2. The charge had concerned an alleged breach of SFL League Rule 6.9 for fielding an ineligible player. The alleged rule breach had occurred in seven matches played by the Appellant in the Southern League Premier Division Central ("the Matches").

3. The charge had been dealt with by a Disciplinary Sub-committee of the SFL sitting on 17th April 2024 where the charge had been found proven and the Appellant was deducted twelve points from its playing record for season 2023-4 and fined £100 ("the Decision"). The Decision was communicated to the Appellant by a letter of 17th April 2024.

4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The Appeal Board convened on 26th April 2024 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)
Glenn Moulton (Football Panel Member)
Gordon Mellis (Football Panel Member)

The Appeal Board was assisted by Conrad Gibbons of FA Judicial Services acting as secretary to the Appeal Board.

6. The Appellant had opted for a personal hearing, in other words the appeal was to proceed on consideration of the papers and personal submissions by and on behalf of both the Appellant and the Respondent.

7. The Appellant was represented by Steven Mann, an advisor and former Club official of the Appellant, and the Respondent by David Martin, the SFL's acting chair, with Jason Mills of the SFL observing.

The Appeal Documentation:

8. The Appeal Board had before it the full appeal bundle of 356 pages in total comprising:

- The Appellant's Notice of Appeal & Submissions
- The Appellant's supplementary submissions
- Response to Notice of Appeal
- Appendices A to O to the Response to Appeal
- The Applicable SFL Rules
- Expedited Timelines Application and Outcome

9. The Appeal Board had before it the full appeal bundle, including all papers of first instance, with which all members of the Appeal Board were fully conversant. Absence of specific reference to any part of the appeal bundle in these written reasons does not mean they were not considered; they were considered in full.

Submissions by the Appellant:

10. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle.

11. The Appellant was appealing against the decision on the single ground that the Respondent:

- Imposed the penalty, award, order or sanction that was excessive,

12. Mr Mann, on behalf of the Appellant, confirmed to the Appeal Board that he was familiar with the procedure on appeal.

13. The Appellant was content to curtail the procedure by removing the final four paragraphs of point 7 .3 of their written submissions. This would serve to narrow the issues.

14. The Appellant expressed the hope that the facts were agreed and that what the Appellant was seeking was a reduction in the penalty because of what it believed to be exceptional circumstances

15. In brief, the Appellant had enjoyed an outstanding start to the 2023-24 season but 12 matches into the season a new goalkeeper was required which is why they signed Lewis Ridd on loan from Derby County FC. That loan had completed on 26th December 2023 and the club secretary attended to all details for registering the one month loan.

16. On the expiry of that month there was a proposal to extend the loan further and this was agreed by all parties. The Appellant did not dispute that the new loan needed to be registered correctly and the club secretary, Darren Kay, accepts that he cannot explain why that did not happen. Indeed, he had renewed another loan for another player later on in the season which he had administered entirely correctly so it was not as if Mr Kay did not know what to do.

17. Having believed everything was in order a check on the Respondent's Matchday team sheet function appeared to confirm that Mr Ridd was available for selection and the Appellant never hid the fact that Mr Ridd had played for them. Having nothing to hide, the Appellant believes that the only reason the discrepancy came to light was because Mr Ridd was offered a trial by another EFL club and it was discovered that iFAS had no record of the loan extension.

18. The matter had been investigated by the FA whose conclusion was that there had been a breach of regulations but no penalty was awarded by the FA, simply a warning. The Respondent had then been notified and the Respondent had charged the Appellant on 11th April 2024. A hearing was arranged for 17th April 2024 and the Appellant accepts the Respondent's written summary of that meeting is an accurate summary.

19. The Appellant's submission was that the Respondent had imposed the maximum points deduction permitted by SFL rule 6.9 but had failed to apply SFL rule 6.9.c which permits mitigation of the sanction where there are "exceptional circumstances".

20. The exceptional circumstances upon which the Appellant relied were that there was nothing in the loan extension itself which was in breach of any regulation. Everything had been done correctly bar the correct registration procedure but Mr Ridd's name appeared on the team sheet app which is why the Appellant was never alerted to the possibility that he was not correctly registered to the Appellant club. The loan was all above board, the player was already at the club and the Appellant made no attempt to hide what was happening – why would it? Mr Ridd's name appears on the appropriate team sheets on Full Time and on Whole Game and there was no attempt to circumvent the rules or to seek an unfair advantage.

21. For his part Mr Kay was not alerted to any irregularity and when he was, immediate action was taken.

22. The Appellant submitted that it was debatable as to what advantage had been gained by the Appellant. They have to play a goalkeeper in any event.

23. SFL rule 6.9 allows an exception where there has been a change of status in the player and the Appellant argued that logically Mr Ridd remained the same player in the same role at the same club, just with a different loan arrangement.

24. The Appellant was prepared to concede:

- There is no evidence that the loan extension was registered.
- There is no evidence of any receipt of the registration having been submitted.
- Mr Kay accepts he did not check the iFAS system for Mr Ridd's registration.
- The Appellant should more properly have checked Mr Ridd's eligibility through iFAS.
- The SFL Matchday team sheet app is not a reliable list of eligibility – but that is the area where the mistake has been made.
- The FA's position is perfectly clear.
- Mr Ridd did play seven times for the Appellant while not properly registered.

25. When exploring what would be a reasonable points deduction the Appellant conceded that a rule breach had occurred by playing Mr Ridd in the first match after the loan extension so a points deduction of some sort is appropriate. However, the more appropriate penalty should be

the three points for the first match in which Mr Ridd played as everything thereafter simply compounded the error which had already been made: the error was not repeatedly made.

26. To set out the exceptional circumstances in this case Appellant pleaded that:

- The Appellant had an unblemished record in this regard
- There was no intent to deceive or to gain an unfair advantage
- The Appellant did nothing to hide the facts and continued to play Mr Ridd openly because they were not aware of any error
- The initial error had been compounded game by game but this had been done unwittingly
- When the letter from the FA had been received the Appellant had hoped that was the end of the matter, although they did note that the Respondent would then become involved.

27. Finally the Appellant accepted that the offence of playing an ineligible player is a strict liability offence but there is no strictly defined penalty. There can be different shades of breach but in this case the maximum penalty has been applied without taking into account the circumstances and mitigation.

Submissions by the Respondent:

28. The Appeal Board considered the formal response to the notice of appeal as well as the written explanation as to how it had reached the Decision.

29. The Respondent submitted that the Appellant did not dispute that the player, Lewis Ridd, was ineligible to play in the seven matches in which he did play by reason of his loan extension not having been registered. The Respondent did not dispute that the extension had been entered into but the registration process had not been completed. This may have been a processing error but it was still an error, the upshot of which was that Mr Ridd was not properly registered to play for the Appellant.

30. Mr Darren Kay is a good club secretary and the Appellant is a good member of the league but the league rules need to be administered impartially.

31. The Appellant's apparent confusion between the iFAS registration system and the Respondent's own Matchday system is not accepted. Matchday is a tool to be used when preparing team sheets for the referee and opposition and is not a definitive tool to identify players' eligibility.

32. On 9th April 2024 the FA had written to the Appellant confirming that they had been found guilty of fielding an ineligible player, in breach of Rule C37, but that letter also made reference to the Respondent's own disciplinary process to which the Appellant would still be subject.

33. Fielding an ineligible player is a strict liability offence and the FA had issued their usual warning for a first offence. The Appellant's good record in this matter was not in dispute but the breach had taken place.

34. The Appellant had sought to allege that there was a fault with the Matchday application and the software suppliers, Athium, had investigated the matter but on page 296 of the bundle Athium confirmed that no submission had been made to register the loan extension and there was no technical fault with their system.

35. For the record, on page 280 of the bundle at Appendix H was a full set of written reasons detailing the written reasons for the Decision.

36. Having found the initial charge proven, the disciplinary subcommittee then had then to impose a penalty in accordance with SFL rule 6.9. This was not an optional process. Rule 6.9 states that in the event of a breach the offending club "*shall*" be subject to a points deduction and the rule then goes on to define the level of deduction. There is scope for the points deduction to be mitigated but for that to occur there need to be exceptional circumstances.

37. The Respondent submitted that Rule 6.9.a does not apply, 6.9.b only applies where there has been a change in status of a player and 6.9.c offered the only possible discretion on sanction.

38. The disciplinary subcommittee had considered whether exceptional circumstances applied in this case. The deliberation on this particular point was set out in full on page 285 of the bundle. As the error which had occurred was a processing error, which was the exclusive responsibility of the Appellant, this did not amount to exceptional circumstances. The bar is set necessarily high in such cases. Bearing in mind its responsibility to the competition as a whole, the Respondent had to be objective and impartial in applying the rules and, not having found exceptional circumstances, the Respondent found its hands tied and did not consider the criteria for exercising a discretion had been established.

39. The Appellant referred in its submissions to the Matchday team sheet function as a tool for establishing eligibility. That is not the function of the Matchday application - it is simply to

produce a team sheet and the reason ineligible players might appear on the programme was because they needed to be removed manually. This was why the Respondent had made it clear to all members of the league that the method of checking a player's eligibility is either through iFAS or by checking with the county association. This was made clear on page 302 of the bundle at Appendix N.

40. The Respondent submitted that it is not the responsibility of the league to check every player's eligibility. It does not check every player in every game but does check against FA suspension lists and the maximum number of loan players who can play, but the Respondent does not have the resources to check every player for every match.

41. The Respondent was unable to give an explanation as to why the player list on Matchday is not kept up to date.

42. The Respondent confirmed that all relevant meetings were quorate.

43. The Respondent confirmed that Mr Kay had attended the hearing on his own, had appeared distressed and had continued to deny the charge on the basis that the player had been eligible for the Matches.

Closing remarks

44. In closing, the Appellant submitted that this was a genuine mistake, a point conceded by the Respondent. Mr Kay is relatively young as a club secretary but has devoted nearly half of his life to grassroots football. He is a qualified referee, Sunday League Secretary, Secretary of two leagues in Leicestershire and now secretary of Mickleover Football Club.

At the disciplinary subcommittee meeting, the chair had commented that Mr Kay had presented the case well and had come across as a better club secretary than most who appear before League committees and this goes to the heart of the Appellant's case. The Appellant had not come to the appeal to cause trouble but to emphasise the contribution that people like Mr Kay, and Mr Kay himself in particular, make to grassroots football. What message does it send if the first mistake made by a club secretary is punished with such a severe penalty?

The Appellant did accept that the error was a personal error and doesn't seek to blame anyone else for the lack of noticing the failure to register the loan extension but we all make mistakes.

Yes, the rules say that a points deduction "*shall*" be imposed but the Appellant contended that Mr Kay had not put forward exceptional circumstances to the subcommittee and had he done so the subcommittee could have considered the sanction differently.

Deliberation

Legal test for all grounds of appeal

45. As is clear from Regulation 12 of the Non- Fast Track Regulations[1], the task of the Appeal Board is to conduct a review of the first instance decision, and not a new hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

46. Guidance on how this review should be carried out is to be found in:

(a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

"When considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission's decision was unreasonable."

and

(b) The FA v José Mourinho, 18 November 18, which states, at paragraph 54:

"It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to 'second guess' the Commission; ... ... We are permitted to 'intervene' only when there has been an error of principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone 'plainly wrong'."

1 The FA Handbook 2023/2024 at P.191

47. Accordingly, the Appeal Board applied the following principles in its approach to the grounds of appeal:

- An appeal such as this proceeds by way of review of the decision of the Respondent. It is not a rehearing of the evidence and arguments at first instance;
- It is not open to the Appeal Board to substitute its own decision for that of the Respondent simply because the Appeal Board might themselves have reached a different decision at first instance;
- If the Respondent has reached findings of fact which it was reasonably open to the Respondent to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant;
- The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Respondent. Evidential assessments of the Respondent should only be interfered with if they are clearly wrong or if the wrong legal principles were applied to the making of those factual findings;
- Any Appellant who pursues an appeal on the ground that a Disciplinary Commission has come to a decision to which no reasonable such body could have come has a high hurdle to clear or a high threshold to overcome.

Discussions on the ground submitted

48. In accordance with the principles set out immediately above, the Appeal Board considered all the parties' submissions.

49. The Appellant had appealed on a single ground only, namely that the Respondent had imposed a penalty, award, order or sanction that was excessive.

50. The Appeal Board noted that there was no dispute that Mr Ridd had not been eligible to play in the Matches because his loan extension had not been registered. The Appeal Board was grateful to the Appellant for making this clear so as to narrow the issues and avoid wasting time.

51. SFL Rule 6.9 in its entirety states:

"*6.9 PLAYING AN INELIGIBLE PLAYER*

Any club found to have played an ineligible player in a match or matches shall have any points gained from that match or matches deducted from its record, up to a maximum of 12 points, and have levied upon it a fine. The Board may also order that such match or matches be replayed on such terms as are decided by the Board which may also levy penalty points against the Club in default.

The Board may vary its decision in respect of the points gained in the circumstances where:

(a)the ineligibility is due to the failure to obtain an International Transfer Certificate or

(b)where the ineligibility is related to a change in the Player's status with the Club whom he is registered or

(c)*where the Board determined that exceptional circumstances exist*."

52. The Appeal Board concluded that Mr Ridd had been ineligible for the Matches. In any event this was conceded by the Appellant. It therefore fell to the Appeal Board to consider whether any of the potential exceptions applied, so as to render a lesser penalty more appropriate than the 12 points deduction which had been imposed by the Respondent.

53. It was not disputed that of the seven matches in which Mr Ridd had played, the Appellant had gained 18 points but, according to rule 6.9, the maximum sanction was 12 points, which had been applied.

54. As the written reasons of the subcommittee meeting of 17th April 2024 were not disputed and were regarded as an accurate record of that meeting, the Appeal Board was content that the representation of the discussion which had taken place on the question of whether exceptional circumstances applied was also accurate. This appeared to be an informed and in-depth discussion on the availability of exceptional circumstances but the subcommittee found that there were none.

55. The Appeal Board found that there were no exceptional circumstances applicable in this case, either quoted as having been presented to the subcommittee or presented to the Appeal Board in the course of this appeal. The Appeal Board took note that the exceptional circumstances cited by the Appellant at the appeal were:

- The Appellant has an unblemished record and certainly no history of such a breach
- There was no intent to deceive
- The Appellant had not sought to hide the error

- The Appellant had unwittingly compounded its culpability each week by playing Mr Ridd over and again
- Mr Kay is regarded as being a good club secretary and this punishment is extreme being the maximum which could be levied but, in this case, for an innocent mistake.

56. The Appeal Board was unable to find any of these factors comprised an exceptional circumstance. The onus is on a club not to break the rules not for a league to catch them at it and therefore it is the club's responsibility, whatever the circumstances, to ensure compliance with the rules. The SFL Rules are not exceptional, are the FA's own Standardised Code of Rules and therefore do not place an unnecessary burden upon clubs.

57. Mindful of FA appeal regulation 12 (see above) the Appeal Board was satisfied that the Decision had been properly made with consideration of the correct circumstances and factors. There was nothing manifestly incorrect in the Decision nor in the manner in which it had been taken. The penalty applied was entirely in accordance with the Respondent's rules and had been calculated correctly.

Conclusion

58. In summary, the Appeal Board unanimously dismiss the Appeal on the ground cited.

59. In order to give effect to this decision, the Appeal Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations[2], orders that:

i. The appeal fails.
ii. The appeal fee is retained.
iii. There is no order for costs.

60. This decision of the Appeal Board is final and binding and there shall be no right of further challenge.

Paul Tompkins
Glenn Moulton
Gordon Mellis 8th May 2024

[2] The FA Handbook 2023/2024 at P.192