

# APPEAL BOARD OF THE FOOTBALL ASSOCIATION

**BETWEEN:**

**MOUSEHOLE AFC (Appellant)**

**-and-**

**SOUTHERN FOOTBALL LEAGUE (Respondent)**

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## WRITTEN REASONS OF THE APPEAL BOARD

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Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member

Robert Purkiss – Independent Football Panel Member

Billy Thomson – Former FA Council Member

Secretary: Conrad Gibbons – Senior Judicial Services Officer

Date: 16 May 2024

Venue: Held remotely via Microsoft Teams

### INTRODUCTION

1. The Appeal Board was appointed under The Football Association’s Disciplinary Regulations – Appeals (“the Appeal Regulations”). No objection was raised concerning the composition of the Appeal Board.

2. The Appeal Board conducted a hearing on 16 May 2024 to determine an appeal submitted by Mousehole AFC (“the Appellant”) against a decision of The Southern Football League (“the Respondent” or “the League”) by which it was ordered to pay compensation to Melksham Town FC (“Melksham”) following the cancellation of a match that had been due to be played on 17 February 2024 (“the Match”). The Match was called off by the Match Referee following a pitch inspection 90 minutes before kick-off. Two earlier pitch inspections that day by a different referee had deemed the pitch playable, but the weather conditions had subsequently worsened.
3. The decision to order the payment of compensation was made by the Board of the League (“the Board”) at a meeting on 14 March 2024 and was communicated to the Appellant by letter dated 15 March 2024. Written Reasons for the Board’s decision were provided on 27 March 2024. A Notice of Appeal (“the Notice”) was submitted by the Appellant on 12 April 2024.
4. The Respondent submitted a Response to the Notice on 1 May 2024 (“the Response”).
5. The Appeal Board had before it a bundle (“the Appeal Bundle”) containing the following:
  - Notice of Appeal
  - Response to Notice of Appeal
  - Appendix A: Submissions by the Appellant and Melksham
  - Appendix B: Results Letter
  - Appendix C: Written Reasons
  - Appendix D: Board Meeting Minutes
  - Sanction Stay Application and Outcome
  - Supplementary Observations
6. This document constitutes the written reasons for the Appeal Board’s decision. The Appeal Board considered the entirety of the materials that the parties put before it. If this document does not explicitly refer to a particular point, document or submission, it should not be inferred that the Appeal Board overlooked or ignored it.

## **BRIEF BACKGROUND FACTS**

7. The Appellant plays in the League.
8. As stated in paragraph 2 above, on 17 February 2024 the Appellant was due to play Melksham. However, the Match was called off due to the state of the pitch.
9. Following the Match, both Melksham and the Appellant submitted expenses claims to the League, along with observations regarding the events leading up to the postponement.
10. In a series of emails to the Respondent between 18 and 20 February 2024, Melksham provided copies of emails that they had exchanged with the Appellant and made the following points, among others:
  - The Appellant kept them in the loop regarding the state of the pitch most of the time.
  - They had booked hotel rooms costing £923 and paid £80 per car in travel expenses for a total of seven cars. The total cost of £1,483 was cheaper than the £1,600 that they had been quoted for a coach.
  - They arrived at the ground around midday and were present for the second inspection of the day. The referee who did the inspection was in contact with the Match Referee and said that the pitch was playable.
  - Their Chairman spoke to the Appellant's groundsman, who said that he had asked for the game to be called off on the Friday. The groundsman showed the Chairman photos of the pitch on Thursday afternoon with puddles on it. He said that there was no chance of the Match being played.
  - By the time the Match Referee arrived the rain had become heavier and calling the game off was definitely the right decision.
  - They were very angry about the lack of hospitality when they arrived.
  - They were concerned by the prospect of having to travel to Mousehole again for a rearranged midweek fixture, both in terms of cost and player availability,
  - The Appellant's Chairman called the Melksham Chairman the day after the Match to apologise. He said that the Appellant had been told by the League that the Match could

not be called off on the Friday. The Appellant's Chairman offered compensation to Melksham.

- The Match was called off *“through no fault of ours and by someone lying and not using common sense”*.

11. On 8 March 2024, Gary Hocking (“GH”), the Appellant's Matchday Coordinator, emailed the League with the Appellant's observations and comments. He provided a chronology of events and copied and pasted emails exchanged with Melksham. He summarised the Appellant's position in the following terms:

*“In summary, all decisions in the 48 hours prior to the scheduled kick-off were made in full consultation with all three parties. I proposed to Melksham that there should be a pitch inspection the day before the game but acceded to the Melksham Chairman's request not to call for one. Then, despite Melksham discouraging me from requesting a pitch inspection early on Saturday morning, I requested one anyway which pronounced the pitch playable and the weather forecast not definitive enough to warrant postponing the match.*

*Melksham subsequently inspected the pitch themselves at 10:00 and confirmed their satisfaction, and a further referee's pitch inspection just after midday was also positive. Only when the match referee arrived in person at 13:15 was this position reversed.”*

## **THE BOARD'S DECISION**

12. In its Written Reasons, the Board stated that it had considered the matter under Standardised Rule 8.40. It went on to say the following:

*“the Board carefully considered the points made by both Clubs. It found that there were inconsistencies between the two clubs' versions of events and needed to take a view on such. It was considered that Mousehole FC had offered to pay Melksham Town FC some compensation and therefore the Board considered that this should be done by means of ordering the match to be played under League Cup tie terms with any loss to be shared by both Clubs”.*

## **THE APPEAL REGULATIONS**

13. Regulation 2 of the Appeals - Non-Fast Track Regulations (“the Appeal Regulations”) sets out the grounds upon which a participant may appeal a first instance decision. They are:

*“... the body whose decision is appealed against:*

*2.1 failed to give that Participant a fair hearing; and/or*

*2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or*

*2.3 came to a decision to which no reasonable such body could have come; and/or*

*2.4 imposed a penalty, award, order or sanction that was excessive.”*

14. Regulation 12 of the Appeal Regulations states:

*“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”*

15. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal.

## **THE RELEVANT RULE**

16. Rule 8.40 of the Standardised Rules states as follows:

*“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.”*

## THE APPELLANT'S SUBMISSIONS

17. As stated in paragraph 6 above, the following is a summary of the principal submissions made to the Appeal Board. It does not purport to contain reference to all the points made. The absence of a particular point or submission should not imply that the Appeal Board did not take that point or submission into consideration when reaching its decision.
18. In the Notice, the Appellant indicated that it was appealing on grounds 2.1, 2.3 and 2.4 of Regulation 2, as quoted in paragraph 13 above.
19. The Notice provided a comprehensive chronology of events, before expanding on each of the Appellant's grounds of appeal in turn. The Appellant's points are summarised briefly below:

### **Failure to give the Appellant a fair hearing**

- The Board "*took a view*" rather than seeking clarification and investigating.
- The Board placed undue weight on the supposed offer by the Appellant's Chairman to pay compensation to Melksham. He did not make any such offer. The Appellant had no opportunity to address and correct what Melksham had said.
- The Appellant's groundsmen "*moved heaven and earth*" to prepare the pitch.

### **Came to a decision to which no reasonable such body could have come**

- Alternative processes, conclusions and decisions were available to the Board.
- The Appellant had a match called off earlier in the season in very similar circumstances. In that case the Board had decided that neither club was at fault, meaning that no compensation was payable. Taking that as a precedent, the Board must have deemed that the Appellant was at fault on this occasion, although there was nothing to indicate how it had formed that view.
- If the Appellant was at fault, it must have breached one of the League's Rules. The breach had not been identified.

- The Board had decided to apply the financial rules applicable to a League Cup tie to an ordinary League game.

### **Penalty, award, order or sanction was excessive**

- The decision to treat the Match as a League Cup tie was disproportionate.
- Given that the Appellant had clearly done nothing wrong, no penalty or order should have been imposed at all.
- The previous postponed match should serve as a precedent.

### **LEGAL TEST**

20. Regulation 12, cited in paragraph 14 above, makes it clear that the task of the Appeal Board is to conduct a review of the first instance decision rather than a *de novo* hearing. In other words, the Appeal Board is not considering the matter afresh, it is simply looking at whether evidential assessments are clearly wrong or wrong principles have been applied.

### **DETERMINATION**

21. The Appeal Board noted that this was appeal against a decision of a League and that the decision-maker was the Board of that League rather than a Disciplinary Commission. As such the decision was not taken after a hearing in the strict sense as that was not the procedure laid down for determining compensation. Nonetheless, the Appeal Board was concerned that the Board had preferred the evidence of one party to another with no further investigation or clarification and no rationale for the decision that it had reached.

22. The Appeal Board focused on the wording of Rule 8.40. It noted that the award of compensation is normally premised on a finding of fault on the part of one of the clubs involved. The Board did not indicate in its Written Reasons why it had concluded that the Appellant was at fault, if indeed that was its conclusion.

23. The Appeal Board noted that Rule 8.40 does permit no-fault compensation “*in some instances*”. The Board had not indicated if it had relied on this provision and, if so, why. Rule 8.40 states that overnight accommodation may be claimed “*in exceptional circumstances*”. The Board had not indicated whether it considered that there were exceptional circumstances in this case. Finally, and crucially, the Appeal Board noted that Rule 8.40 concludes by saying that it is for the Board to determine the amount of compensation payable, if any. In the view of the Appeal Board, the Board had failed to make that determination. Instead, it had chosen to apply a rule applicable to a completely different competition, which meant that the amount of compensation payable could and would only be determined at a future date, after the rearranged Match had been played. The Appeal Board considered this to be a perverse approach. The Board had applied the wrong principles and had come to a decision to which no reasonable such body could have come.
24. While quashing the Board’s decision for the reasons set out above, the Appeal Board wished to make it clear that it was not saying that no award of compensation should be made. It would be up to the parties to decide whether to reapply for compensation under Rule 8.40 and, should they do so, it would be for the Board to decide on the appropriate amount of compensation, taking account of all of the factors set out in Rule 8.40.

## CONCLUSION

25. The Appeal Board allowed the Appellant’s appeal.
26. The Appeal Board made no order as to costs.
27. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport  
Robert Purkiss  
Billy Thomson  
23 May 2024