

**BEFORE AN APPEAL BOARD CONSTITUTED UNDER THE RULES OF
THE FOOTBALL ASSOCIATION**

B E T W E E N:-

SOUTHEND UNITED FC

Appellant

-and-

**THE FOOTBALL CONFERENCE LTD.
(known as THE NATIONAL LEAGUE)**

Respondent

DECISION OF THE APPEAL BOARD

Introduction and Background

1. Southend United Football Club (hereafter “the Club”) currently competes in The National League, which is the fifth tier of English football.
2. As such, the Club is subject to the rules of the Football Conference Ltd., known as “The National League” and which we shall refer to hereafter as the Respondent.
3. The Club’s appeal is against a decision of the Respondent communicated on 14 June 2024, whereunder it sought to impose conditions on an Unconditional Licence issued to the Club on 5 May 2024.
4. Part of the recent history of the Club and its relationship with the Respondent was set out in an earlier appeal. That involved a decision of the Respondent in July 2023 requiring the Club to discharge all outstanding debts to Football Creditors by 24 July 2023 and all debt to HMRC by 23 August 2023. That requirement also provided for a sanction for non-compliance which was to be an “*immediate and automatic points deduction*”.

5. The Club's challenge to that decision came before an earlier Appeal Board (but with the same Chair as this Panel) in September 2023. In a decision dated 2 October 2023, that Appeal was dismissed.
6. Although there is arguably some overlap between the legal issues arising in the two cases, we take the view that they are, at least from a legal perspective, distinguishable. Nevertheless, the facts underlying the legal issues are very relevant to the factual context for the issues that arise here. Indeed, it is the Respondent's concern for what it sees as the substantial financial difficulties that the Club faces now and which it faced in relation to the previous appeal that led to the imposition of the conditions on 14 June 2024. From the Club's perspective, however, that is characterised as an illegitimate attempt to impose conditions upon a licence that had been granted unconditionally only six weeks or so previously.

The Facts

7. The facts are largely uncontroversial, although there are very considerable differences of interpretation between the parties.
8. Following on from the previous hearing in September 2023, when there was an awareness that the Club was likely to be sold, discussions progressed with a consortium of businessmen who, shortly before Christmas 2023, exchanged contracts to purchase the Club. Completion of that deal is, we are told, now scheduled for the summer / autumn of this year. According to the Club's case on this appeal, the consortium has already invested in excess of £3.5 million and that investment has reduced the Club's net debt by around £1.5 million.
9. That the Club nevertheless has continuing financial difficulties is not denied, although the Club and the Respondent are in fierce disagreement as to the nature and extent of those difficulties. One event to which both parties refer is that a Winding Up Petition was presented against the Club on 23 February 2024.

10. On 19 April 2024, the Club filed its accounts for the year ending 31 July 2022 and, we were told, then began work on its accounts for the year ending 31 July 2023, which were due to be filed at Companies House on 30 April 2024.
11. There was an issue between the parties as to whether the accounts for the year ending 31 July 2023 should have been filed with the Respondent by the beginning of March 2024 or by the end of April 2024, whereas in fact they were not sent to the Respondent until 20 June 2024. Either way, it means that, as at 5 May 2024 when the decision was taken to grant an Unconditional Licence, the Respondent knew that those accounts were outstanding.
12. In our view, it is not material to decide whether they were outstanding by a few days or whether they were outstanding for over six weeks.
13. On any view, as at 5 May 2024, the Club's difficult financial position was obvious not least because of the history that we have already recorded. Moreover, if the Respondent is correct about the bleak picture which those accounts show, then there had been several days in which those responsible for assessing the state of the Club's financial health could have familiarised themselves with that position. And the Respondent was certainly aware that there was an outstanding Winding-Up Petition.
14. On 15 May 2024, with the consent of the Petitioning Creditor and the two entities supporting it, the Winding-Up Petition was adjourned to 26 June 2024 and, consequently, on 17 May 2024, the Respondent wrote to the Club placing it under Transfer Embargo in relation to Player Registrations.

The 14 June Review

15. We shall quote in full the letter which forms the basis of this appeal:

“Dear Sir

*The National League Membership Rules and Appendix Q: The Licensing System
Review of the Licensing Decision for Southend United FC for 2024/25*

Due to serious concerns surrounding Southend United FC in relation to its current ownership and the winding up petition issued against the Club, the Club Compliance and Licensing Committee met today, 14 June 2024, to review whether the Club is in compliance with National League rules.

Consideration was given to Appendix Q, para. 6.2 which states that ‘if the Competition becomes aware of a change at a Club by any means then the Competition must consider any such change in relation to the application of the Licence Criteria to the Club.’ The National League has become aware of changes at the Club including a winding up petition that has been further adjourned, its qualified accountants report for 2022, filed on 19 April 2024 and the failure to submit the July 2023 accounts to the National League by the due date. The Committee has determined the following:

Appendix Q para. 4.1.4 states:

‘Where the annual financial statements are not provided to the Competition by the due date or do not satisfy the requirements at paragraph 4.1.2 above then the Licence may be refused or a Conditional Licence issued. The Club may also be subject to a penalty determined by the Competition.’

The deadline for submission of the 31 July 2023 accounts to the National League was 30 April 2024 (as per Rule 10.8 – within nine months of its accounting reference date). As of the date of this letter, the accounts have not been submitted to the National League and are overdue at Companies House. The Club had a Conditional Licence imposed on it for both the 22/23 and 23/24 seasons with a condition to submit its outstanding accounts.

The National League has reviewed the club’s latest audited financial report for the year ended 31 July 2022 submitted online at Companies House on 19 April 2024, which show a retained loss for the year to 31 July 2022 of £2,717,380 and a negative balance sheet of £21,366,584. Of this balance, £22,619,910 was payable within one year and the vast majority of this balance being £15,117,403 was due to the company’s immediate parent company, South Eastern Leisure UK Limited. This company is wholly owned by Mezcal Investments Limited, based in the British Virgin Islands.

The National League note that the audited financial report, a public viewable document, is heavily qualified. This is in respect of the valuation of the Soccer Dome and whether any adjustment to the carrying valuation of £434,122 should be made. More important is the material uncertainty related to the club being a going concern, which is normally twelve months from the date of signing the audit report. As a result of this, the National League is justifiably concerned as the ability of the Club to meet its financial obligations for the forthcoming season and that the Club may be operating whilst insolvent both on a balance sheet basis and on the basis that the Club cannot pay its debts as they fall due.

Appendix Q, Rule 4.4.1 states:

‘A Club must be assessed under the Financial Reporting Initiative in respect of PAYE and VAT. The assessment of a Club and the application of the

requirements of the Financial Reporting Initiative to a Club shall be deemed to be compliance with the criteria'

Financial Reporting Initiative, Appendix D, Rule 4.3 states:

'If requested by the Competition a Club must demonstrate to the reasonable satisfaction of the Board that it has sufficient funds to meet its financial obligations for the Season or any outstanding part thereof. In the event of a Club failing to provide such information to the reasonable satisfaction of the Board then the Board may request a personal interview with the Club with a view to seeking further information and details and in the event of a Club still failing to satisfy the Board then the Board may impose such penalty as it may reasonably decide including but not limited to the imposition of an embargo or the suspension of a Club from the Competition.'

The Committee has today made the following decision:

The 24/25 Licence is amended to a Conditional Licence with immediate effect with the following conditions:

a) The Club must provide the National League with its accounts for the year ending 31 July 2023

b) The Club must provide detailed objective and independent evidence that Southend United FC (and not the Consortium) has sufficient funds to meet its financial obligations for the coming 24/25 season

The deadline for the above conditions to be satisfied is 3pm on Thursday 20 June 2024.

The Committee will reconvene again on Friday 21 June 2024 to determine the matter further and wish to draw your attention to the possible sanctions that can be determined at that meeting are as follows, but not limited to:

a) Embargo – the Committee notes the Club is already under embargo due to the winding up petition

b) Suspension or withdrawal of the Club's Licence

c) Financial penalty

d) Points deduction

e) The requirement to deposit a Bond (as per Rule 4.12)

f) Relegation

g) Expulsion

Please note if the Committee decides to order the deposit of a Bond, this deposit would be required within 7 days of the next meeting.

You are also reminded a club must hold a Licence to be a member of a Competition.

I look forward to receiving the relevant information on or before 3pm on 20 June 2024.”

16. Having filed its accounts to the year ending 31 July 2023 on 20 June 2024, the Club appealed the conditions set out in the Review Letter on the same day.
17. As we have already said, the issue on the imposition of those conditions is whether it was legitimate for the Respondent to amend the unconditional licence to make that licence conditional upon
 - the Club providing The National League with its accounts for the year ending 31 July 2023, and also
 - providing “*detailed objective and independent evidence that Southend United FC (and not the Consortium) has sufficient funds to meet its financial obligations for the coming 24/25 season*”.
18. The deadline for both conditions was expressed to be 3:00pm on Thursday, 20 June 2024.
19. As can be seen from the letter itself, the Club was told that the Committee would reconvene on Friday, 21 June in order to determine the matter further and consider potential sanctions for non-compliance, the options for which were identified in the letter. One of those options was the potential to “*order the deposit of a Bond*”.
20. As we have recorded, the Club met the first of those conditions by filing its July 2023 accounts at 14:26 on 20 June 2024. It did not, however, provide the other evidence within the timeframe on which the Respondent had insisted, but did send an email on 2 July purporting to comply with the second condition. It is against the conditions in the Review Letter that the Club appeals. This is the appeal we heard remotely on 4 July 2024, which we shall refer to as the first appeal.

21. On 21 June 2024, Mr Ives, on behalf of the National League, apparently spoke to the leader of the Consortium, warning that he was proposing to request a Bond in accordance with one of the options identified above. Whatever may have been said, the fact of the matter is that, on 24 June 2024, a bond was required by the Respondent in a substantial sum (£1 million) and that requirement was the subject of a second (albeit related) appeal that was due to be determined on Thursday, 18 July 2024 and which has now been compromised.
22. There were several subsequent exchanges between the parties. However, one possibly material event that we should record is that, on 26 June 2024, the Winding-Up Petition issued against the Club was dismissed. And, on the same day, Heads of Terms relating to a property deal upon which the sale of the Club is dependent were agreed.

The Rules as to Licensing

23. These are contained in Appendix Q of the Respondent's Rules and the relevant paragraphs are as follows:

“1.1 the Association operates a Licensing System for Clubs at Steps 1 to 4 of the National Keagye System. The Association has delegated to each Competition the operation, determination and monitoring of the Licence as set out in this Licensing System (“the delegated powers”). The Association retains a right to apply the operation, determination and monitoring of the Licence as set out in Section 2 below [...]

1.2 A Club must hold a Licence to be a member of a Competition.

...

2.2 The Association has the right to apply at any time the delegated powers where in the reasonable option of The Association the Competition has failed to do so or has failed to do so adequately and the procedure set out in paragraph 2.3 has been followed.

...

3.1 Each Club is required to apply for a Licence using the application form. The application form is to be received by the Competition by 14 March in respect of the Membership Year immediately following. A Club shall be assessed by the Competition in accordance with the Licensing Criteria in order to be granted a Licence.

...

3.3 *The Competition must advise each of its member Clubs of its licensing decision in writing on or before the 5 May following the submission of an application, other than for a Club to which The Association has exercised the delegated powers in accordance with paragraph 2.3.*

...

4.1 *The Licence Criteria are as set out in Annex 1. Each Licence Criterion is to be met for a Club to be granted an Unconditional Licence. A Conditional Licence may be issued as stated in the Licence Criteria.*

...

7.1 *All decisions of the Competition in relation to a Licence shall be subject to appeal only by the Club which submitted an application form for that Licence. The appeal shall be determined in accordance with the FA's Appeal Regulations save that any such appeal must be lodged in writing within 5 working days of the date of notification of the decision to be appealed against and any appeal hearing must be held within 14 days of the appeal being lodged with The Association.*

...

4.1.1 *By 14 March in a Membership Year a Club must provide to the Competition a copy of its full annual financial statements for the period of its most recent complete financial year.*

4.1.2 *The annual financial statements are to be prepared in accordance with applicable legal and regulatory requirements, the rules of the Club, Rules 11.3 or 11.4 of The Association as appropriate and are to be evidenced as having been approved on behalf of the Club by its Board of Directors or Committee and circulated to its members / shareholders.*

...

4.1.4 *Where the annual financial statements are not provided to the Competition by the due date or do not satisfy the requirements at paragraph 4.1.2 above then the Licence may be refused or a Conditional Licence issued. The Club may also be subject to a penalty determined by the Competition.*

...

4.4.1 *A Club must be assessed under the Financial Reporting Initiative in respect of PAYE and VAT. The assessment of a Club and the application of the requirements of the Financial Reporting Initiative to a Club shall be deemed to be compliance with the criteria.*

...

6.1 *A Club is required to advise the Competition in writing of any changes to the application of any of the Licence Criteria to its Licence at any time*

which might directly or indirectly affect the application of the Licence Criteria. The written notification is to be received by the Competition within three working days of the change occurring.

- 6.2 *If the Competition becomes aware of a change at a Club by any means then the Competition must consider any such change in relation to the application of the Licence Criteria to the Club.*
- 6.3 *If a Club fails to advise the Competition of such a change then it may be subject to a penalty determined by the Competition, including and not limited to suspension or withdrawal of the Club's Licence, Embargo or financial penalty or a points deduction."*

Other Relevant Rules

24. It is also relevant to bear in mind the financial reporting obligations that are set out in Appendix D to those same rules.

25. Under the heading "Other Matters" there are the following relevant provisions:

"4.1 In considering the application of the Initiative, the Board shall adopt such procedures and take such action for the determination of any matter, dispute or difference as it considers appropriate.

4.2 In the event that a Club believes that it is subject to specific circumstances that are not reflected in the Initiative, they must report these circumstances immediately to The National League. Such circumstances may include, but not be limited to, the following:

- a Club not being registered for either PAYE or VAT*
- a Club having an arrangement in place with HMRC to make PAYE/NI and/or VAT payments on a basis other than the standard terms (i.e. a basis other than PAYE/NI monthly and VAT quarterly)*
- a Club being subject to an HMRC assessment in the course of any season*
- a Club having an amount under dispute with HMRC*

In such circumstances, the Board of The National League reserves the right to request any supporting documentation and to impose any additional or varied reporting requirements on such Clubs as it deems appropriate.

4.3 If requested by the Competition a Club must demonstrate to the reasonable satisfaction of the Board that it has sufficient funds to meet its financial obligations for the Season or any outstanding part thereof. In

the event of a Club failing to provide such information to the reasonable satisfaction of the Board then the Board may request a personal interview with the Club with a view to seeking further information and details and in the event of a Club still failing to satisfy the Board then the Board may impose such penalty as it may reasonably decide including but not limited to the imposition of an embargo or the suspension of a Club from the Competition.

4.4 Clubs will have the right to appeal any decision by the Board of The National League pertaining to the application of the Initiative. Such an appeal will be subject to the conditions laid down in Rule 16 of The National League.

4.5 For the avoidance of doubt, any Club that has become a member of The National League through promotion, relegation or by any other means is required to comply with the Initiative.”

Provisions as to Appeal

26. There are some straightforward provisions as to appeals which were drawn to our attention.

27. First, Regulation 2 of The FA Disciplinary Regulations, Part C: Appeals Non-Fast Track of The FA’s Disciplinary Regulations provides that the grounds of appeal available Participants shall be that 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.”

28. Next, Regulation 7 provides that a Notice of Appeal must:

“7.1 identify the specific decision(s) being appealed;

7.2 set out the ground(s) of appeal and the reasons why it would be substantially unfair not to alter the original decision;

7.3 set out a statement of the facts upon which the appeal is based”

The Hearing on 4 July 2024

29. The hearing of this appeal was conducted remotely on 4 July 2024. Mr Mehrzad KC appeared for the Respondent and Mr de Marco KC on behalf of the Club. We are grateful to them for their submissions and for the clarity with which they argued their competing positions.
30. We should note that there was no objection to the composition of the Panel and record the fact that a member of the Panel who had previously been appointed (Mr Williams) became unavailable on the morning of the hearing. However, before the appeal began, Mr Wild was able to replace him at short notice and joined the Panel with the consent of both parties.
31. At the conclusion of the hearing, we notified the parties of our decision, but only in summary. This written decision expands the reasons we summarised.

The Competing Arguments on the First Appeal

32. Very shortly, it is the Respondent's case that it was entitled to impose the conditions set out in its letter of 14 June 2024 because, as the letter expressly said, there had been material changes in the Club's financial situation since the Unconditional Licence had been granted on 5 May 2024.
33. What the Respondent characterises as those 'changes' are summarised in the Club's submissions at para. 29.3. The relevant passages are as follows:

“(i) The Club contends that ‘there has been no “change at the Club” pursuant to para 6.2 of Appendix Q’ (paragraph 37.1). There was self-evidently ‘a change’, indeed a series of developments, all pointing to the Club’s ever more dire financial situation:

- a. The winding-up petition, which was adjourned for a final time on 15 May 2024. It is hopeless to contend an adjournment on a final basis does not amount to a change when it means the yet further failure of the Club to pay its debts and the very real possibility of it being wound up;*

- b. *An analysis of the Club’s very late filed 2022 Accounts, which showed its even more desperate financial state-of-affairs than its previously filed accounts: see paragraph 7 above; and*
- c. *The Club’s ongoing failure to submit its 2023 Accounts as required: see paragraph 10 above. As already indicated above, it seems the Club realistically concedes that this undisputed factual matter was a legitimate ground for the imposition of a condition in any event: see paragraph 29.2 above. Stepping back that must be right since, without those latest accounts, the National League was in no position to assess the Club’s most recent financial position, which be most relevant to its ability to fulfil its financial obligations next season. Anyhow, when the club did finally file its 2023 Accounts (again) late on 20 June 2024, they showed the Club to be once again to be in an awful financial position: see paragraph 12 above.”*

- 34. The short point on this whole case, which Mr de Marco KC put as his first ground of appeal, is whether the Respondent was entitled to act as it did on the basis of the provision stated: that is, had there indeed been an event or circumstances which could fairly be regarded as a ‘change’ or which were ‘changes’ from the situation as it must have appeared to the Respondent when granting the Unconditional Licence on 5 May 2024.
- 35. The answer to that question is, in our view, determinative of this first ground of appeal bearing in mind that the expressed justification for the imposition of those conditions in the letter of 14 June 2024 was that there had indeed been the kind of change envisaged in Appendix Q, paragraph 6.2, of which the Respondent had become aware and was therefore obliged to consider.
- 36. The Club’s case is that the Appendix Q framework (and rule 3.3 in particular) provides for a mandatory requirement that the Respondent ‘*must*’ advise of its licencing decision “*on or before 5 May*’ unless there is a material change of which it becomes aware. And, further, the submission is that there had in fact been no material change at all. On point (a) above, as set out in paragraph 33 above, Mr de Marco KC points out that the winding-up position was known in May 2024. He submits that the fact that the petition was adjourned ten days later (on 15 May 2024) should be neither here nor there because, at the time the decision was taken, the Winding-Up Petition was outstanding to be heard. And it was still outstanding on 14 June 2024.

37. The next point – (b) above – is the Respondent’s proposition that analysis of the Club’s late-filed 2022 Accounts showed it to be in a very poor state. The Club points out that, even if one accepts that that is a reasonable judgement to make on the state of the Club’s accounts, those accounts had been filed on 19 April 2024, nearly three weeks before the decision to grant an Unconditional Licence on 5 May.
38. The Club also argues that the fact that the 2023 Accounts should have been submitted adds nothing to this – that is, point (c) above. Whether they should have been submitted at the beginning of March (as Mr de Marco KC argued) or whether the obligation was only engaged on 30 April 2024 (as Mr Mehrzad KC suggested) is, in our judgement, very little to the point.
39. The Club submits that whether they were outstanding for six weeks or for five days cannot be considered a real or material change. That is because they were already outstanding when the Unconditional Licence was granted and, if the Respondent had been concerned about that fact at the time, it could have declined to grant an Unconditional Licence and imposed a condition that such accounts should be filed by a particular date. But it did not.

Conclusions on this first ground of appeal

40. In those circumstances, we think that the Respondent is not able to justify its change in position as between 5 May and 15 June 2024 on the basis of any ‘change’ (which, in our view, must mean a material or real change), such as is provided for in Appendix Q, paragraph 6.2.
41. We think there was no such change for the reasons Mr de Marco KC has given. Rather, we consider that what the Respondent did was, in effect, to have second thoughts and to realise that it probably should have granted a Conditional Licence on 5 May 2024. Indeed, as a comment, it is surprising to us that the Respondent did not do that, bearing in mind that a Conditional Licence had been granted to the Club in the two previous years and there was (at least if its analysis of the Club’s financial state is correct) very little reason to think there had been a significant improvement in the Club’s situation since then.

42. In our view, the way in which the Respondent ought to have addressed such concerns as developed or emerged after it granted the Unconditional Licence was in accordance with the provisions of Appendix D, paragraph 4.
43. We referred to that provision above and it seems to us that paragraph 4.3 of that Appendix would have entitled the Board of the National League (in context, the Respondent) as of 14 June 2024, to make a request to the Club that it should “*demonstrate to the reasonable satisfaction of the Board that it has sufficient funds to meet its financial obligations for the Season or any outstanding part thereof*”. Having made that request, the rest of the process set out in that provision would have followed and, having sought such further information, it would have been for the Respondent to decide then whether to impose some kind of penalty.
44. Rule 4.3 has, of course, to be read in conjunction with Rule 4.2 which obliges the Club to report its own specific circumstances, such as are identified in that rule. That is how the process should work and it cannot, in our view, be circumvented by the use of Appendix Q, Rule 6.3 a provision which we see as intended and expressed to be designed to deal with genuine and significant changes that have occurred between the date on which a licence has been granted and the time when the information about such changes comes to the Respondent’s attention.

Other Grounds of Appeal

45. Having allowed the Club’s appeal under its first ground of appeal, namely that which is set out in the Notice of Appeal at paragraph 37.1, at page 10 of the First Appeal Bundle (the ‘change point’, as we characterised it), we do not consider it strictly necessary to decide the further grounds of appeal identified and hence our observations upon them are, strictly speaking, *obiter*. Nevertheless, we do say something about those and other matters arising out the Respondent’s concerns as to the Club’s financial situation.
46. As we have already indicated, we accept that the Respondent’s concerns about the financial situation at the Club were legitimate. However, we consider that the way in which they should have been addressed would have been to grant a Conditional Licence on 5 May 2024 rather than by seeking to impose conditions *ex post facto* when, in

reality, there had been no material change in the Club's financial situation. Had they investigated that situation properly with material that was available to them at that time, then the Respondent would – or should – have realised that the grant of an Unconditional Licence was inappropriate.

47. There can be little doubt that the Respondent could have imposed a condition requiring the provision of accounts by a certain date, though it may be a moot point as to how much leeway the Club should have been allowed to comply with an obligation that had already passed. They might have been inclined to afford a little more leeway if the accounts should have been lodged by the end of April rather than in March, but it is not for us to delineate the range of reasonable options since we are not upholding or dismissing the related ground of appeal.
48. It also remains a moot point as to whether the Respondent was entitled to have imposed a condition such as to require the Club to provide evidence of its ability to meet its financial obligations for the future. If we had to resolve that issue, we would have resolved it in favour of there being such a power. But what would certainly be open to argument would be the nature and extent of the evidence requested, which would need to be a reasonable request, as well as what might be a reasonable timescale that was provided.
49. In that context, we would regard it as at least arguable that the timescale that was in fact provided on 14 June, requiring the provision of such information by 3:00pm on 20 June 2024, was a very tight one. Whether it was so tight as to be unreasonable is an argument that we do not feel the need to resolve.
50. As a further comment, we do not consider that the power to impose a condition, in relation to the provision of evidence about the sufficiency of the Club's funds, can have derived from paragraph 4.4.1 of Appendix Q. As Mr de Marco KC submitted, and as appears from paragraph 27 of the Club's Notice of Appeal, that particular provision is focussed on PAYE and VAT.
51. Regardless of its power to impose a condition as to the provision of such evidence, what the Respondent certainly could (and we think should) have done was to exercise its

power under Rule 4.3 of Appendix D. It is open to argument that such a power should have been engaged prior to the implementation of the kind of condition that we have discussed at paragraphs 48-49 above.

52. That is because Rule 4.3 of Appendix D, as we have already seen, sets out a process whereby a line of enquiry between the Respondent and the Club as to the Club's financial health could have been set in place. Nevertheless, and again as a comment, we recognise that it is at least arguable this would not necessarily prevent the Respondent from imposing any condition such as those under discussion here if (for example) doing so was considered a more appropriate course of action.

The Bond and Appeal 2

53. The Respondent's requirement that the Club provided a Bond was a separate but related issue that we would have addressed at a second appeal due to be heard on 18 July. We were pleased to be told prior to the hearing of that second appeal that the parties had come to terms, so compromising all issues that otherwise we would have had to determine. We commend the parties for that compromise, the terms of which are set out in an Annex to this decision.
54. We note, for the convenience of the reader, that it is Rule 14 of Appendix D which expressly provides for the Respondent to have the power to "*require a Bond to be paid by or on behalf of the Club on such terms and for such period as it may in its entire discretion think fit*".
55. Again, for convenience, we note that the Club has set out its Grounds of Appeal at paragraph 24 of the Notice of Appeal on that second appeal.
56. The Respondent counters by saying that its decision to require the payment of that bond followed the Respondent's consideration of the Club's 2023 accounts "*which unsurprisingly reinforced its serious concerns about the financial viability of the Club*" – see paragraph 11 of the Response. In justification for that decision, the Respondent prays in aid Rules 4.3 and 4.4 of Appendix D, as well as Rule 4.12, to which we have already referred.

57. All other issues as to the merits or otherwise of the parties' competing arguments in relation to the second appeal (in respect of which the Chair made a direction regarding interim relief on 3 July restraining the Respondent from moving to sanction prior to the Appeals being determined and gave further directions following the conclusion of the hearing of the first appeal) therefore require no further comment from us.

Conclusion

58. In those circumstances, we allow the Club's appeal under Appeal 1 and in respect of the first ground only. We invited the parties to identify any typographical or other factual errors, and this a corrected decision taking account of their suggestions.

59. We previously directed that all questions of costs arising in relation to this first appeal should be reserved for determination at the conclusion of the second appeal. Happily, those issues have also been resolved by the terms of the parties' compromise of that second appeal.

WILLIAM NORRIS KC

GARETH FARRELLY

MATT WILD

Final and Further Revision 31 July 2024

Annex as per Paragraph 53

Within 24 hours of the National League confirming in writing (i) its formal approval of the takeover of the Club, and (ii) that no sanctions of any kind shall be applied to the Club in respect to the Bond that was subject to Appeal 2:

1. The Club shall withdraw Appeal 2.
2. The parties agree that the National League and the Club shall bear their own costs of Appeal 1 and Appeal 2.
3. The parties agree that the National League and the Club shall pay 50% each of the Appeal Board's costs of Appeal 1 and Appeal 2.
4. The Club shall bear its own costs of the interim relief application.