

IN THE MATTER OF A FOOTBALL ASSOCIATION  
APPEAL BOARD

BETWEEN:

THETFORD TOWN F.C.

and

THE EASTERN COUNTIES FOOTBALL LEAGUE

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WRITTEN REASONS AND DECISION OF THE APPEAL BOARD  
FOLLOWING THE HEARING ON 7 MAY 2024

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1. These are the written reasons for a decision made by an Appeal Board (“the Board”) which sat via video link on 7 May 2024.
2. The Appeal Board members were Mr. Simon Parry, (Chairman, and Independent Legal Panel Member), Mr Dennis Strudwick (Independent Football Panel Member) and Mr. Chris Reeves (FA Council Member).
3. Mr. Conrad Gibbons of the FA Judicial Services Department acted as Secretary to the Board.

#### CHARGE AND FIRST INSTANCE PROCEEDINGS

4. By letter dated 28 April 2024 the Eastern Counties Football League (“the Respondent”) charged Thetford Town FC (“the Appellant”) with a breach of Rule 6.9 of the FA Standardised Rules 2023-24. It was alleged that The Appellant had fielded an ineligible player (JMW) in the Premier Division Play-Off Semi-Final against Mulbarton Wanderers on 27 April 2024. The Appellant won that Semi Final and were to progress to play Newmarket Town FC (“NTFC”).
5. The Appellant accepted the Charge, and it is common ground that JMW was indeed an ineligible player at the date of the Semi Final. The Appellant submitted documents to the Respondent in mitigation. At a meeting of the League Management Committee on 29 April 2024 the Charge was discussed and the Appellant’s mitigation considered.

6. In the minutes of that meeting the Respondent notes "*that the play-off guidelines issued by the FA gave no guidance as to the manner in which this situation should be dealt*". They go on to say that "*having sought guidance from the FA. The FA forwarded advice from a higher league that they would treat the playing season as completed and the play offs are similar to a Cup*".
7. As a result, the Respondent concluded that Rule 6 of the League Challenge Cup Rules should apply which provides that "*Any Club playing an ineligible Player will be struck out of the Competition, and the tie shall be awarded to their opponents. The defaulting Club shall be liable to a fine not exceeding £100*".
8. After a vote of 9 votes in favour and two abstentions, the Respondent sanctioned the Appellant to removal from the Play-Offs and the tie awarded to Mulbarton Wanderers. No financial penalty was imposed.

#### APPEAL PROCEEDINGS

9. The Appellant seeks to challenge that decision to remove them from the Play Offs. Written Grounds of Appeal with supporting documentation were submitted. Due to the urgency of the proceedings, given the stage of the season reached, an expedited timetable for the progress of the appeal was set by the Judicial Panel Vice Chair, Graeme McPherson K.C. The Respondent submitted a Response to the Grounds of Appeal containing six documents for our consideration.
10. The Grounds upon which an Appellant can appeal against a decision of a League are set out in the FA Disciplinary Regulations at Section C2. The

grounds are that the body whose decision is appealed against:

- a) failed to give that Participant a fair hearing; and/or
- b) misinterpreted or failed to comply with the Rules and regulations of The Association relevant to its decision; and/or
- c) came to a decision to which no reasonable such body could have come; and/or
- d) imposed a penalty, award, order or sanction that was excessive.

11. In this particular appeal the Appellant sought to argue Grounds c) and d). However, an Appeal Board must consider all potential grounds, and, in the particular context of this case, the Appeal Board considers, of its own motion, that it is important to also consider ground b), which is inextricably linked to ground d).
12. The Appellant was represented by Mr Matt Morton, the First Team Manager of TTFC. The Respondent was represented by Mr Kevin Lorkins, Honorary Secretary of the League. We are extremely grateful for the written and oral submissions of both parties to this Appeal. Mr Morton is to be commended for the care and attention that he has paid to presenting the Appellant's case both in writing and at the hearing. His submissions were clear, cogent and argued in a commendably measured way. Similarly, we are grateful to Mr Lorkins for his clear and succinct presentation of the Respondent's case.
13. The following is a summary of the principal submissions provided to the Board. It does not purport to contain reference to all the points made,

however the absence in these reasons of any particular point or submission should not imply that the Board did not take such point or submission into account when the members determined the matter. For the avoidance of doubt, the Board carefully considered all the evidence and materials provided to it.

### FACTUAL BACKGROUND

14. The factual background of this case is important to consider. There was no dispute between the parties as to the central facts, and we set out the relevant facts here. On 24 February 2024 JMW was charged for an off-field incident whilst playing for NTFC. On 8 March 2024 NTFC responded to the Suffolk FA charge on behalf of JMW. On 9 March 2024 JMW became a registered player for the Appellant. On signing, JMW did, quite properly and responsibly, inform the Appellant that he was the subject of an outstanding disciplinary matter at NTFC. He played six times before 15 April 2024 when Suffolk FA notified NTFC of JMW's suspension for five matches commencing 19 April 2024. There is no evidence that NTFC shared the notification of that suspension with JMW or his new club, the Appellant, as NTFC were duty bound to do under FA Rules. Whilst suspended, but without any knowledge of the suspension, JMW played once more for the Appellant on 20 April. On 25 April, again without the knowledge of JMW, NTFC paid the £95 fine imposed upon him. It is important to note, also, that at no time has NTFC sought to recover that sum from JMW himself.

Then, on 27 April JMW appeared in the Play Off Semi Final which the Appellant won. The following day the manager of the losing team, Mulbarton, messaged the manager of the Appellant to say that he had been informed that there was a possibility that JMW had played whilst suspended. The source of the information to Mulbarton was none other than NTFC, the team that the Appellant would have been due to face in the Play Off Final. NTFC had supplied the manager of Mulbarton with a screenshot of JMW's suspension that it was only possible to access from the NTFC club portal on the Whole Game System. The design of the Whole Game System would not, it is accepted, show JMW's suspension in the Appellant's club portal, only that of NTFC and the player's own portal.

### THE STANDARDISED RULES

15. The Respondent league is subject to the Standardised Rules which are mandatory for all sanctioned competitions at Steps 1-6 of the National Game System. They provided a consistent set of rules for competitions nationwide. The relevant Rule concerning fielding ineligible players is Rule 6.9. The Rule provides:

*"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 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 for*  
*whom he is registered or*
- (c) *where the Board determined that exceptional circumstances exist.*

16. The obvious point about Rule 6.9 is that the Standardised Rules make no provision for Play Off games. That is an important gap in the Rules and one that this Appeal Board will highlight to the FA as requiring of urgent attention in time for the 2024-25 season. The Respondent acknowledged such gap and, to their credit, sought advice on how to proceed. Unfortunately, in our judgement, the advice was wrong. It was not open to the Respondent simply to treat the play-off game as a cup tie. For one, the play-off game is not cup competition by definition. Secondly, it is part of the league competition for that season, determining who is promoted.
17. Therefore, Rule 6.9 creates no power for the Respondent to expel the Appellant from the play offs. Clearly there could be no points deduction imposed, as no points attached to the game in question. The only penalty available to the Respondent was the power to fine, which is mandatory, and the power to order a replay of the match, which is discretionary.
18. We acknowledge that in administering the Rules and Regulations of the FA, league officials up and down the country are trying conscientiously to do their best as unpaid volunteers in the game. We are satisfied that this

case was no different.

#### GROUND B - MISINTERPRETED THE RULES & REGULATIONS

19. The Appeal Board is unanimous in its view that the Respondent misinterpreted the relevant Rule, namely Rule 6.9. In the absence of an express provision permitting the Respondent to expel the Appellant from the play offs, the Respondent did not have the power so to do. Furthermore, the Respondent fell into error in that it was obliged to order a financial penalty. We have no doubt that this was well-intentioned, given the severe sanction that they had already imposed on the Appellant. Nevertheless, it was an error.
20. The Respondent did have the power to order the replay of the original match. This does not appear to have been considered looking at the Respondent's Minutes. Indeed, the Appellant in their written and oral submissions argued that the Respondent had created a precedent for the replay of fixtures from another game earlier in the season featuring Great Yarmouth FC. They fielded an ineligible player who had been suspended for an on-field incident whilst playing for Great Yarmouth. The distinction that the Appellant makes is that Great Yarmouth's offence was much more serious, given that they knew of their player's suspension unlike the Appellant in the present case. There is some force in that submission, albeit that the strict doctrine of precedent does not apply in this jurisdiction. The Great Yarmouth scenario was, in our judgment, more serious on the facts of the case and yet they had the opportunity to play the fixture again. During



the course of oral submissions before us Mr Lorkins, on behalf of the Respondent, indicated very fairly that the Respondent always ordered the replay of a fixture where points were deducted and had done so for many years. Thus, in effect, a policy had been created. In our judgment, given the existence of that policy and the fact that the Appellant's conduct in fielding an ineligible player was much less culpable than that of Great Yarmouth, the Respondent ought properly to have considered a replay as part of the sanction. Their failure to consider it was a further error.

#### GROUND C – UNREASONABLE DECISION

21. Given the Board's conclusions on Ground b), above, it is not necessary for us to address this particular ground of appeal.

#### GROUND D – EXCESSIVE PENALTY

22. Again, given the Board's conclusions on Ground b), above, it is not necessary for us to address this particular ground of appeal save for in one respect. For the reasons we have outlined at paragraphs 14 and 20, the Appellant's part in this breach of Rule 6.9 was at the lower end of the scale of culpability. There was not a deliberate decision to field an ineligible player. They had relied on NTFC to comply with their obligations under the FA Disciplinary Regulations and notify both the player and the Appellant of the sanction. It is not lost on this Board that NTFC did not inform anyone of JMW's suspension until they notified Mulbarton

Wanderers, and not the Appellant, and once they knew that they were due to face the Appellant in the Play Off Final. Their conduct in this episode does them no credit. In our judgment, insufficient weight was attached to the Appellant's reduced culpability and a just and proportionate sanction in these circumstances and bearing in mind the Respondent's settled policy on replays, would have been to order the replay of the fixture and impose a fine.

### CONCLUSION

23. The Appeal Board allows the Appellant's appeal against the Respondent's decision on the ground that the Respondent misinterpreted FA Rule 6.9.
24. We therefore quash the decision of the Respondent dated 29 April 2024.
25. We exercise our power to substitute our own decision for that which the Respondent made and order as follows:
  - a) The Play-Off Semi-Final fixture between Thetford Town FC and Mulbarton Wanderers FC is to be replayed.
  - b) Thetford Town FC shall be fined a sum as prescribed by the League Rules (i.e. not exceeding £200). We impose a fine of £25, payable to the Respondent within 35 days of the date of our decision.
  - c) There be no order as to costs.
  - d) The appeal fee shall be remitted to the Appellant.

Mr. Simon Parry (Chairman)

Mr. Dennis Strudwick

Mr. Chris Reeves

21 May 2024