

IN THE MATTER OF AN ARBITRATION IN ACCORDANCE WITH  
PARAGRAPH 14 OF THE TERMS AND CONDITIONS  
FOR WOMEN'S FOOTBALL TIER 2 APPLICATIONS

B E T W E E N:

Southampton FC Women

*Claimant*

and

The Football Association Limited

*Respondent*

---

**AWARD**

---

**INTRODUCTION**

1. I have been appointed as the Sole Arbitrator to determine a challenge brought by the Claimant ("Southampton") against the Respondent ("the FA") under Paragraph 14 of the Terms and Conditions which governed the application for licences for Tier 2 of Women's Football. Both parties put in written submissions. In addition, the FA served a witness statement from Lucy Wellings, the Women's Football Clubs Manager at The FA. I then held a hearing on 19 July 2018 at which I heard the oral evidence of Ms Wellings and

received oral submission from Messrs Abrahams and Greenwell on behalf of Southampton and Mr Segan of Counsel on behalf of the FA.

2. Subsequent to the hearing, I was requested to make my decision with a reasoned decision to follow thereafter. I duly did so, and the parties were informed that Southampton's challenge was dismissed. I now provide my reasoned decision.

## **THE BACKGROUND**

3. The FA needs no introduction. It is the governing body for professional football. Southampton is a "start up" team integral to the well-known men's football club; until now it has not run a full ladies' team, although it does run a ladies' under 21 team. Until recently the top two leagues for professional women's football were FA Women's Super League 1 and FA Women's Super League 2; they were two divisions of a single league. In 2017 the FA determined for reasons which do not matter for my decision to re-organise the top of what is described as the women's football pyramid. Commencing with the 2018/19 season, there were to be two tiers, a tier 1 of professional teams and a tier 2 where teams might be either semi-professional or professional. Tier 1 is now known as the FA Women's Super League and tier 2 as the FA Women's Championship. However, for ease of reference I refer to them simply as tier 1 and tier 2.
4. Initially, the FA invited applications for licences for the new tiers 1 and 2 from all the clubs which had participated in the FA Women's Super League. In fact all the applying clubs were granted licences. There remained four places to be filled for the new tier 2 with one further place being reserved for the winner of the FA Women's Premier League Play-Off Final. The licence application process then moved onto its second open stage for selection of the remaining four tier 2 places. There were 14 clubs which submitted tier 2 licence applications at this open stage including Southampton. In the event, Southampton's application was unsuccessful with the four available licences being granted to Leicester City Women, Lewes FC Women, Manchester United Women and Sheffield United Women. I was told that Sheffield FC Ladies has now withdrawn from tier 2 along with another club, Doncaster Belles. Thus, two vacancies have arisen. But, of course, that does not affect my decision which only concerns Southampton's initial application.

## **THE SOUTHAMPTON APPLICATION**

5. The FA had appointed a Selection Panel to make recommendations over the grant of the tier 2 licences to the Women's Football Board. The Selection Panel reviewed Southampton's application in March 2018. The Club was then sent a list of further information which was required and invited to attend for an interview. After the interview and the provision of further information from the Club the application was subject to further review.
6. Ultimately, the Women's Football Board decided not to award a licence to Southampton, and the Club was so informed by letter of 31 May 2018. This letter drew attention to one particular area where it had been judged that the Southampton application fell down by reference to the published Key Minimum Requirements used for assessing licence applications: there had been a lack of information and evidence about Southampton's proposals for a Secondary Home Ground. In addition, the letter referred to the strengths of applications from other clubs.

## **THE APPLICATION PROCESS**

7. The criteria published by the FA made it clear that licence applications would be assessed primarily by reference to the Key Minimum Requirements of a licence. The categories of these Requirements concerned Financial and Business Planning, Marketing and Commercial, Facilities and Players, Support Staff and Youth Development. Guidance was given as to what should be addressed under each of these headings in an applicant club's Compliance and Development Report. Following submission of that Report, applications were to proceed as follows:
  - (1) Each category of the Key Minimum Requirements was to be assessed by a member of the Selection Panel;
  - (2) The full Selection Panel would then meet to consider the applications and assessments and, if necessary, revise them;

(3) The Compliance and Development Reports along with the Selection Panel's views would then be reviewed by the Women's Football Board.

The Application Terms and Conditions (at paragraph 5) also explained that an applicant club might, at the FA's sole discretion, be invited to a presentation, interview or oral questioning.

8. The above summarises the published process for applications for licences. However, it must be said that the Application Terms and Conditions emphasise how decisions are solely for the discretion of the FA. Even Key Minimum Requirements could at the FA's discretion be waived for a particular club: see paragraph 9. Thus, paragraph 11 stipulates:

The Selection Panel and [Women's Football] Board shall have absolute discretion to assess the club against the Key Minimum Requirements and determine membership of Tier 2 in such manner as they deem appropriate.

Paragraph 13 is equally clear:

Subject to compliance with the terms of the licensing process as set out in these Terms and Conditions, The FA will be free to exercise its discretion in awarding Tier 2 licences as it sees fit. The decision of The FA shall be final and binding and there shall be no appeal against the exercise of such discretion.

## **BASIS OF CHALLENGE**

9. Despite all references to an unfettered discretion of the FA, there is a residual right to challenge a decision if there has been a failure to follow the published licensing process. Thus, paragraph 14 of the Terms and Conditions provides:

However, an applicant club who believes that The FA has not complied with the terms of the licensing process as set out in these Terms and Conditions may lodge a challenge by way of arbitration to

an independent panel which shall comprise a sole arbitrator who shall be appointed by Sport Resolutions UK .....

It is pursuant to this provision that the present challenge is made before me. Paragraph 17 of the Terms and Conditions makes it clear that, if I were to conclude that there had been a failure of process, I might direct the FA to carry out the selection process again on the basis of the documents previously submitted.

### **SOUTHAMPTON'S COMPLAINT**

10. Mr Greenwell for Southampton did faintly refer to Southampton having some misgivings over the FA's internal marking of sections of its application. Nevertheless, he realistically accepted that a matter of such subjective judgment could not be open to challenge before me. The main complaint of Southampton was that the FA in its email of 28 March 2018 prior to the interview had requested information over a considerable number of areas, including information about the proposed Primary Home Ground, but there was no request for any information at all about a Secondary Home Ground. Mr Greenwell thus submitted that Southampton was lulled into the belief that the FA had no concerns over a Secondary Home Ground.
11. On Southampton's case it was unfair of the FA to make a written request for further information which made no reference to a Secondary Home Ground and then turn round and give the absence of such information as the only reason why its application had not met the Key Minimum Requirements. Southampton was misled. In fact, Southampton did meet the requirements concerning both a Primary Home Ground at AFC Totton and a Secondary Home Ground at either the Southampton FC ground at St Mary's or at Winchester FC. For the challenge before me Southampton produced written confirmation from Winchester FC.

### **THE FA RESPONSE**

12. The FA's primary response to this challenge is that Southampton's complaint is not admissible. Under paragraph 14 of the Terms and Conditions it is only failure to follow the licensing process which can be a valid ground of appeal. Otherwise, selection was

expressly a matter for the FA's discretion. Here, the selection process was strictly followed.

13. Second, Mr Segan for the FA submits that In any event there was no error by the FA. The need for information about a Secondary Home Ground (a) features in the Key Minimum Requirements (b) was addressed at an FA workshop attended by Southampton in November 2017 and (c) was the subject of specific discussion at Southampton's interview. The email of 28 March 2018 did not purport to contain an exhaustive list.
14. Thirdly, Mr Segan submitted that on the evidence the supposed error by the FA would have made no difference. The evidence was that even if Southampton's Secondary Home Ground marking were increased from its actual 2 to 6 (the figure for a compliant application), Southampton's application would still have ranked overall behind other successful applications for the four available tier 2 places.

#### **THE EVIDENCE OF LUCY WELLINGS**

15. Ms Wellings, the FA Women's Football Clubs Manager, gave oral evidence before me and confirmed the comprehensive witness statement which she had previously provided. She explained how information about a Secondary Home Ground was a stipulation of the Key Minimum Requirements. Furthermore, the topic had been expressly raised at a workshop for applicant clubs including Southampton; she referred to a PowerPoint slide for the workshop stating: Second Ground to meet criteria – access! Ms Wellings also referred to the interview with Southampton on 9 April 2018. By this time Southampton had filled a previously missing dearth of information about its proposed Primary Home Ground, but the absence of any information about a Secondary Home Ground was specifically discussed at the interview. She referred to the interview notes of Katie Brazier of the FA which noted that Winchester City FC was a possibility. Her own notes also state in terms: secondary – Winchester – needs to be confirmed. Nevertheless, Southampton had provided no confirmation, tangible evidence or indeed any information at all about a Secondary Home Ground.
16. Ms Wellings also noted that Southampton's application had been marked at 2 for Secondary Home Ground (not zero because Winchester had been floated) whereas the

compliant score under this heading would have been 6. But, even if Southampton's application had received 6, that would not have had a material effect on its ranking. The application would still not have been successful vis-à-vis other applications.

17. When asked why information about a Secondary Home Ground had not been sought in the email of 28 March 2018, Ms Wellings's response was that the FA's focus was at that time on the fact that Southampton's application was still defective as regards a Primary Home Ground, let alone a secondary one.

## **DISCUSSION**

18. Southampton is understandably disappointed in not being awarded a tier 2 licence. Nevertheless, it has to be appreciated that under the Terms and Conditions my power as the Independent Arbitral Panel is extremely limited. My sole remit is to consider whether the FA has not "complied with the terms of the licensing process as set out in these Terms and Conditions". Thus, for example, I would have power to direct the FA to re-consider a licence application if, to take an extreme case, the FA had simply decided not to refer an application to the Selection Panel or had decided not to assess an application in the light of the Key Minimum Requirements. However, the merits of any licence application are most definitely not a matter for me to judge. The discretion which is vested in the FA under the Terms and Conditions is not my discretion. Particularly in the light of the limited number of tier 2 licences available and the imbalance of supply and demand, the decision to be reached is that of the FA. My own views have no relevance. It is in this context that I must consider Southampton's complaint.
19. There is no doubt that information about a Secondary Home Ground was an application requirement. The Key Minimum Requirements Guidance stated at Paragraph 3 under the heading "FACILITIES":

Clubs shall provide confirmation of their Primary Home Ground and a Secondary Home Ground if the Primary Home Ground does not provide full availability throughout the season. The following information is required for both grounds (unless specified otherwise).

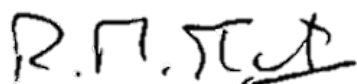


Ms Wellings explained that there would be full availability only where there was a purpose built ladies' stadium, as with Manchester City.

20. It is certainly regrettable that there was no mention in the FA's email of 28 March 2018 about the need for Southampton to supply details about both a Primary and a Secondary Home Ground. However, Southampton must have known that it had not given the FA any details at all about a Secondary Home Ground, quite apart from the uncertainty even about the Primary Home Ground in its original application. Southampton cannot reasonably have understood the 28 March 2018 email as a waiver of a Key Minimum Requirement by the FA. Furthermore, I am quite satisfied that the issue of a Secondary Home Ground was expressly raised at Southampton's interview.
21. In these circumstances, I do not consider that there was any failure by the FA to comply with the published terms of the licensing process such as would justify my upholding Southampton's challenge. Moreover, I should say that I do not read the FA's decision letter of 31 May 2018 as saying that Southampton's application would have been successful even if the Club had met all the Key Minimum Requirements. These have to be met, but their fulfilment is not the end of the matter. Ultimately, this was a competitive process, and the evidence from Ms Wellings demonstrated how Southampton's omission of Secondary Home Ground details did not affect the outcome.

## **CONCLUSION**

22. In summary, my conclusion is that Southampton's lack of success in the tier 2 licence competition was not caused by any failure to comply with the licensing process on the part of the FA. I must accordingly dismiss the Southampton challenge.



Robert Englehart QC, Sole Arbitrator  
London, 24 July 2018





Sport Resolutions (UK)  
1 Salisbury Square  
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: [resolve@sportresolutions.co.uk](mailto:resolve@sportresolutions.co.uk)  
Website: [www.sportresolutions.co.uk](http://www.sportresolutions.co.uk)

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited