

## **THE BOARD OF APPEAL**

*Sitting on behalf of Birmingham County Football Association ("The CFA")*

**CASTLE CRUSDADERS FOOTBALL CLUB ("The Appellant")**

V

**THE BURTON JUNIOR FOOTBALL LEAGUE ("The Respondent")**

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### **THE WRITTEN REASONS OF THE BOARD OF APPEAL ("The Board")**

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These written reasons contain a summary of the principal evidence before the Board and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Board did not take such points into consideration when determining the matter. For the avoidance of doubt, the Board has carefully considered all the evidence and materials furnished to this matter.

#### **INTRODUCTION**

1. The CFA convened a Board of Appeal to consider the matter of appeal between the Appellant and the Respondent.
2. The Appeal Board Members appointed were as follows:
  - Mark Ives (Independent Chairman)
  - John Monnes
  - Barry Cooke
  
  - David Nixon (Secretary)
3. The League were not in attendance and the Club were represented by Darren Giles (Secretary) and Neil Sellers (Manager).
4. This document forms the written reasons of the decisions and orders of the Board, which sat on Wednesday 20<sup>th</sup> July 2022, to hear the appeal submitted by the Appellant, in respect to the decision of the Respondent, dated 28<sup>th</sup> April 2022, in that they;
  - Failed to give the Appellant a fair hearing

- failed to comply with the rules or regulations relevant to its decision; and/or
- imposed an award or sanction that was excessive.

## **Background**

5. The Appeal relates to the failure of the Appellant to play in a fixture scheduled for Sunday 10<sup>th</sup> April 2022 in the Dave Hackett Under 16 Memorial Trophy Semi Final v Mickleover RBL Under 16.
6. The Appellant had postponed the fixture due to the Manager testing positive for Covid the day before the scheduled fixture.
7. In summary, the Appellant states that the game was postponed because:
  - “The absence of any clarity from the BJFL and other relevant advisory boards”
  - “Safeguarding and liability” reasons.
8. The League charged the Club by letter on Sunday 10<sup>th</sup> April with “a broken fixture.”
9. The Club sent an initial response on Monday 11<sup>th</sup> April by email sent by the Club Secretary.
10. The League convened a “Special discipline meeting” on Friday 15<sup>th</sup> April. The case was heard by 6 members.
11. The League sent the decision letter to the Club on Saturday 16<sup>th</sup> April.
12. The decision from the meeting was that the “fixture was to be awarded to the opposition team.” There was no financial penalty.
13. The Notice of Appeal cited the reasons of the appeal which can be summarised as follows:
  - They failed to get a fair hearing because they had no notification as to when the date of the hearing would be where they would have presented their case.
  - Nor were they advised as to the options open to them in the charge letter and that the charge letter should have clearly set out the options open to them.
  - That there was no option in the rules to award the points against them

## **The Appeal Board Hearing**

14. Prior to this hearing, there had been two previous adjournments because of the refusal to attend in the first instance of the Respondent and the unavailability on the second date of the Appellant.
15. As a result, the date was set by the Appeal Board Chair in accordance with the following Appeal Board Regulations:

### ***Regulation 12***

12 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.

### ***Regulation 14***

14 The chairman of an Appeal Board (or the Judicial Panel Chair (or their nominee) if an Appeal Board has not yet been convened) may upon the application of a party or otherwise, give any instructions considered necessary for the proper conduct of the proceedings, including but not limited to:

- 14.1 extending or reducing any time limit;
- 14.2 amending or dispensing with any procedural steps set out in these Regulations;
- 14.3 instructing that a transcript be made of the proceedings;
- 14.4 ordering parties to attend a preliminary hearing;
- 14.5 ordering a party to provide written submissions.

The decision of the chairman of the Appeal Board shall be final.

### ***Regulation 16***

16 The Appeal Board shall proceed in the absence of any party, unless it is satisfied that there are reasonable grounds for the failure of the party to attend, and shall do so in such manner as it considers appropriate.

16. The hearing was scheduled to be heard on 20<sup>th</sup> July 2022 to be heard online and both parties were advised by the CFA of the direction from the Chair that they were required to attend.

17. The Respondent, as in previous emails, stated they were not available on the revised date and only two people were appropriate to attend to represent the League.
18. The Chair considered the content of Regulations 12 and 16 in the deliberations. It was determined that there were others from the League that could have attended as the decision was not made only by two people but by a Panel of six people.
19. However, should the League fail to attend, Regulation 16 is clear that the matter should proceed. Regulation 12 gives a party the opportunity to make oral submissions but as the appeal is determined on the review of the documents, it was agreed to proceed in the absence of the League.
20. The Respondent advised no member of the League would be in attendance.
21. The Appeal Board waited on the evening for 15 minutes should the League attend but they failed to show.
22. The Board decided to proceed in their absence.
23. The failure/refusal of the Respondent to attend did not negate the opportunity for the Appellant to make oral submissions. In fact, the candid submissions made by the Appellant assisted the Board, and the Respondent, in the final determination of the appeal.
24. The Appeal Board had before them the documentation that was in front of the League, together with the response to the Notice of Appeal.

#### **The Decision**

25. The Appeal Board considered the written submissions of both parties and the oral submission from the Appellant.
26. In considering all matters, the Appeal Board dismissed the appeal on all three Grounds

## **The Reasons**

**27.** The Appeal Board noted with interest the detail of the charge letter raised on Sunday 10<sup>th</sup> April which stated;

“Castle Crusader are charged with a broken fixture (details above)” The letter title states “Re: Broken Fixture BJFL Rule 20(B).

“You have 7 days as per our rules to respond to this charge BJFL Rule 6(D)

“For details of the appeals process, please see BJFL Rule 7.

**28.** The relevant Rules quoted state as follows:

### **Rule 6D**

(D) The Management Committee shall have powers to apply, act upon and enforce these Rules and shall also have jurisdiction over all matters affecting the Competition. Any action by the Competition must be taken within 28 days of the Competition being notified.

With the exception of Rules 6(I), 8(H) and 9, for all alleged breaches of a Rule the Management Committee shall issue a formal written charge to the Club concerned. The Club charged shall be given 7 days from the date of notification of the charge to reply. In such reply a Club may:-

- (i) Accept the charge and submit in writing a case of mitigation for consideration by the Management Committee on the papers; or
- (ii) Accept the charge and notify that it wishes to put its case of mitigation at a hearing before the Management Committee; or
- (iii) Deny the charge and submit in writing supporting evidence for consideration by the Management Committee on the papers; or
- (iv) Deny the charge and notify that it wishes to put its case at a hearing before the Management Committee.

Where the Club charged fails to respond within 7 days, the Management Committee shall determine the charge in such manner and upon such evidence as it considers appropriate.

Where required, hearings shall take place as soon as reasonably practicable following receipt of the reply of the Club as more fully set out above.

Having considered the reply of the Club (whether in writing or at a hearing), the Management Committee shall make its decision and, in the event that the charge is accepted or proven, decide on the appropriate penalty (with reference to the Fines Tariff where applicable).

The maximum fine permitted for any breach of a Rule is £100 and, when setting any fine, the Management Committee must ensure that the penalty is proportional to the offence, taking into account any mitigating circumstances.

No Participant under the age of 18 can be fined.

All breaches of the Laws of the Game or the Rules and Regulations of The FA shall be dealt with in accordance with FA Rules by the appropriate Association.

### **Rule 20(B)**

(B) Except by permission of the Management Committee all Competition Matches must be played on the dates originally fixed but priority shall be given to The FA and parent County Association Cup Competitions. All other matches must be considered secondary. Clubs may mutually agree to bring forward a Competition Match with the consent of the (Fixtures) Secretary. Failure to comply with this Rule will result in a fine in accordance with the Fines Tariff.

In the case of a revised fixture date, the Clubs must be given by the Competition 5 clear days' notice of the Competition Match (unless otherwise mutually agreed).

**29.** League Rule 7 sets out the process for Protests, Claims, Complaints, Appeals

**30.** The following matters gave concern to the Appeal Board:

- a. League Rule 20(B) makes no mention of a "Broken Fixture."
- b. The Club had 7 days to submit all their correspondence to the charge, but the hearing was heard less than 7 days after raising the charge.
- c. The charge letter failed to outline the options open to the Club in their response but relied on the Club to research and understand the content of League Rule 6D.
- d. The response from the Club on 11<sup>th</sup> April did not detail the Clubs intention under Rule 6D
- e. The charge letter referred to "the appeals process", please see BJFL Rule 7. The first instance hearing is not an appeal and Rule 7 is irrelevant to the first instance hearing.

**31.** The Appeal Board considered the correspondence within the Appeal Board pack and where appropriate asked questions of the Appellant to determine the appropriate response to the concerns as outlined.

**32.** The Appeal Board made the following determinations:

### ***League Rule 20(B) – Broken Fixture***

33. The term “Broken Fixture” is not contained within the Rules and appears to be a local term.
34. However, the Rule itself relates to a game not being played on the scheduled date and it was clear to the Club the reason they had been charged.
35. When charging a Club for an offence, it should detail in the charge letter the specific offence they had been charged with using the terminology of the League Rules.
36. In this instance, the wording used by the League was inaccurate but did not impact the intent of the charge.
37. Therefore, on its own, this failing did not have a material impact on the Appellant, but it was nevertheless poor practice from the League.

### ***The Charge letter and first Instance hearing***

38. The hearing was heard less than 7 days from the charge letter.
39. This was against the League rules as the Club could have submitted further correspondence, in addition to the initial response submitted on 11<sup>th</sup> April, up to the 7<sup>th</sup> day following the charge.
40. The Club were questioned on this matter and to their extreme credit were truthful in this and all their answers. They confirmed that they had not intended to submit anything else in this regard.
41. It was noted that the email response did not address the requirements of rule 6(D) in that it does not accept or deny the charge, nor does it confirm how they wish the matter to be dealt with, i.e., by correspondence or in attendance at a hearing.
42. The Board noted that an element of the Notice submits they were unaware of when the meeting was and would have liked to have explained their reasoning for the decision.
43. On that alone, it could have been taken that it was a denial and they wished to attend a hearing.
44. Clearly the League took the response as a denial and proceeded on the correspondence.

- 45.** What is not in doubt, in the Board finding is that the League should have:
- a. Made clear in the charge letter the 4 options open to the Club; and
  - b. Clarified the position of the Club before they proceeded as the information was not clear.  
This is even more important as the hearing was heard before the timeframe to respond had elapsed.
- 46.** The Board questioned the Club on this and again, they were truthful in their response. They accepted that the Chair and Secretary had access to the League rules and were aware of the content of Rule 6D. The Secretary also confirmed that had they been asked the question at the time they would have denied the case and relied on the written response submitted on 11<sup>th</sup> April.
- 47.** The charge letter referred to Rule 7 for details of appeal. This is incorrect and the response to a charge does not relate to an appeal. The details to respond to the charge are contained in Rule 6D – Rule 7 relates to appeals against the outcome of the decision of the first instance hearing. It also relates to Protests, Claims and Complaints that do not apply here.
- 48.** There are several failings of the League in this case and had the matter have just been heard on correspondence alone, the appeal would likely to have been upheld.
- 49.** However, with the extremely helpful and truthful participation of the Club, the honest answers to the questions of the Board, the Board went on to consider the impact of the League failings.
- 50.** Attention is drawn to Regulation 4 of the Discipline Regulations that state as follows:
- “4 The bodies subject to these General Provisions are not courts of law and are disciplinary, rather than arbitral, bodies. In the interests of achieving a just and fair result, procedural and technical considerations must take second place to the paramount object of being just and fair to all parties.”
- 51.** There is no doubt in the view of the Board that the League could have done more to be helpful to the Clubs for which they serve.

- 52.** However, with the truthful answers given by the Club, it is clear that the Club had intended the matter to proceed in the way it did. Therefore, whilst the League are guilty of “procedural and technical irregularities” it did not impact the outcome or approach. On that basis, the above failings were not fatal to the outcome of the case and reaching a just and fair outcome is important as per Regulation 4.
- 53.** The Board then went on to consider the actual findings based on the response from the Club.
- 54.** It is important that the Board reminded themselves that their role was not to re-hear the case but to consider the decision made on the papers that were in front of the League and whether it was a decision that the League were entitled to make.
- 55.** A key element of the submission from the Club is that there was no guidance from the League or other bodies on how to deal with this issue.
- 56.** It was also emphasised that the Manager was the only qualified First Aider in the Club and the terms of the Club lease required there to be a qualified First Aider in attendance.
- 57.** The Board also understand that an offer was made by the opposition to supply a First Aider and if the Club agreed, they could switch venues, but the fixture could also be played as scheduled.
- 58.** The Board find that even if that was not on offer, the responsibility rests with the Club to meet the necessary requirements and is not a failing of any other body.
- 59.** Of course, it would be disappointing for the Manager to miss an important fixture but whilst at the time legally not a requirement to self-isolate it was the correct decision for the Manager not to attend the fixture.
- 60.** However, the Board find that the decision to postpone the game was incorrect and the game should have proceeded.
- 61.** The Competition Rules should cover within their rules what occurs when a game in the Cup Competition is not fulfilled. It does not but the powers of the Management Committee grant the League the ability to make the decision that it did.

62. It is also common practice across the game in Cup fixtures for games to be forfeited for non-fulfilment. That must be the correct course of action otherwise the running of Cup Competitions would become unmanageable.
63. It was also noted that there had been no financial penalty imposed by the League, which they could have done.
64. The sanction imposed therefore could not be considered as being excessive and the decision was a reasonable decision for any League to make.
65. For the reasons outlined above the appeal was dismissed.
66. In doing so, the Board emphasised however that the League had failed in several areas and are advised to consider their approach to charging in the future by emphasising the details in full in charge letters and to consider whether the level of support given to Clubs in its current form is appropriate. The Board thinks it is not.
67. The Appeal is dismissed, the appeal fee forfeited and there was no order to costs against either side.

Mark Ives

**Chairman**

2<sup>nd</sup> August 2022