

**IN THE MATTER OF THE APPEAL BOARD OF THE
FOOTBALL ASSOCIATION**

BETWEEN:

GILLINGHAM WOMEN FC (Appellant)

-and-

THE FA WOMENS NATIONAL LEAGUE (Respondent)

WRITTEN REASONS

1. The Appeal Board conducted a hearing on Tuesday 14 December 2021 to determine an appeal by Gillingham Women FC ("**the Appellant**") against the decision of the Management Committee of The FA Women's National League ("**the Respondent**") made on 25 October 2021 and appealed by the Appellant in a notice of appeal which was itself undated, but which was filed on 8 November 2021 and provided to the Respondent on 9 November 2021.
2. The Respondent, by its Management Committee, had determined on 25 October 2021 that the match between the Appellant and Crawley Wasps which took place on 5 October 2021, and which resulted in a 1-0 victory for the Appellant be replayed because the match officials made a mistake which was not in accordance with the Respondent's Competition rules, namely that Crawley Wasps were not permitted to make a fourth substitution in the 75th minute of the game.
3. The appeal hearing was a personal hearing held by MS Teams, the Appeal Board comprising Mr Christopher Stoner QC (Chair), Ms Laura McCallum and Mr Dennis Strudwick. Mr Conrad Gibbons of the FA Judicial Services acted as secretary to the Appeal Board.
4. The Appellant was represented by Mr Josh Oatham, the Chair of the Appellant, whilst the Respondent was also represented by its Chair, namely Ms Carol West.

5. The Appeal Board thank Mr Oatham and Ms West for their clear submissions and assistance both during the appeal hearing and in the documents within the Appeal Bundle.
6. The parties were informed by a Decision Letter, sent by email by Conrad Gibbons of the FA's Judicial Services on behalf of the Appeal Board and dated 14 December 2021, that the Appeal Board had unanimously allowed the appeal on all grounds; that the Appeal Board therefore ordered that the original result of the game stood and that the Appellant be awarded the match points; that no order be made as to costs, but that the appeal fee be returned.
7. The Respondent made an application pursuant to Appendix C, paragraph 3.7 of its Rules for written reasons for the decision to be provided. This document contains the written reasons for the Appeal Board's decision.

Background

8. On 5 October 2021 the Appellant played Crawley Wasps. Ultimately it won the match 1-0 with a goal in injury time. However, in the 75th minute Crawley Wasps had sought to make a substitution. It had already made 3 substitutions and it was told it could not make a fourth.
9. However, Rule 20F of the Respondent's Competition Rules, under the sub-heading "Match Related Rules" provides (as relevant):

"A Club may at its discretion and in accordance with the Laws of the Game use 5 substitute Players in any Match in this Competition who may be selected from 5 Players..."

10. The Appeal Board was informed that Rule 20F had been amended for the 2021/22 season, the change having been made at the previous AGM and subsequently sanctioned by the FA. The rule change appears in the Respondent's current Handbook and the Appeal Board was informed this had been provided to all match officials and circulated to all Clubs.

11. Crawley Wasps reported the refusal of the match officials to allow a 4th substitution to the Respondent the day after the game. The Appeal Board understands this was an informal report and that no formal protest or complaint was lodged by Crawley Wasps pursuant to rule 7 of the Respondent's Rules, or otherwise.

12. The Respondent then sought to look into the matter by contacting The Referees Department of the FA, which resulted in an email from the match referee in the following terms:

"There was confusion surrounding whether it was 5 from 5 or 3 from 5.

I wasn't made aware of the confusion until after the final whistle when my senior assistant told me [he] hadn't allowed the substitution as he believed it was 3 from 5 as that is what he had been doing on previous games in the league.

After the final whistle we clarified as a team that it was 5 from 5. Both of my assistants had been operating 3 from 5 on the previous games in the league which is where the issue originated.

My error came from not clarifying in my pre match what the league rules were as I assumed that due to their involvement in the league previously that they were already aware. I can only apologise for not covering this in my pre match."

13. It was confirmed by the Respondent that it did not seek to consult or obtain any information from either the Appellant or Crawley Wasps. The Appeal Board was informed this was a deliberate step on the part of the Respondent. Neither team was at fault and the Respondent considered it was purely down to an error on the part of the match officials. It was also confirmed that at no time did the Respondent seek assistance or clarification as to what to do from the FA Regulatory department.

14. Instead, armed with the Referee's report and the admission of a mistake having been made during the match in respect of the substitutes, the Respondent considered the matter at its Management Committee meeting on 25 October 2021. The Appeal Board was provided with the relevant extract from the Minutes which reads:

"The fixture 05.10.21. Gillingham v Crawley Wasps was discussed following Crawley Wasps being denied making a fourth substitution by Match Officials.

The FA Referee Department had made enquires with the Match Officials involved which had confirmed that the substitution had been denied due to them not following/being aware of the WNL Competition Rules.

The Chairman clarified that all Match Officials had been provided with a bespoke version of WNL rules and that updated rule relating to increased substitutions had been specifically communicated by Ms C Parker, FA WNL Referee Appointment Officer at the FA.

The Chairman expressed frustration and disappointment at the match not being played within Competition rules. A member agreed it was unacceptable and as such, led to the match not being played in accordance with the Laws of the Game.

A discussion took place with regard to whether the decision affected the outcome of the match, the impact on the Competition and particular division. It was acknowledged that both clubs were not at fault and should not face any disciplinary action as a result of Match Officials failing to observe Competition rules.

It was unanimously agreed that the fixture should be replayed to maintain the integrity of the Competition in order that a reliable outcome could be obtained. It was also agreed that The FA WNL would meet replay costs incurred.

Action: *Chairman to advise clubs of the decision as soon as possible."*

15. The Chairman duly informed by the Appellant and Crawley Wasps of their decision by an email dated 25 October 2021. In that email the Chairman said (in part):

"An investigation has taken place involving the match officials from the day, the FA Referee Department and FA WNL Management Committee which had found that the match officials did not comply with FA WNL Competition rules which allow clubs to name and play 5 substitutes, thereby match not carried out in accordance with the Laws of the Game.

The FA WNL Management Committee therefore must order a replay of this match."

The Appeal

16. In all the circumstances and with due respect to the Appellant (and indeed Crawley Wasps) the focus of the appeal was very much on the actions of the Respondent alone.
17. The Appellant appealed by an undated Notice of Appeal submitted to the FA on 8 November 2021. In accordance with Appendix C, paragraph 1.6 the Appeal was advanced on 3 grounds, namely:
- (1) That the Respondent failed to give the Appellant a fair hearing, in circumstances where it was not asked for any comment, correspondence or observation;
 - (2) That the Respondent had come to a decision which no reasonable body could have come to, principally on the ground that the Respondent made a decision which was not within its 'ruleset'; and
 - (3) That the Respondent imposed a penalty, award, order or sanction that was excessive, principally as the Appellant argued it had lost 3 points when it had done nothing wrong and in circumstances where it said both teams were treated the same, namely as only being allowed to make 3 substitutions.
18. The Respondent provided a detailed and helpful response to the Appeal dated 29 November 2021. It asserted that it had made the decision objectively pursuant to Rule 6E of its Rules in circumstances where it observes in its Response "*The observations or views of either Club would not have affected or influenced the outcome of the decision.*"
19. It also asserts that whilst no specific rule covered the present scenario, Rule 6E gives the Management Committee authority and jurisdiction over the whole competition. The Management Committee, the Respondent says, considered the potential effect of the official's decision on the match and concluded that from an objective competition perspective rather than a subjective club perspective, the fairest and most just resolution was to order that the game be replayed, so the entire match was played in accordance with Competition rules.
20. The Respondent contends that to replay the match was "*the minimum action available and most reasonable option*" and, furthermore, states that given the admission from the match referee that the Competition Rules had not been followed "*it would be grossly unfair on all clubs in that Division for the result to be allowed to stand.*"

21. The totality of Rule 6E provides:

“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.J, 8.H and 9, for all breaches of Rule a formal written charge must be issued to the Club concerned. Club charged shall be given seven days from the date of notification to reply to the charge and given the opportunity to:-

- 1. Accept the charge and/or submit in writing a case of mitigation for consideration by the Management Committee; or*
- 2. Accept the charge and notify the Competition that it wishes to put its case of mitigation at a hearing before the Management Committee; or*
- 3. Deny the charge and submit in writing supporting evidence for consideration by the Management Committee; or*
- 4. Deny the charge and notify the Competition that it wishes to have 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.

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).

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.

The maximum fine permitted for any breach of a Rule is £250 and, when setting any fine, the Competition 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 Sanctioning Association.”

Discussion

22. On the basis of all the submissions made by the Appellant and Respondent, both in their Notice of Appeal and Response respectively and orally during the appeal hearing, all of which the Appeal Board took into account whether specifically mentioned in these written reasons or not, the Appeal Board considered that the most important question was whether the Respondent had authority to do that which it did pursuant to Rule 6E, being the Rule the Respondent states its exercised.
23. The Appeal Board was not persuaded by the Respondent that the application or enforcement of the Rules pursuant to Rule 6E entitled the Respondent to intervene to correct an admitted in-game error on the part of the match officials by ordering a replay, or, if it did, that it was in fact appropriate to do so.
24. The Appeal Board considers that Rule 6E is properly read as a whole. When that occurs the rule clearly contemplates that the Management Committee shall be responsible for enforcement and application of the Rules where there is a breach which engages with the procedure outlined in Rule 6E, which was inapplicable in the present instance.
25. However, if this is wrong the Appeal Board also considered whether the Respondent's Management Committee could act on the basis of the first sentence of Rule 6E considered in isolation from the remainder of the provision, which is what the Appeal Board considers the Respondent to have done in the present instance. More specifically, in the present instance, the Appeal Board considered whether the Management Committee could 'act, enforce or apply' Rule 20F in circumstances where the match officials had failed to do so during the course of a game.
26. In this context, as no-one has disputed, the match officials on the day clearly made a mistake. It appears to the Appeal Board that the referee was unaware of the matter during the game, but both assistant referees thought that only 3 substitutions per side were permitted, instead of what the Appeal Board understands to be the new rule of 5 substitutions being allowed during the 2021/22 season.

27. The Appeal Board considers this mistake to be a mistake made by match officials during the course of a game which is akin to the referee wrongly sending a player off, or wrongly allowing a goal to stand when it should be disallowed. Whilst the Appeal Board agreed with the Respondent's submission that the match official's mistake was most unfortunate, each game is played with the inherent possibility of human error on the part of the match officials.
28. The Appeal Board considered that even if the Respondent could rely upon the first part of Rule 6E in isolation, which is doubtful but which the Appeal Board does not have to decide, it is an inappropriate use of any such inherent power vested in the Respondent that an in-game error by the match officials causes the Respondent, as the League, to intervene and require the game to be replayed. The Appeal Board considers that the League should not effectively be managing the substitution procedure, which is a matter for the Laws of the Game. A mistake in that application does not, in the Appeal Board's view warrant an intervention under Rule 6E to 'apply or enforce' a Competition Rule.
29. Whilst the Appeal Board heard submissions from both parties on what were asserted as being 'precedents' no details of the matters referred to were provided. The Appeal Board does not understand that either the example of a player being double-yellowed who was not then sent-off advanced by the Appellant, nor the example of an additional substitute being used advanced by the Respondent are on all-fours with the current scenario. The rules in issue in those matters were not referred to by either the Appellant or the Respondent. As such the Appeal Board does not find these vaguely referred to examples as being of assistance.
30. The Appeal Board also notes that the referee in the game, as recited at paragraph 12 above, reported: *"Both of my assistants had been operating 3 from 5 on the previous games in the league which is where the issue originated."* The Appeal Board are not satisfied that the Respondent adequately explained how this point was considered and dealt with. The Appeal Board does not consider it is sufficient to say that it was referred to the Referee's Department who did not provide any evidence to suggest previous issues had arisen, as opposed to being definitive in being able to state that the Assistant Referee's in question had not refused a 4th and/or 5th substitution previously during the season, which games would not have been subject to any sanction of being replayed.

31. In all these circumstances the Appeal Board considered that it was not appropriate to order the relevant match to be replayed between Gillingham Women and Crawley Wasps, noting that there was no suggestion that the game was completed on any basis other than the same application of rules being applied to both teams on that afternoon, even if there was an error in the understanding of the Competition Rules.
32. More generally, the Appeal Board was also disturbed to note that the Respondent did not contact the FA Regulatory Department for assistance in circumstances where to require a match to be replayed because of an error by the match officials in the implementation of the substitution procedure during the match, because of their mistake as to the permitted number of substitutes, is a draconian sanction and one which, from the Respondent's perspective, was without precedent.
33. Furthermore, the Appeal Board rejects the reason advanced in the Decision Letter email dated 25 October 2021 that "*The FA WNL Management Committee therefore must order a replay of this match.*" It was plainly not a requirement of the Respondent's Rules that the Management Committee *was compelled* (namely 'must') order a replay of the match. Equally, the Appeal Committee rejects the Respondent's assertion in the written Response that to replay the match was the "*minimum action available.*"
34. The Appeal Board also notes from the written Response:
- (1) That within the minutes of the meeting there is no record of the Management Committee having considered in any form the scope and application of the Respondent's Rules, let alone the application and proper extent of Rule 6E. Indeed, there is no mention of the Management Committee exercising its discretion and/or jurisdiction pursuant to Rule 6E; and
 - (2) The same minutes record that the Management Committee sought to consider whether the match official's error had affected the outcome of the match. The Appeal Board is at a loss to understand how the Management Committee could possibly have reached any conclusion on this point, especially in the absence of hearing from the Appellant and Crawley Wasps. The Appeal Board also notes that to reach such a decision was inconsistent with the Respondent's decision not to contact either club as it simply wished to form an objective view on the fact a game had been played and an in-game mistake had been made by the match officials. The Appeal Board agrees, however, that this was the correct approach. The facts

of the matter were clear and admitted by the match officials. The only decision was what action, if any, was appropriate.

35. Following on from the last point the Appeal Board should also note that it specifically considered that it had not heard from Crawley Wasps during the appeal procedure. The Appeal Board is aware that the outcome of the appeal will have an impact upon Crawley Wasps.
36. However, the Appeal Board are satisfied that the issue in this appeal is whether the Respondent had the power to make the decision it did and, if so, whether it exercised that power appropriately. This, the Appeal Board considers, is simply a matter of taking the admitted fact of the match officials mistake and then simply asking whether Rule 6E facilitates the match being replayed.
37. Furthermore, in any event the Appeal Board approached its consideration on the basis that Crawley Wasps would support the Respondent's arguments to uphold the decision of the Management Committee, whilst also placing particular emphasis on the impact of it being refused a substitution which Competition Rules permitted.
38. For the reasons stated above, the Appeal Board allows the Appeal. On the first two grounds, principally the Appeal Board considers that the Respondent did not have the power to order the game to be replayed pursuant to Rule 6E, but even if that is wrong it was an inappropriate use of that power to seek to correct an in-game error on the part of the match officials by a League level intervention. As such the decision was one no reasonable body could reach. Furthermore, the matter was not properly considered as the minutes do not record any consideration of the extent and application of Rule 6E, or indeed any other Rule. In this regard the 'hearing' was not fair.
39. As to the third ground, in so far as it arises in light of the findings on the 1st and 2nd grounds, the Appeal Board considers that the sanction of replaying the game because of a mistake on the part of the match officials to be draconian and excessive.

40. The Appeal Board allows the appeal on all 3 grounds and orders that the result of the match between Gillingham Women FC and Crawley Wasps on 5 October 2021 stands. There shall be no order on costs and the Appellant shall be returned its appeal fee.

Christopher Stoner QC (Chair)

Laura McCallum

Dennis Strudwick

16 December 2021.