



Football Association Appeal Board

In the matter of

AFC MOORLANDS (Appellant)

-and-

MIDLAND JUNIOR PREMIER LEAGUE (Respondent)

WRITTEN REASONS

Factual Background

1. These are the Reasons for the decision of the Disciplinary Commission which was held via virtual personal hearing at 17.30 on 13th January 2022.
2. The Appeal Board ("the Board") members were Paul Tompkins (Chair), Robert Purkiss and Alan Darfi.
3. Ms Hayley Mather of Lancashire FA acted as Secretary to the Board.
4. The following is a record of the main points which the Board considered and is not intended to be and should not be taken as a verbatim record of the hearing.
5. The appeal related to a charge of non-fulfilment of a fixture in the Midland Junior Premier League (MJPL) between Sky Blues in the Community -v- AFC Moorlands U14s (Moorlands) on 2nd October 2021 ("the Match") which had been brought against Moorlands. The charge had been found proven by the MJLP discipline panel. The events leading up to the matchday and details of the allegation are contained within these reasons.
6. The following is a summary of the principal submissions considered by the Board. It does not purport to contain reference to all points considered, 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 consideration when the members determined the matter. For the avoidance of doubt, the Board carefully considered all the evidence and materials furnished with regard to this case.

The Appellant's case

7. The Board had before them the following items to consider:
 - (i) A notice of appeal from Moorlands with supporting evidence
 - (ii) A response to the notice of appeal from the MJPL
 - (iii) A copy of the papers of first instance.
 - (iv) FA Covid-19 Step Four Guidance for Grassroots Football (FA Guidance)
 - (v) UK Government Guidance for contacts of people with confirmed Covid-19 infection who do not live with the person (UK Government Guidance)
 - (vi) MJPL and Moorlands' official contact details
 - (vii) Original charge letter
 - (viii) Decision result letter
 - (ix) MJPL Rules
8. Representing Moorlands were Cath Hill (CH), the club secretary, and Andrew Ward (AW), the club chairman who presented the appeal. Moorlands case was that the MJPL had not applied the correct rules by which they meant that UK Government Guidance had dictated that Moorlands had been unable to field a team for the Match. CH had been following the UK Government Guidance by calling off the Match otherwise she would have been complicit in spreading Covid amongst the Moorlands team and maybe the opposition. Government guidance was paramount, and CH and Moorlands had followed all guidance correctly.
9. A call had been made to the MJPL secretary to inform of the Covid cases in the Moorlands squad on the Wednesday before the Match, but the call had not been answered. More cases had developed, and advice had been sought from the Staffordshire FA County Welfare Officer who had recommended stopping training and stopping playing, which they did. CH had also contacted the local authority who had given the same advice. Moorlands were asked if they could provide evidence of the third-party advice, they had received but they did not do so.

10. Moorlands were directed by the Board to the FA Guidance and were reminded that it had been formulated by the FA in direct consultation with DCMS specifically to apply government guidance to football. Moorlands' response was that UK Government Guidance trumps it all. Moorlands had five players who had tested positive for Covid and two more awaiting test results. They were down to a squad of nine with one further player away on holiday. Moorlands said that the MJPL had nothing to contribute but they had no information other than what had been sent via email to the MJPL until the notification on 2nd October, the morning of the Match.
11. What was CH to think? She wasn't considering rules with a view to an appeal, she was sorting out an under 14s football team suffering from Covid. She had tried calling the MJPL secretary, had sought guidance from their County FA and their local authority and had emailed the MJPL. She had a decision to make and did so in good faith.
12. The MJPL had charged Moorlands with non-fulfilment of a fixture, and they had responded explaining the circumstances in which they had taken a difficult decision. The MJPL had granted them more time to provide evidence referred to in their submission, but they had not sent in anything further. They are not a business they are a grassroots football club run by volunteers and CH's efforts should be commended.
13. The threshold which needed to be achieved to succeed in an appeal on the ground that the MJPL had come to "a decision which no such reasonable body could have reached" was explained and Moorlands submitted that they had achieved that threshold.
14. On the question of sanction, Moorlands is a grassroots junior club and does not have funds to spend on fines such as had been handed down in this instance.

The Respondent's response.

15. MJPL's response was presented by Louise Hughes (LH), the League Secretary, supported by Peter Kemp (PK), the League Vice-Chairman.
16. MJPL referred to the rules governing the league competition which adopt SCORY. Rule 20 (D) states that the minimum number of players that will constitute a team for a competition match in a 11v11 match is seven. Moorlands had at least seven players available. FA Guidance states that only players who are actually ill can be discounted. UK Government Guidance and FA Guidance both state that under 18s only need to isolate and avoid contact with others if they test positive and therefore Moorlands did not reach the required level to call off the Match. The matter had been dealt with entirely within the relevant rules.

17. In their email of 16th October to Moorlands MJPL had been looking for further evidence such as messages from parents of the sick boys or corroborative emails from the County FA or local authority as to the advice, they had given but nothing further had been produced.
18. To the suggestion that a fine of £50 for a junior club acting in good faith was harsh MJPL explained that the fine had been £20 (against a maximum of £100) with £30 compensation for Sky Blues in the Community who had wasted the pitch hire cost for the Match. Compensation was provided for in the rules.
19. LH explained that charging a club for non-fulfilment of a fixture was standard practice in such circumstances. There was no pre-judgement. A charge would be raised, and the club could then put its case to be considered objectively without the need for a league officer to make a snap judgement on matchday, as would have been needed here.
20. When questioned on the possibility of ordering the Match to be played at a later date LH stated that the rules do not provide that option. She had consulted Birmingham FA (the CFA to which MJPL is affiliated) who advised that “the answer is in the rules”.
21. When asked again why the Match could not have been re-scheduled for a later date PK replied that their approach in this case was, “The standard thing we’ve been doing all season”, inferring consistency in their approach.
22. An email had been sent by Moorlands to MJPL on Wednesday 29th September, but this had gone to “mjplreferees” which LH stated was not the correct address to reach her and while the MJPL officers have a 48 hour turn around for dealing with emails it had not reached LH as secretary and was not dealt with until the morning of the Match. Moorlands “should have made a better attempt if it was that important”. LH had received CH’s call on 27th September (not 29th as CH had said) but couldn’t answer as it was during her working day, was outside contact hours as communicated to all clubs, no message had been left, no text sent, and no follow up call had been made. “It could have been anything”.
23. MJPL offered nothing further in closing.

Appellant’s closing submission.

24. Moorlands submitted that CH had endeavoured to contact the MJPL but had received no assistance when she needed it. The sanction imposed may have been within the scope of the rules but there is no obligation to impose a fine or any sanction at all and the penalty of £50 is harsh.

Deliberation

25. Moorlands had relied upon all four possible grounds of appeal, namely:
- (i) Failed to give the appellant a fair hearing
 - (ii) Failed to comply with the Disciplinary Procedures relevant to the hearing of the charge
 - (iii) Came to a decision on the facts of the case which no reasonable such body could have reached
 - (iv) Imposed an award, order or any other sanction that is excessive.
26. The Board considered that Moorlands had had a fair hearing. While the policy of charging automatically in such circumstances might at first have appeared harsh, once the rationale had been explained it was considered an acceptable approach. Moorlands had been asked for their explanation and had been given the opportunity of submitting further evidence. While the decision to charge was explained as standard, the Board was satisfied that the procedure was properly applied according to SCORY.
27. The relevant rules had been applied. The squad size of Moorlands had not been shown to have fallen below seven so according to the rules they were still compliant and MJPL had not erred. Moorlands' assertion that UK Government Guidance had supremacy and also that it supported their withdrawal from the Match was not supported by the documents. The Board considered UK Government Guidance and the FA Guidance relevant at the time of the Match, both of which stated that there was no need for under 18s to isolate unless they themselves had tested positive or were exhibiting symptoms of Covid.
28. The Board thoroughly considered the question of whether the MJPL had come "to a decision on the facts of the case which no reasonable such body could have reached". To find in favour of Moorlands the Board would have to have found that the decision the MJPL had taken was outside the scope of possible outcomes, which it was not. It was not a question of whether the Board would have come to the same decision as this was a review not a re-hearing, rather the Board had to consider whether the decision of MJPL was within the possible scope of reasonable decisions and the Board considered that it was.

29. On the sanction, the Board took notice of the apparent lack of mitigation either sought or applied by the MJPL. Rule 20(E) calls for the exercise of discretion and as there had been no apparent discretion exercised in the application of the sanction the Board felt empowered to consider the sanction afresh. The Board noted that the MJPL had sought additional evidence but had received nothing, although they had not been clear what they had been seeking.
30. As the sanction was explained as £20 plus £30 for Sky Blues' compensation the Board did not consider this unreasonable in the circumstances. Sky Blues had done nothing wrong and were entitled to cover their lost expenses. The maximum fine applicable was £100 and a fine of £20 did not seem unreasonable to the Board, having given the matter detailed consideration.

Decision:

31. The Appeal Board unanimously dismissed the appeal on all four grounds.
32. There was no order made as to costs but the appeal fee is to be forfeited.
33. The sanction imposed by the League will remain as per the original decision.
34. The Appeal Board's decision is final and binding on all parties.

Paul Tompkins

Alan Darfi

Robert Purkiss

20th January 2022