



Football Association Appeal Board

In the matter of

NEW MILLS FC (Appellant)

-and-

THE NORTH WEST COUNTIES FOOTBALL 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 11.00am on Friday 28th January 2022.
2. The Appeal Board ("the Board") members were Paul Tompkins (Chairman), Robert Purkiss and Leon Bird.
3. Mr Conrad Gibbons of The Football Association 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 against New Mills FC ("New Mills") relating to non-fulfilment of a fixture in the North West Counties Football League ("NWCFL") between FC Isle of Man ("FC IOM") and New Mills on 27th November 2021 ("the Match"). The charge had been found proven by the NWCFL disciplinary committee. 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 New Mills
 - (ii) A response to the notice of appeal from the NWCFL
 - (iii) The original charge letter
 - (iv) New Mills's response to the charge
 - (v) NWCFL management committee meeting minutes from 4th August 2021
 - (vi) NWCFL Disciplinary report
 - (vii) Decision result letter
 - (viii) NWCFL Rules
8. Representing New Mills was Nick Dowse (ND), Director of football who presented the appeal, Sue Hyde (SH), the club secretary (and incidentally also a member of the NWCFL management committee) and Ray Coverly (RC), the club chairman. New Mills's grounds for appeal were twofold, namely that:
 - (i) *NWCFL misinterpreted or failed to comply with the relevant Rules and /or regulations of The Association relevant to its decision; and*
 - (ii) *NWCFL came to a decision to which no reasonable such body could have come.*
9. By way of presenting New Mills's appeal, ND drew the Board's attention to the Covid-related criteria ("the Criteria") which had been adopted by the NWCL management committee at its meeting on 4th August 2021. ND accepted that the Criteria had been circulated amongst the clubs and had been received by New Mills. New Mills's case was that the Criteria did not address the scenario where players were prevented from travel as had been the case in respect of the Match and the Criteria only catered for situations of illness.
10. New Mills's inability to play the Match had been as a result of the Isle of Man (IOM) government's entry rules at the time of the Match preventing anyone travelling to the Isle of Man unless in receipt of two anti-Covid 19 vaccinations. The Criteria did not provide for

a case where a team's players were prevented from travelling by the over-riding authority of a government, as had been the case here. New Mills had been faced with a problem of not having sufficient players to enter the IOM with a sufficiently large squad, only having 11 eligible players.

11. On 3rd November they had raised the issue with NWCFL but had had no response. On 9th November they had been approached by FC IOM asking about their travel arrangements for the Match whereupon New Mills had again contacted NWCFL to notify them that they had insufficient eligible players for the Match because of the IOM's entry criteria. There was no dispute that the IOM restrictions were Covid related but the Criteria were couched in terms of people contracting Covid, not the ability to move around in a Covid infected world.
12. ND pointed out that there had been similar instances early in the season when FC IOM had had difficulty travelling on 4th and 18th August but that NWCFL had dealt with the issue proactively and a solution had been found. In this case New Mills and FC IOM had themselves found a solution and the Match had been played on 3rd January 2022.
13. The Match fixture could not be reversed as had been the case with a lot of FC IOM's early season fixtures as New Mills had already played FC IOM at home.
14. When charged, New Mills had not opted for a personal hearing but instead had asked for a non-personal hearing as that seemed to them like a pragmatic approach and they had been happy to have had the opportunity to present their case in writing.
15. New Mills had a total of 33 registered players but only 24 had been used in the season of which only eleven had been double-vaccinated. Nine others had been signed on by the club early in the season but had not played. New Mills had not approached these nine as they had been discarded by the club, had not played and were extremely unlikely to drop everything to help New Mills, having been rejected, even if they had been available.
16. SH had called Paul Lawler (PL), chairman of the NWCFL, to try to sort things out but no solution had been found.
17. The letter presented to the NWCFL disciplinary committee hearing on 8th December 2021 had been headed "Mitigation Letter" but had been a denial of the charge, it had simply been wrongly headed and ND had been satisfied that the letter had been taken as a denial of the charge and not simply as mitigation of an acceptance.
18. It was not NWCFL's place to mandate vaccination amongst players, especially as it was not UK government policy
19. When asked if, for the purposes of NWCFL's rule 8.39, the Match had been rearranged by the time of the disciplinary hearing ND confirmed that the dates of 3rd/5th January were

under discussion at that time but had not been finalised and New Mills had indeed travelled to the IOM on 3rd January to play the fixture. PL confirmed at this point that the rearranged fixture had been published by NWCFL on 16th December 2021.

20. ND was asked what response there had been to the email of 3rd November to NWCFL. It had really just been a “heads up” to identify a forthcoming problem but no response had been received.
21. John Deal, NWCFL Secretary, mentioned that the Criteria had been adopted by the Management Committee on 4th August and shared with the clubs on 9th August when the minutes were circulated. ND confirmed that New Mills were aware of the Criteria and that point was not in dispute. What was in dispute was that the Criteria did not cater for the position in which New Mills found themselves, namely that they had a squad but only 11 of players were able to enter the IOM.
22. Had New Mills presented any medical information to NWCFL? ND said they had not but neither had they been asked to, they had simply been told they would be charged with non-fulfilment of a fixture. Anyway, what evidence could they have produced? Positive test results, as anticipated by the Criteria are entirely different from proof that a person has not had two vaccinations. ND did not know what evidence could have satisfied in that case.
23. ND considered the penalty to have been harsh and believed NWCFL were trying to make an example of New Mills. There was no consideration of what New Mills believed to have been a difficult position in which they found themselves and there was no “equality” with other cases of non-fulfilment.

NWCFL’s response:

24. John Deal (JD) presented on behalf of the NWCFL.
25. NWCFL’s case on sanction was that they had taken into account all mitigating circumstances when deciding on sanction. They decided to “go down the middle” by which he meant that there was a £1,000 maximum fine and New Mills had been fined £750 with £250 suspended, ie an immediate fine of £500. They had considered other sanctions which were contained in Rule 8.39 but NWCFL believed FC IOM had the right to play so decided against awarding them the points.
26. JD confirmed that FC IOM fixtures had been played in August but that two had been postponed due to travel issues. The FC IOM situation was known to all clubs in the NWCFL and all clubs knew they were expected to fulfil their fixtures.
27. The general feeling of the disciplinary committee had been that New Mills had not managed the eligibility of their players and also the Match had been rearranged to be played on 3rd January 2022 only because of pressure on New Mills from NWCFL.

28. It was the NWCFL Emergency Committee that had decided to charge New Mills under Rule 8.39 of the NWCFL rules. The Board noted the principle in the Criteria that allows postponement where a club has fewer than 14 eligible players and it was noted that NWCFL had adopted the Criteria. When questioned on the fact that New Mills had only 11 eligible players JD stated "It's only about Covid infection" and "There are no rules covering non-vaccination".
29. JD referred to Rule 8.10 which deals with postponement because of an epidemic. That rule requires medical certificates to be provided for those players affected, which must be provided within fourteen days of the postponement and nothing had been produced by New Mills. The Board noted that the charge had been raised three days before the date of the Match and the disciplinary committee had sat only 11 days after the date of the Match.
30. JD was referred to the Criteria which state they are "Criteria for the postponement of a match due to COVID-19-related player eligibility issues" and not merely infection. JD declined to comment on whether NWCFL considered the IOM government's restrictions on travel were "COVID-19-related player eligibility issues". Instead he commented "They didn't provide names, only numbers". Also NWCFL had not considered the Criteria in this instance as New Mills couldn't provide evidence of infections and all that mattered was that the Match had not been played on the original date.
31. JD stated that it was clear that New Mills did not want to go to the IOM and "We knew they didn't want to play"
32. JD was directed to page 12 of the bundle and the quotations from the League Secretary (presumably JD) and Management Committee member Glyn Jones. Both appeared to exhibit a general reflection on the situation rather than a consideration of this specific case. Additionally, a point of reference of a case of non-fulfilment involving Cleator Moor Celtic had been cited in the NWCFL's notes before a decision had been taken on the charge which, it needed to be remembered, had been denied. JD responded "I am convinced that the club were in breach and if the Committee hadn't implemented a fine we'd have been inundated with claims from other clubs not wanting to go to the Isle of Man. There were no free Saturdays in the Isle of Man so any postponement would be a non-fulfilment. It was, to a certain extent, making a statement to other clubs as well."
33. JD stated that New Mills had only lodged a plea in mitigation, as was mentioned on page 12 of the bundle, so the question of proving the charge had not arisen. The Board noted that nonetheless the disciplinary committee had treated the case as a non-personal denial of the charge, had voted and had found the charge proven by four votes to one.
34. When asked what other factors had influenced the disciplinary committee's decision JD pointed out that he does not have a vote but is there as secretary to advise the committee.

He also stated that precedent had been set this season for a non-fulfilment irrespective of the circumstances. In contrast to JD's comments, the Board noted the significant contribution by JD to the disciplinary hearing prior to a decision being taken as quoted on page 12 of the bundle and also took note of the fact that JD was one of a three person panel comprising the Emergency Committee which had taken the decision to charge New Mills on 24th November.

35. JD was asked to outline the procedure whereby the matter was automatically dealt with as a disciplinary issue. He mentioned that as soon as it was clear that any fixture had not or would not be fulfilled then a charge was raised. That then led to an investigative process when the views of all parties could be canvassed and a reasoned decision taken. 24th November was the last date on which accommodation in the IOM could be arranged and it had not been so at that time it was clear that the Match was not going to go ahead on 27th November and that was the point at which New Mills were charged. The disciplinary committee had dealt with things correctly, it was a matter of fact that the Match had not been played.

Closing remarks

36. NWCFL offered nothing further in closing.
37. ND for New Mills submitted that rules 8.10 and 8.39 had been misrepresented. The situation in which New Mills found themselves had been properly dealt with by the club as they had notified the NWCFL as soon as it was apparent that there was a problem. In his opinion the NWCFL should have engaged with them but they did not.

Deliberation

38. New Mills had relied upon two grounds of possible appeal:
- (i) NWCFL misinterpreted or failed to comply with the relevant Rules and /or regulations of The Association relevant to its decision; and
 - (ii) NWCFL came to a decision to which no reasonable such body could have come.
39. The Board noted that the response to the appeal stated quite simply that "It is a matter of fact that New Mills FC did not fulfil the fixture in the Isle of Man on the scheduled fixture date of 27th November 2021." This exhibited a belief that rule 8.39 introduced a strict liability offence when it does not. Rule 8.39 makes it an offence to fail to fulfil a fixture "without just cause". There appeared to have been no exploration of the reasons for the non-fulfilment and whether the reasons were just or not. In other words, the NWCFL disciplinary committee had failed to exercise the discernment required by the rule.
40. By their own admission the NWCFL had also believed the Criteria applied exclusively to medical situations when they do not. The possibility of the Criteria applying to a situation where outside legislation prevented travel for players had not been considered. The Board

noted the Criteria were for “Covid- 19 related player eligibility issues” and also found that New Mills’s situation was definitely such a case and the Criteria should have been applied but were not.

41. The Board was of the opinion that on the evidence presented the NWCFL directors and disciplinary committee members had allowed their own opinions to outweigh their objectivity. It was not clear why the NWCFL had submitted material (eg page 12 of the bundle) exhibiting prejudice by officers of the League. JD had said that they knew New Mills did not want to go to the IOM to play but gave no evidence to support that view and as the Match had been played since the postponement the Board did not accept this line of argument.
42. The NWCFL disciplinary committee had also misdirected itself by using the Cleator Moor Celtic case as a precedent before a decision on New Mills had been reached. The rules should have been applied objectively but the presentation of the committee minutes suggested strongly that a decision had been reached (by some members at least) before the committee convened. This was borne out by the statement by JD that “It was, to a certain extent, making a statement to other clubs as well.”
43. The Board did believe that New Mills had received a fair hearing. The charging procedure was correct and they had been given the opportunity of a personal hearing. It was not sure why they had not taken that opportunity. Matters were not helped by New Mills submitting their response to the charge as “Mitigation” but they had formally denied the charge and it was clear from the minutes that the disciplinary committee had not taken the matter as a guilty plea, rather as a non-personal hearing.

Decision

44. The Board found that:
 - (i) NWCFL had not applied the Criteria correctly in only treating them as applying to medical postponements and the Criteria had not been considered at all, as they should have been.
 - (ii) Rule 8.39 had been misapplied as the consideration of “just cause” had not been applied at all
 - (iii) In their response to the appeal NWCFL stated merely that the fixture had not been fulfilled as if that were sufficient to rebut the appeal. It was not.
 - (iv) In their evidence in response to the appeal NWCFL had shown evidence of prejudice against New Mills which called into question the objectivity of the original decision
45. The Board concluded that NWCFL had both misinterpreted and misapplied the relevant rules and as a consequence had come to a decision which no reasonable such body could have come.
46. The appeal therefore succeeds and any sanction falls away.

- 47. The appeal fee is to be returned
- 48. No order as to costs
- 49. The decision is final and binding on all parties

2nd February 2022

Paul Tompkins
Robert Purkiss
Leon Bird