

IN THE MATTER OF AN APPEAL PURSUANT TO RULE 16.4 AND APPENDIX A OF THE FOOTBALL CONFERENCE LIMITED t/a THE NATIONAL LEAGUE FA STANDARDISED MEMBERSHIP RULES 2021/22 SEASON

AND

IN THE MATTER OF A DECISION IMPOSED BY THE FOOTBALL CONFERENCE LIMITED ON 22 FEBRUARY 2022

BETWEEN:

WREXHAM AFC LIMITED

Appellant

And

THE FOOTBALL CONFERENCE LIMITED

(T/A THE NATIONAL LEAGUE)

Respondent

WRITTEN REASONS

1. The Appeal Board conducted a hearing on Thursday 17 March 2022 to determine an appeal by Wrexham AFC (“**the Appellant**”) against the decision of the Board of The Football Conference Limited t/a The National League (“**the Respondent**”) made on 22 February 2022 which confirmed a decision of the Respondent’s Board initially made on 10 February 2022. The decision is set out below.
2. The appeal hearing was an expedited personal hearing held by MS Teams, the Appeal Board comprising Mr Christopher Stoner QC (Chair), Mr Peter Powell and Mr Alan Hardy. Mr Conrad Gibbons of the FA Judicial Services acted as secretary to the Appeal Board.

3. The Appellant was represented by Ms Jane Mulcahy QC of Counsel instructed by Walker Morris LLP from whom Ms India Seaton was in attendance at the hearing, as was Mr Shaun Harvey of Wrexham AFC. The Respondent was represented by Mr Mel Stein of Clintons LLP. Mr Mark Ives, the Respondent's General Manager, was also in attendance.
4. The parties were informed by a Decision Letter, sent by email by Conrad Gibbons on behalf of the Appeal Board and dated 17 March 2022, that the Appeal Board had allowed the appeal, on both grounds advanced; that the decision to extend the Registration Period deadline until the second Thursday of April be set aside, such that the Registration Period shall remain as stated in Rule 6.2.1 of the Respondent's Handbook; that the Respondent is to pay the costs of the Appeal Board in the sum of £900, payable within 28 days and that the appeal fee is to be returned to the Appellant.
5. The Respondent made an application during the hearing, which the Appeal Board accepted as an application pursuant to Rule 26 of Appendix 1 of the Respondent's Handbook for written reasons for the decision to be provided. This document contains the written reasons for the Appeal Board's decision.

The Decision

6. Rule 6.2.1 of the Respondent's Rules is central to this appeal. It should therefore be recited at this early stage. It provides:

"REGISTRATION PERIOD

6.2.1. In any Playing Season the Registration Period for that season for The National League, National League North and National League South Clubs shall be the period commencing at midnight on the last day of the immediately preceding Playing Season and ending at 5:00pm on the fourth Thursday in March next following.

After 5:00pm on the fourth Thursday in March each Playing Season new registrations, new loans, and transfer of registrations will be declined or will be approved subject to such limitations and restrictions as the Board may determine and, if so determined, the Player shall only be eligible to play in the matches for which permission is granted by the Board."

7. The Decision appealed against is dated 22 February 2022. Pre-dating this, by an email dated 10 February 2022 from Mr Ives, all clubs administered by the Respondent were told, as relevant:

“Registration Cut Off

As you will be aware, in accordance with League Rule 6.2.1, under a normal playing season, the final date for Player Registrations is the fourth Thursday in March. After this date registrations are only accepted under such conditions as the Board may determine.

*Due to the late commencement of the season and the subsequent late finish of the season the Board determined that registrations date is extended until the **second Thursday in April.**”*

8. The Appeal Board was shown an email dated 7 February 2022 which had been sent in confidence to the Respondent’s Board by Mr Ives which appears to have prompted the decision. The email states:

“All

As you will be aware, in accordance with League Rule 6.2.1, under a normal playing season, the final date for Player Registrations is the fourth Thursday in March. After this date registrations are only accepted under such conditions as the Board may determine.

However, last season due to the late commencement of the season and the subsequent late finish of the season the Board determined that registrations date was extended one month until the fourth Thursday in April.

This season the Promotion final is schedule two weeks earlier but it is still two weeks later than normal.

I am seeking your opinion as to whether the Board feel it is appropriate to extend the date again this season by two weeks (to the 2nd Thursday in April) or leave as it is.

I would welcome your opinion...”

9. The Appeal Board was informed that the above recited email led to a discussion between Mr Harvey, on behalf of the Appellant and Mr Ives on behalf of the Respondent. The result of that discussion was that Mr Ives agreed to re-submit the issue of an extension of the Registration Period to the Board.
10. That explains a further email being sent by Mr Ives to the Appellant, dated 22 February 2022, which stated:

“Further to our recent communications on the registration date extension, I can confirm the matter was placed back to the Board for their reconsideration.

I gave a full explanation to the concerns you raised and they were all asked to reconsider their position [in] light of those points.

The Board are sympathetic to the points that have been raised and the difficulties encountered by being an FAW Club, and understand that the decision may have been made at the start of the season. However, I can confirm that the majority of the Board feel the two week extension as previously announced is appropriate.

Taking the points forward, I can assure you that unless there is a material change during the season, it [is] not our intention to amend the registration date after the season has commenced taking into consideration the points you have raised. Furthermore, with the dates already set for next season, coming back to the standard season end date, there is no intention to amend for next season.

Thank you for raising the concerns in the manner in which you did ...”

11. The penultimate paragraph appears to concern the 2022/23 season, which is not directly in issue for the purposes of the current appeal. Rather, the confirmation that the registration period for the 2021/22 season is to be extended by 2 weeks is the decision against which the Appellant appeals.
12. Through a combination of the Respondent’s formal Response to the Notice of Appeal and correspondence prior to the Appeal Board hearing, it has become plain that the initial decision taken on 10 February was a unanimous decision of the Respondent’s Board, whilst that taken on the 22 February was a 7-3 majority in favour of the extension of the Registration Period.

13. Before proceeding with the background, two further points should be mentioned. The first is that although the Respondent refers in the documents to a 2-week extension, which appears to have been the intention, in fact by announcing to all affected clubs on the 10 February that the Registration Period was being extended to the 2nd Thursday in April, the Respondent was, inadvertently, imposing a 3-week extension, given that there are 5 Thursdays in March 2022 (the 31st being the last Thursday). That this had not occurred to anyone is, in the Appeal Board's view, reflective of the lack of attention given to the underlying decision.
14. It should be noted that during the course of the appeal hearing the Respondent indicated that it would be prepared to accept the extension would only apply for 2 weeks and, accordingly, would end on the 1st Thursday in April.
15. The second point is that the appeal is framed as one pursuant to Rule 16.4 and Appendix 1 of the Respondent's Rules. The Appeal Board questioned Mr Stein as to whether the Respondent was satisfied the appeal was properly brought under those provisions. Mr Stein confirmed that the Respondent's stance was that whilst it had considered the provisions the Appellant should be given a right of appeal. Accordingly, no points were taken, and the Appeal Board proceeded accordingly.

Background

16. During the course of the appeal the Appeal Board was shown, in some detail, correspondence from March, April and May 2021¹ between the parties which included discussion as to an extension of the Registration Period which took place in the 2020/21 season, when the Registration Period was extended for 4 weeks.
17. The Appeal Board does not need to detail this correspondence for the purposes of its decision. It suffices to note that the following points emerge from the correspondence:
 - (1) That the Respondent also used Rule 6.2.1 of its Rules as the basis for extending the Registration Period for the 2020/21 season.
 - (2) That the Appellant stated that it understood the rationale behind that decision, but that it did not accept it.

¹ Although one letter was clearly mistakenly dated 3 April 2020 (when it should have been 2021).

(3) That the Appellant contended that there was an additional competitive imbalance caused to it by an extension of the Registration Period. This point, which is a central argument against the decision of the Respondent's Board dated 22 February 2022, is because, being a Welsh Club, an International Transfer Certificate is required for players transferred to Wrexham, which is only available during the recognised Transfer Windows. Accordingly, the Appellant is at a competitive disadvantage in any event, not being able to sign players in any given season after 31 January, whereas other clubs can sign players until the 4th Thursday in March (as provided for in Rule 6.2.1). The Appellant's stance is that an extension of the Registration Period exacerbates this disadvantage, at a crucial time of the season.

(4) The Appellant asked whether the Respondent's Board had authority to make a change to the Rule without seeking a vote of the clubs.

(5) That the Respondent, through Mr Ives, stated that the issue of the Registration Period had been raised by a number of clubs as a result of the late start and finish of the 2020/21 season (due to Covid) and that before making the decision the views of the FA and the EFL had been sought. Mr Ives asserted the Respondent had the requisite power to extend the Registration Period pursuant to Rule 6.2.1.

(6) Mr Ives suggested a meeting with the Appellant, as it may *"... assist in my understanding so I can fully represent you and your views on all matters moving forward."*

(7) Mr Ker, on behalf of the Appellant stated it assumed the competitive disadvantage of extending the Registration Period was not considered by the Respondent's Board but the Appellant had a legitimate expectation that all relevant matters would be considered by the Board when making a decision impacting all shareholders. Mr Ker continued: *"We would ask that all the correspondence in relation to this matter is put in front of the Board for their information, as while we are choosing to move on and put our plans in place for the 2021/22 season, our pragmatism should not be celebrated by your Directors but serve as a warning that the decision-making process needs to be far more thorough going forward that it has been ... if you are to enjoy our continued support."*

(8) Mr Ives confirmed that the Appellant's particular position and the effect of an extension to the Registration Period had not been placed before the Board, but from Mr Ives' perspective *"It is a lesson I will learn and will (try to) consider any unintentional consequences that would face Wrexham on any decision because of their FAW Regulations before any final decision is made."*

18. It is also relevant to note, by way of background, that the start and finish dates for the 2021/22 season were determined in 22 March 2021. However, there is no evidence to suggest that an extension of the Registration Period was considered at that time, although the Appeal Board notes the Rules for the 2021/22 season do start with the following statement:

"Due to the impact of COVID-19, a number of provisions were temporarily amended or disapplied for the 2020/21 season. It is intended that any temporarily amended or disapplied provisions will be reinstated for the commencement of the 2020/21 season, save where any further amendments have been approved by FA Council. A number of existing provisions have also been amended."

19. Finally, by way of background, the Appellant having given notice of an intention to appeal the decision dated 22 February 2022 on 1 March 2022 the matter was expedited, with the agreement and co-operation of the Respondent, as it was clearly important to have the matter determined before the 4th Thursday in March in case, as has in fact happened, that date was re-instated as the final date of the Registration Period. The Appeal Board records its thanks to both parties and to Judicial Services at the FA for co-operating and ensuring the matter could be heard with expedition.

20. The Notice of Appeal, dated 7 March 2022, advances the Appellant's appeal on two grounds, namely:

(1) Pursuant to paragraph 2.2 of Appendix A of the Respondent's Rules, on the ground the Respondent has *"misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision"*; and/or

(2) Pursuant to paragraph 2.3. of Appendix A of the Respondent's Rules, on the ground the Respondent had *"come to a decision to which no reasonable such body could have come."*

Interpreting Rule 6.2.1.

21. The Appeal Board considers that the proper interpretation of Rule 6.2.1 of the Respondent's Rules lies at the heart of this appeal.

22. In a letter dated 15 March 2022, Walker Morris LLP on behalf of the Appellant, set out what it contended was the purpose of Rule 6.2.1. They stated:

"Rule 6.2.1. provides that the fourth Thursday in March is designated as the registration deadline. This is in order to protect the integrity of the competition by preventing clubs making wholesale changes to their squads at the end of the season, potentially at a crucial period. Allowing registrations after this date may undermine the integrity of the competition by allowing clubs seeking to achieve promotion, or avoid relegation, to acquire players on short-term contracts, including on loan, from clubs who are already, or are likely to be, competing in the same division next season (and therefore have nothing to play for). The deadline prevents, for example, a wealthy club signing an entirely new team for the last game of the season. It also stops clubs taking short term financial gambles and putting themselves at risk."

23. The Respondent, through Clintons LLP, responded on the 16 March 2022 and did not seek to put forward an alternative contention as to the purpose underlying Rule 6.2.1. Furthermore, the Appeal Board notes that Mr Stein did not seek to do so in the hearing either, notwithstanding that Ms Mulchay QC had clearly referred in her submissions to the purpose as stated in the above letter and the lack of any dissent from it.

24. The Appeal Board is of the view it does not have to provide a definitive statement of the purpose of Rule 6.2.1, as it is not necessary to do so for the purposes of this appeal. To seek to provide a definitive statement in a vacuum of considering all potential applications is a danger. It seems to the Appeal Board, for example, that the purpose of the Rule may also extend to a club being prevented from signing a particular player, especially if that player is what might be referred to as a 'marquee player' for, say, the last game of the season, whether that be to secure promotion or to avoid relegation. The suggestion of wholesale changes being required does not seem to be a necessary requirement to the Appeal Board. It suffices to say, however, that the essential purpose of Rule 6.2.1. is to ensure the integrity of the competition.

25. Turning to the construction of Rule 6.2.1:

(1) The primary purpose of the Rule is to provide for a defined period within which registrations can occur;

(2) That period, namely the Registration Period, is clearly and precisely provided for in the first paragraph within the Rule. It is from midnight on the last date of the immediately preceding Playing Season (as defined in Rule 1.1) until 5.00pm on the fourth Thursday in March.

(3) The first part of the second paragraph of Rule 6.2.1 expresses the consequence of the first paragraph: namely after 5:00pm on the fourth Thursday in March new registrations, new loans and the transfer of registrations “*will be declined*”.

(4) However, there is a proviso to what would otherwise be a blanket ban. That proviso is that a new registration, a new loan or a transfer of a registration may be permitted by the Respondent’s Board.

(5) The provision is expressed in a manner which is referable to an individual transaction. The Rule refers to the Board imposing such limitations and restrictions as “*the Board may determine*”. It then proceeds to state that “*if so determined, the Player shall only be eligible to play in the matches for which permission is granted by the Board.*” (our underlining for emphasis). ‘Player’ is a defined term, identified in Rule 1.1 as meaning “*any contract Player, Non Contract Player or other Player who plays or who is eligible to play for a Club.*” Thus, the reference is to an individual.

(6) Accordingly, there is a discretion vested in the Board to permit individual registrations, loans or registrations after the end of the Registration Period, which transaction may be subject to such limitations and restrictions as the Board may, in the exercise of its discretion, think fit and which limitations and/or restrictions may only permit the Player to play in certain a certain game or games.

(7) Such a discretion, being the exception to the clearly stated general rule that new registrations, new loans and the transfer of registrations will be declined after 5:00pm, is clearly sensible in providing for exceptional circumstances. Such exceptional circumstances may cover as diverse circumstances as an application for a registration which is received, due to a technical hitch, after the very precise 5:00pm deadline or exceptional circumstances for a particular club which would mean it would otherwise

be unable to fulfil a fixture, which failure might otherwise affect the integrity of the competition.

26. Importantly, the Appeal Board are clearly of the view the proviso vesting the Respondent's Board with a discretion after the 5:00pm deadline on the fourth Thursday of March does *not* provide the Respondent's Board with the authority to apply a blanket extension to the Registration Period.
27. This is for two primary reasons. The first is that the effect of the decision taken on the 22 February 2022, affirming that initially taken on 10 February 2022, is that the Registration Period itself is amended from the fourth Thursday in March until the second Thursday in April (or whichever Thursday the Board intended, but failed to articulate).
28. Accordingly, given the primary purpose of Rule 6.2.1. is to provide for the 'Registration Period', to change that period is not an exercise of discretion but is in fact an amendment of the Rule itself.
29. Amendments of the Rules are permitted, pursuant to Rule 19 of the Respondent's Rules and Article 25 of the Respondent's Articles of Association. The procedures set out in these provisions were not followed, as was accepted by Mr Stein on behalf of the Respondent when pressed by the Appeal Board at the hearing.
30. The second reason is that in purporting to exercise the decision in the manner it did, the Respondent's Board was divesting itself of the discretion vested in it by the proviso within Rule 6.2.1, in respect of any new registration, new loan or transfer of registration taking place between 5:00pm on the fourth Thursday of March and the second Thursday in April.
31. The Board had not stated that it would be sympathetic to any applications for it to exercise the discretion identified in Rule 6.2.1 in the stated period, which in any event would have to be exercised properly, considering all the circumstances, including the purpose of the rule. As stated above, the Appeal Board considers the discretion could only be properly exercised in an individual case of exceptional circumstances.

32. Rather the Respondent's Board has simply stated that the Registration Period was being extended. When pressed by the Appeal Board Mr Stein was clear that the approval of registrations, loans and transfers being subject to such limitations and registrations as the Board may determine would only apply *after* the extended Registration Period ended. Put another way, the discretion vested in the Respondent's Board by Rule 6.2.1 would *not* be exercised between the fourth Thursday in March and the second Thursday in April.
33. Not only did this reinforce, in the Appeal Board's view, the fact the Respondent's Board was purporting to amend the Rule by actually extending the Registration Period, but it also confirmed the Respondent's Board were impermissibly purporting to divest themselves of the discretion identified in Rule 6.2.1 until after 5:00pm on the second Thursday of April (or whichever date it actually intended but had failed to articulate).
34. Accordingly, the Appeal Board is unanimously of the view the Respondent's Board could not extend the Registration Period pursuant to the provisions of Rule 6.2.1 alone. The first ground of appeal is established by the Appellant.
35. The Appeal Board wishes to add that notwithstanding the Respondent's assertions that the same thing happened last year and no-one complained, that does not mean that Rule 6.2.1. can or should be construed in a different way to that identified above. Indeed, the Appeal Board wishes to record its disappointment that shorn of the rhetoric advanced by the Respondent, it failed to offer any explanation of why rule 6.2.1. should be construed in the manner it contended for.

A decision that no reasonable body could have come to

36. In light of the Appeal Board's decision on the first ground of appeal, it is not strictly necessary to consider the second ground, but in deference to the submissions made the Appeal Board will briefly address why it also considers this ground was made out.
37. Firstly, it follows from the foregoing analysis that the decision by the Respondent's Board was one which was not in accordance with the Rules, or indeed the Articles of Association. The decision is one the Respondent's Board did not have the power to take and, as such, it is a decision which no reasonable body could have reasonably made.

38. However, in addition to this, the reasons advanced for the decision are not, in the Appeal Board's view, sufficient to justify the purported exercise of discretion.
39. Firstly, the reason advanced by the Board in its communique to the clubs and the reason advanced in the memo apparently promoting the decision from Mr Ives was the fact the season had started and would end later than the usual time. However, in the context of the preface consciously promulgated at the commencement of the Rules (and recited above) which dealt with the effect of Covid, and in particular the suspension and temporary amendment of rules in the previous season, no explanation was offered as why an extension to the Registration Period was not considered prior to the commencement of the 2021/22 season.
40. In so far as Mr Stein suggested that no one could know in March 2021 what the effect of Covid would be as we entered 2022, that is, of course, correct. However, it was known when the season would start and end, yet the point simply does not appear to have been considered and indeed appears to run contrary to the general statement as to the effect of Covid promulgated at the commencement of the Rules, as previously stated.
41. Furthermore, there was no evidence to suggest that the effect of the Registration Period had become a problem, in the context of clubs having been planning for their season 2021/22 having known the start and finish dates (and the date of the Registration Period) from March 2021. In so far as Mr Stein suggested that the expedition of the appeal had prevented the Respondent from obtaining evidence from clubs, the Appeal Board notes that expedition was by consent and at no stage was a direction sought to admit evidence, even if that could only be submitted shortly before the hearing. Most importantly, in the Appeal Board's view, there was nothing to suggest that when the proposal was put to the Board there was any suggestion of difficulties for clubs caused by the Registration Period ending on the fourth Thursday in March.
42. Secondly, in correspondence preceding the Appeal Board hearing, the Respondent, through Clintons LLP, suggested that the extension was needed because some 64 matches had been postponed in the 2021/22 season because of the effects of Covid. This appeared to be a new justification for the decision. However, the point was well made on behalf of the Appellant that of those matches, only one match would be played after the fourth Thursday in March, namely Wrexham's postponed match with

Solihull Moors. That is hardly a basis for providing for a blanket extension applicable to all clubs.

43. Accordingly, in the view of the Appeal Board no cogent justification for the decision was articulated by the Respondent. Instead, it was just a decision that was made because it had occurred the previous year. The Appeal Board is disappointed to say, from the lack of substantive argument advanced by the Respondent, that it appears it was a decision that was 'just taken' without any particular thought, with the lack of clarity as to the date to which an extension was being made being redolent of the overall failure of the Respondent to engage properly with the issue, if indeed there was an issue that needed to be engaged with.
44. The decision was, in the view of the Appeal Board, arbitrary and the second ground of appeal is also established.

Conclusion

45. For the reasons identified above the appeal is allowed on both grounds.
46. Pursuant to Regulation 21 of the Non-Fast Track Appeal Regulations, found in Appendix 1 to the Respondent's Rules, the decision to extend the Registration Period to the second Thursday in April is set aside and the Registration Period will remain as stated in Rule 6.2.1. Mr Stein kindly confirmed to the Appeal Board during the hearing that should the appeal be allowed, as it has been, this was an appropriate order.
47. The Appeal Board also orders that the Respondent pay the costs of the Appeal Board, which total £900. The Respondent has lost the appeal and the Appeal Board notes, with disappointment, that aside from plentiful rhetoric very little of substance was advanced by the Respondent in response to the points made by the Appellant to seek to justify the decision by the Respondent's Board.
48. If the costs are not paid within the specified timeframe, the amount of the costs will be increased by 25%. Furthermore, a failure to comply with the Appeal Board's Order on costs may result in a further order being made.

49. In addition to the foregoing, reflecting its success in the appeal, the appeal fee is to be returned to the Appellant.

Christopher Stoner QC

Chair

For and on behalf of the Appeal Board

A handwritten signature in blue ink, appearing to read 'C. Stoner', is written over a horizontal dotted line. The signature is fluid and cursive.

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22 March 2022.
Amended: 25 March 2022