

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

LODGE FARM FC (Appellant)

-and-

**MIDLAND JUNIOR PREMIER LEAGUE
(Respondent)**

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Jonathan Rennie (Chair) – Independent Legal Panel Member
Robert Purkiss – Independent Football Panel Member
Chris Goodman – Independent Football Panel Member

Secretary: Conrad Gibbons – Judicial Services Officer

Date: 5 May 2023

Venue: Held remotely via Microsoft Teams

INTRODUCTION

1. The Appeal Board was appointed to determine an appeal under the Disciplinary Regulations – Appeals (“the Appeal Regulations”) of The Football Association (“The FA”).
2. The Appeal Board conducted a paper hearing on 5 May 2023 to determine an appeal by Lodge Farm FC (“the Club”) against the decision of a Management Committee convened by the Midland Junior Premier League which considered the case as a paper hearing on 23 February 2023. The Management Committee found

the case proven and produced a written decision dated 26 February 2023.

3. The Club submitted a Notice of Appeal asserting that the Management Committee had imposed a penalty, award, order or sanction that was excessive.
4. The Appeal Board had before it a bundle (“the Appeal Bundle”) containing the following documents:
 - Notice of Appeal
 - Response to Notice of Appeal
 - Papers of First Instance
 - Results Letter
 - League Rules
 - Out of time application and outcome
5. This document constitutes the written reasons for the Appeal Board’s decision. The Board considered the entirety of the materials that the parties put before it. If this document does not expressly refer to a particular point, document or submission, it should not be inferred that the Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

6. The charge arose out of the failure to fulfil a fixture between Lodge Farm FC and Hereford Development Centre which was due to be played on Saturday 17 December 2022 at Hereford (“the Match”). It was an away fixture for Lodge Farm FC.
7. In the week leading up to the Match, the weather was affected by snow and ice around the Lodge Farm FC area with travel disruption being both anticipated and reported in local weather forecasts. A representative of Lodge Farm FC, “Troy” sent text messages to a club official at the opponent throughout the week commencing Monday 12 December in which he reported travel concerns given the unpredictable weather. The text messages indicated a desire to keep the opponent updated on whether the weather would so affect travel that the Match might not go

ahead.

8. The text message exchange between the Clubs ended on Thursday 15 December when a Hereford Development Centre representative indicated that “I’ll contact the League and let them know the game is postponed”. The Match did not proceed.

THE CHARGES

9. On 28 December 2022, the Midland Junior Premier League charged Lodge Farm FC with a breach of Rule 20E(I) of the League Rules.
10. The charge letter sets out the details of the charge in the following terms: non-fulfilment of a fixture.
11. The Club denied the charge and indicated that it wanted the case to be dealt with at a non-personal hearing.

FIRST INSTANCE DECISION

12. As indicated above, the case was referred to a Management Committee, which considered the case on 23 February 2023. After considering the evidence, the Management Committee found the charge proven.
13. The Commission imposed a financial sanction on the Club of £50 and awarded the points for the game to the opposition.

NOTICE OF APPEAL

14. Together with its Notice of Appeal, the Club sent a short statement explaining why, in its view, the sanction was excessive:

“The decision to postpone the fixture was agreed by both managers that safety to travel by car in the snowy weather was not suitable on that day. I have 3 players in our team that rely on public transport it was not deemed as a safe option for them either. I feel the decision made was in the best interest of the players safety, I feel being fined and having the points given against us is an unfair decision when both teams agreed to postpone.”

15. In essence, the Club's position was that this was a situation where agreement had been reached by both Clubs not to play the Match in question and that there was a very legitimate reason for doing so being travel safety.

16. The Midland Junior Premier League provided their own response to the Notice of Appeal dated 23 April 2023. The statement included the following:

"The FA rule considered by the commission was 20E(i) which consider the options available to the league in the event of a Club failing to keep its engagement, which include imposing a fine in accordance with the fines tariff and deducting points from the defaulting Club, awarding the points from the Competition Match in question to the opponents (awarding the game to the opposition)."

"The commission considered the response received and concluded that as the game didn't take place when there was no reason why it shouldn't have, the case was found proven. The case against Hereford Development Centre was found not proven following their personal hearing heard on the same day. The commission noted that the club did not seek any advice from the League prior to calling of the game. It was felt that the manager was hoping the game would be off at the start of the week and had made his mind up on Thursday."

THE APPEAL REGULATIONS

17. Regulation 2 of the Appeal Regulations sets out the grounds on which a participant may appeal a first instance decision. They are:

"... the body whose decision is appealed against:

2.1 failed to give that Participant a fair hearing; and/or

2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or

2.3 came to a decision to which no reasonable such body could have come; and/or

2.4 imposed a penalty, award, order or sanction that was excessive."

18. Regulation 12 of the Appeal Regulations states:

“An appeal shall be by way of a review on documents only...”

19. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal.

LEGAL TEST

1. Regulation 12, cited in paragraph 18 above, makes it clear that the task of an Appeal Board is to conduct a review of the first instance decision rather than a *de novo* hearing. In other words, the Appeal Board is not considering the matter afresh.
2. Accordingly, the Appeal Board applied the following principles in its approach to the appeal in this case:
 - An appeal proceeds by way of a review of the decision of the Disciplinary Commission (in this case the Management Committee). It is not a rehearing of the evidence and arguments at first instance.
 - It is not open to the Appeal Board to substitute its own decision for that of the Management Committee simply because the Board might itself have reached a different decision at first instance.
 - If the Management Committee has made findings of fact which it was reasonably open to it to make, the fact that the Appeal Board might have made different findings is irrelevant.
 - The principles set out above apply not only to its findings of fact, but also to the question of whether the Management Committee applied an excessive sanction. The Appeal Board cannot interfere with the sanction applied unless it was manifestly unreasonable and/or the Management Committee failed to determine the sanction in accordance with the relevant sanction guidelines.

DETERMINATION

3. The Appeal Board considered the parties' submissions in accordance with the principles set out above.

4. In terms of sanction, the Appeal Board noted that the Midland Junior Premier League Rules did provide for the situation where a match is not fulfilled and outlines the due process to be followed for postponement applications (Rule 20E(I) and subsequent provisions).
5. The Appeal Board considered that the text messages between the respective Clubs showed that agreement had been reached between the clubs on postponement due to the weather impacting travel. The opponent Herford Development Centre had committed to updating the League. The Appeal Board had no evidence available to support that Hereford Development Centre had updated the league as per its commitment during the exchange of text messages between the two clubs. It is clear that Lodge Farm FC expected them to do so.
6. The Appeal Board noted that Hereford Development Centre were not subject to any sanction arising from the abandonment. There appeared to be some inconsistency in the treatment of the respective clubs and the Appeal Board had no explanation for why that might have been the case in circumstances where the postponement was agreed..
7. The Appeal board had concerns that the road safety for a junior team is of paramount importance and a legitimate concern for any Club. The Management Committee appeared to be assuming from the text messages that Lodge Farm FC had made up their mind not to play at the start of the week in question regardless of how the weather developed. That is set out in their response to the Notice of Appeal and the Appeal Board did not believe that position to be evident from the papers available at first instance.
8. The Appeal Board noted that the Management Committee had explained why they awarded a reduced fine to Lodge Farm FC but did not go further and explain the rationale for the points award to the opponent as compared to any number of other sanctions including a points deduction. The Appeal Board determined that the points award to the opponent was manifestly unreasonable in all of the circumstances of the case.

CONCLUSION

9. The appeal against the decision of the Management Committee is partly upheld for the reasons set out above. The penalty imposed by the Commission is expunged in so far as the award of points to the opponent but the Club is still required to pay the fine levied.
10. In order to give effect to this decision, the Appeal Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations, order that the consideration of the awarding of points, solely, is remitted back to the Respondent to reconsider in accordance with the powers of the Management Committee under League Rules E20.
11. There was no order as to costs and the appeal fee is to be returned.
12. The Appeal Board's decision is final and binding on all parties.

Jonathan Rennie

Robert Purkiss

Chris Goodman

10 May 2023