

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

BETWEEN:

DONCASTER CITY F.C. Appellant

-and-

THE FA LEAGUES COMMITTEE Respondent

WRITTEN REASONS

1. The Appeal Board conducted an in person hearing by MS Teams on Tuesday 19 March 2024 to determine an appeal by Doncaster City F.C. ("**the Appellant**") against the decision of the FA Leagues Committee ("**the Committee**") contained in a letter dated 22 January 2024 and appealed by the Appellant in a notice of appeal dated 5 February 2024.
2. The Appellant was represented before the Appeal Board by Mr Martin Budworth of Counsel ("**Mr Budworth**"), whilst the Respondent was represented by Mr Mark Ives ("**Mr Ives**"). The Appeal Board wish to thank both Mr Budworth and Mr Ives for their considerable assistance, both in their written and oral submissions.
3. The Appeal Board consisted of Mr Christopher Stoner K.C (Chair), Mr Daniel Mole and Mr Dennis Strudwick. Mr Paddy McCormack of Judicial Services acted as the secretary to the Appeal Board, and we are most grateful to him for ensuring the smooth running of the hearing.

Background

4. The Appellant is currently competing in Step 7 of the football pyramid and it wishes to move into the National Leagues System, in Step 6, should it qualify for promotion. As Mr Ives explained to us, on behalf of the Committee, if a club finishes in a position

which qualifies for promotion in a feeder league to Step 6 that does not mean that it will be promoted. That is ultimately determined through an application process.

5. There was no dispute between the parties that paragraph 2.1 of Appendix A of the National League System Regulations provides (as relevant):

“All Feeder League Clubs seeking promotion to Step 6 must make an application using the prescribed form direct to The Association, copied to their existing League, by 31st December in the relevant year ...”

6. There was also no dispute between the parties that:

- (1) On 19 November 2023, The FA published the application details for clubs should they wish to apply for promotion which were forwarded to the Appellant by its league;

- (2) On 12 December 2023, for a second time the application details, should the Appellant wish to apply for promotion, were forwarded to the Appellant by its league; and

- (3) That the Appellant did not apply by the deadline of 31 December, as provided for by paragraph 2.1 of Appendix A recited above.

7. The reason for the Appellant missing the deadline were explained in the Notice of Appeal in the following terms:

“Due to the small amateur nature of the Club, official communications at the time in question were not circulated amongst other members of the management team, and as a consequence emails remained only ... with the individual [to whom] they were addressed. Due to the cancellation of several matches towards the end of 2023 as a result of poor weather and other Clubs folding as a consequence of financial issues, there was limited engagement between [the Appellant] and other clubs removing the opportunity of conversations surrounding the upcoming application for the promotion deadline. The relevance of this point leads on to the central reason of the missed deadline. The Club secretary, who is 65 years of age, and who received all correspondence from The FA relating to deadlines was not at the Club and had no remote access to his emails had a serious personal situation which culminated with

the death of his only living relative. Apart from the other management members feeling sympathetic towards the situation, no one had thought to request that during his personal loss, that he should attend the Club.”

8. We were supplied with some emails which were attached to the Notice of Appeal. The first was dated 6 January 2024 and was from Mr Van Dome of the Appellant, addressed to James Earl, the National League System Manager at The FA. We understand that this email was seen by the Committee when it made its decision. Mr Van Dome said:

“Good afternoon James

I hope this email finds you well, I am emailing regarding the applications that have been released for teams wanting to progress to step six.

Unfortunately our club secretary Pete Millard suffered a bereavement at the start of December and has since been unwell so hasn't been able to lodge an application, with this being our first season in the league system and having to navigate a number of fixture cancellations throughout the last two months it has been hectic and we have regretfully missed the deadline.

This is an error on our behalf which we understand however we would ask that an application for promotion be considered from ourselves, we can have all the forms completed and an application lodged asap, we do our utmost to add to the quality of the league, work with yourselves and other clubs around us to benefit the sport and we would really appreciate being given the opportunity to apply for promotion, we hope you can understand a lot of hard work would go to waste if we did not have promotion to aim for.

Please let us know if there is any way we can rectify this situation and we will make sure it gets done, apologies for the inconvenience and thank you for taking the time to read the email, we look forward to hearing from you.

I would have called you to speak about this personally, however I could not find a number, I would be happy to discuss this further if you get the chance please send across your number and I can answer any questions you may have, really trying to do whatever we can to put this right.

Kind regards

Luke Van Dome

Doncaster City FC.”

9. The response to this email was sent on 9 January. Mr Earl said:

“Hi Luke,

Thanks for the email and apologies for the slight delay.

Most importantly, I am so sorry to hear about the bereavement of a family Member of your Secretary and please do send him my personal thoughts and best wishes.

Our Promotion Deadline is locked in via our Regulations that any Club who wishes to apply for promotion must do so by 31st December in each Season. This date has been set for several years and we open our application window roughly 6 weeks ahead of the deadline. The Regulation is in the National League System Regulations, Appendix A, Reg 2.1.

The form is relatively straight forward and takes no more than 10 minutes to complete.

We have to be fair and consistent to all Clubs. The Club did not make any contact with The Association during the application window to make an advance request for more time due to extenuating circumstances. Neither did it make a temporary application through the online form with a request for additional details to follow. It is only after the announcement of the applicant list has the Club contacted the Association. While I have no doubt that your secretary had more important personal matters, the Club has been able to make contact with the Association about a later application and could have done so in the same regard about circumstances in meeting the deadline prior to the deadline.

We regretfully inform you therefore that we are unable to accept any late application, as is the consistent position taken both with other Clubs in this and previous Seasons.

Regards ...”

10. We do not understand that the email recited in the previous paragraph was before the Committee, but a further email which was is that dated 10 January. It was also addressed to Mr Earl. On this occasion the email was from Paul Vallis, the Central Midlands Alliance, Vice-Chair and League Secretary. The email said:

Good morning James I write in response to a request from the above club who are part of the Central Midlands Alliance Leagues constitution.

Firstly, let me make it clear that I understood that if applications for promotion to Step 6 were not submitted by the 31st December, any application for promotion would be rejected.

I received your initial email regarding the above promotion applications on the 13th of November. Due to being away, this was forwarded to all our Premier Division clubs on the 19th of November. Your second email received on the 12th of December was forwarded to the clubs on the same date.

I only received one email from one of our clubs notifying myself that they had applied for promotion, contrary to your instructions where clubs were to copy the league into the application.

The list of clubs who had applied for promotion from the Central Midlands Alliance was sent out on the 4th of January, and I was surprised to note that Doncaster City were not listed, knowing how much money and effort the Chairman had put into getting the team in a promotion position in the league.

I received a phone call from the secretary of Doncaster City Peter Millard on the 5th or 6th of January asking when the closing date was for promotion and whilst talking he appeared very confused when I said the 31st of December, he appeared to start crying and saying the Chairman wanted me to apply and I didn't realise the date had passed.

Apparently a very close relative, I believe his sister had passed away a few weeks ago and this has hit him hard, and the duties as a club secretary have suffered tremendously ... [Some personal information is not recited]

Having spoken to the Chairman at length yesterday in the end I agreed to send you this email, asking if the FA would please accept a late application for Promotion from Doncaster City to Step 6.

I have attached a screenshot of the league table as it stands now.

Dearne & District who have a commanding lead and Dinnington Town have both applied for promotion this time.

As you can see Doncaster City are in third place 13 points behind the leaders with 3 games in hand.

Personally, I can not unless something drastic takes place, see Dearne & District not winning the title as they are unbeaten at the halfway point of the season.

I said I would write to you to ask you the FA/NLS to reconsider your decision and to let Doncaster City make a late application for promotion for the 2023/24 season. and that is what I am doing.

Thank you for your time

Kind Regards ..."

11. The matter came before the Committee, acting by a sub-committee in accordance with Regulation 5.3 of Appendix A to the National League Systems Regulations. Any reference in these Written Reasons to the Committee shall be construed so as to include the sub-committee as appropriate. Its decision letter ("**the Decision Letter**") was dated 22 January 2024 and stated:

"Request from Doncaster City FC ('the Club') to lodge a late application for promotion from Regional NLS Feeder Leagues.

I am writing to notify you of the decision of a Sub Committee of the FA Leagues Committee. The Sub Committee was constituted in accordance with Regulation 5.3 of Appendix A of the National League System Regulations to consider the request from the Club to apply for promotion beyond the regulated deadline.

Promotion from Regional NLS Feeder League is by application and the deadline to do so is 31st December in each year on the prescribed form. This is in accordance with Regulation 2.1 in Appendix A of the National League System Regulations:

2. Rules and Regulations for Promotion and Relegation

2.1 All Feeder League Clubs seeking promotion to Step 6 must make an application using the prescribed form direct to The Association, copied to their existing League, by 31st December in the relevant year.

The League confirmed that the Club had been provided with the application details on the 19th November 23 and the 12th December 23. The Sub Committee were presented with the Correspondence from the Club. The passing of a relative of the Club secretary at the beginning of December was noted. The initial correspondence was received by the Club before the tragic personal loss. It is for the Club to have collective responsibility for the progression of their Club. If this was of such importance to the Club, then the Club would have normally understood the process (especially as a new Club) at the beginning of the Season, or it be raised when correspondence was received by the Club from the League. The Sub Committee noted that no application was received from the Club by the deadline, nor any correspondence from the Club during the 7 week period that the window was open. Nor was any request made prior to the deadline and so any application received will be out of time.

The Sub Committee, while exceptionally sympathetic to the personal circumstances for the Secretary did not feel this amounted to overall ignorance from the Club on well established Regulations pertinent to Promotion from this level. Therefore, the Club have been deemed to be out of time for applying for promotion. This would mean the Club would not be eligible for promotion should it finish in a qualifying position.

The decision of the Sub Committee is final. Should the Club wish to appeal in accordance with FA Rule H then they should contact the Judicial Services team at JudicialServices@thefa.com".

12. The provision providing that the appeal shall be pursuant to FA Rule H is Regulation 5.2(a) of Appendix A of the National League System Regulations. Neither this provision nor Rule H specifically provide a time limit for the appeal but given that Rule H4 provides that the appeal shall be under the relevant regulations of The FA, it would appear that the Appeal had to be brought, pursuant to Rules 5 and 6 of Regulation 11, Part C within 14 days of the decision letter referred to above, which duly occurred.

13. After some initial confusion before the Appeal Board, it was common ground that the relevant Regulations were those in Part C of Regulation 11 in The FA Handbook for 2023/2024. Accordingly, in accordance with Rule 12 of Regulation 11, Part C:

“An appeal shall be by way of review on documents only and shall not involve a rehearing of the evidence considered by the body appealed against. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”

14. Rule 10 provides:

“The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Any application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) that such evidence is relevant. The Appeal Board’s decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given an opportunity to respond.”

15. We refer to Rule 10 for 2 reasons. Firstly, a simple request was made on behalf of the Applicant by email dated 29 February 2024 to include an email trail into the appeal bundle. This was objected to on behalf of the Committee, relying on the terms of Paragraph 10. By an email dated 8 March 2024 the Chair directed that the email trail would not be added to the bundle on the basis that no valid application had been made pursuant to Rule 10.

16. The second reason for referring to Rule 10 is that the Notice of Appeal states at paragraph 8 “*Along with the Notice of Appeal, we also wish to apply for leave to present new evidence listed below: - (a) Witness Statement from Mr Mark McKay; (b) Witness Statement from the former Club Secretary Mr Peter Millard.*”
17. Notwithstanding the requirements of Rule 10, no explanation was provided as to the relevance of the evidence and at no stage were the statements produced. Put simply the application was not pursued.
18. The Notice of Appeal identified that the Appellant relied upon two of the grounds for appeal identified in Paragraph 2 of Regulation 11, Part C, namely:
- (a) Paragraph 2.1. – that the Committee failed to give the Appellant a fair hearing; and
 - (b) Paragraph 2.4. – that the Committee imposed a penalty, award, order or sanction that was excessive (Mr Ives accepting in submissions that the decision letter was an order for these purposes).

Argument and Analysis

19. Mr Budworth helpfully provided some written submissions to the Appeal Board on the morning of the hearing. We mean no disrespect to Mr Budworth in not reciting all the points taken. Even if not mentioned in these Written Reasons, all points advanced on behalf of both the Appellant and the Committee have been fully considered by the Appeal Board.
20. An initial point to consider, which was raised by Mr Budworth on behalf of the Appellants, was the argument that there was no sporting purpose underlying Regulation 2.1 of Appendix A to the National League System Regulations. It was said that the rule was an administrative check on promotion, the reason for which was not obvious and that, in reality, the Appellant’s hard-won success on the pitch could be overridden by an unyielding, administrative deadline.

21. Viewing the Regulations objectively, as the Appeal Board must, we were not persuaded Regulation 2.1 has no purpose. As Mr Ives explained to the Appeal Board, the Appellant currently competes at Step 7 of the football pyramid. There is no right to progress to Step 6, even if the Appellant were to win its league. Step 7 is outside of the National League System and, as such, if a club wishes to progress to Step 6 this is by way of application.

22. Mr Ives referred the Appeal Board to Regulation 2.2 of Appendix A of the National League System Regulations to illustrate the type of matters that are taken into account to determine whether any particular club can make the move from Step 7 to Step 6, assuming they qualify by their finishing position in their league. Regulation 2.2. provides:

“Clubs competing in a Feeder League must comply fully with the minimum requirements of Grade 8. To be considered for promotion to Step 6, Clubs must meet the requirements of Grade 7 and attain Grade 6 by 31st March in the year following promotion. Clubs can be promoted from Feeder Leagues to Step 6 without floodlights, provided that all other requirements of Grade 7 are met by 31st March in the Playing Season in which the Club wishes to gain promotion and that the Club has the following in place –

- *Planning permission for granted floodlights*
- *That by 30th September following promotion that floodlights are installed and in working order*
- *A development/business plan*
- *Quotations/estimates for the work to be carried out*
- *Funding applications submitted, if required*

Failure to install floodlights in working order by 30th September following promotion will result in a sanction being imposed at the discretion of the League of which the Club is a member. If by 31st March in the year following promotion the floodlights are still not installed then the Club will be a relegated Club and dealt with accordingly.”

23. Mr Budworth submitted that the Appellant ground-shared with a Club who met the relevant criteria. We had no evidence of this, but even accepting it as being the case, this does not mean that every club will be in the same situation and it is plain that certain steps have to be met by 31st March in the Playing Season in which a club wishes to gain promotion.
24. We have no evidence before us, but Mr Ives submitted to us that 103 applications had been received by the 31 December deadline in the current season across 51 feeder leagues.
25. In such a context and viewed objectively, the purpose of a time limit on applications is, in the view of the Appeal Board, clearly identifiable. Whether that date should be the 31 December or another date is not a matter for the Appeal Board. We also accept the submission made by Mr Ives on behalf of the Committee that the consistency provided by the Rules and Regulations is of importance.
26. There was discussion before the Appeal Board as to whether the Appellant contacted The FA only once the Secretary returned to his duties following his own tragic family circumstances, or whether it was in response to the publication, on the 4 January 2024, of the list of Clubs who had applied for promotion from the Central Midlands Alliance. As an Appeal Board it is not necessary for us to make any findings on this point. However, it is mentioned because within that discussion is the point that when considering the overall procedure, this clearly includes a release of a list of those who had applied for promotion, presumably so everyone is aware of that information.
27. In this regard the email dated 10 January from Mr Vallis recited above makes specific reference to the list for the Central Midlands Alliance having been released on 4 January, whilst the email dated 6 January from Mr Van Dome might make reference to it in the opening paragraph, although that is a point which the Appeal Board accepts is open to interpretation and as to which we make no specific finding.
28. The nub of the arguments advanced on behalf of the Appellant appeared in paragraphs 9 to 15 of the written submissions.
29. At the outset of the hearing, the Chair asked Mr Budworth to identify what Rule or Regulation was relied upon by the Appellant to support the view that the Committee has a discretion to extend the deadline identified in Rule 2.1 of Appendix A recited above.

30. In his written submissions, Mr Budworth had taken an analogy with the CPR pursuant to which the Courts can grant an extension of time or relief from sanctions. However, the Appeal Board did not consider that analogy useful. As Mr Budworth accepted in argument, the Court has an express power to grant an extension of time. There is no such express power in the present instance.
31. The second, and as it turned out, the principal argument was to the effect the Court has a supervisory jurisdiction over governing bodies if they do not comply with the requirements of natural justice and, more specifically, the governing body must act reasonably in the sense of not being irrational, arbitrary or capricious. Mr Budworth referred to extracts from *Lewis & Taylor: Sport Law & Practice (4th Ed, 2021)*. Paragraph 7.2 notes:
- “Sports governing bodies are required, in all their decision making pursuant to the regulatory functions contained in their rules, to act lawfully (which includes, in this context, acting in accordance with those rules), fairly in a procedural sense (and in accordance with natural justice), on the basis of only relevant considerations, on a sound basis in fact, in accordance with legitimate expectation and rationally (as opposed to perversely, arbitrarily or capriciously).”*
32. The Appeal Board is alive to the Court’s supervisory jurisdiction, but in the context of this matter also notes that its jurisdiction pursuant to Regulation 11, Part C, Rule 12 (as recited above) is that of a review on the documents of the decision of the Committee.
33. The Appeal Board was not persuaded that the decision of the Committee could be described as irrational, in the sense of it being perverse, arbitrary or capricious. It applied the Rules and Regulations in all the circumstances of the case having had regard to both the Rules and Regulations and the underlying reason for the requested extension.
34. Having regard to the notifications that were sent out on 19 November 2023 and 12 December 2023, there can be no argument that any club had any expectation other than that an application had to be made by the 31 December 2023 and that, if it did not, it would not be entitled to apply for promotion in that playing season.

35. Whilst the circumstances surrounding the Club Secretary accord him the utmost sympathy, there is no doubt in the Appeal Board's view that responsibility lay with the Appellant in not having a process in place, or even taking ad hoc steps, which ensured that given the Secretary's personal circumstances his duties were covered and/or his correspondence was dealt with. This was considered by the Committee, and we note the Notice of Appeal states:

"Apart from the other management members feeling sympathetic towards the situation, no one had thought to request that during the personal loss, that he should attend the Club."

It was not really a question of the Club Secretary attending the Club. More pertinently it appears to the Appeal Board that no one thought that given he was not attending the club, someone else should check whether, in his absence, anything needed to be done.

36. However, it would be wrong to simply focus on December 2023 and the Committee did not. We cannot fault the Committee's reasoning, when they stated:

"It is for the Club to have collective responsibility for the progression of their Club. If this was of such importance to the Club, then the Club would have normally understood the process (especially as a new Club) at the beginning of the Season, or it be raised when correspondence was received by the Club from the League."

... ... The Sub Committee, while exceptionally sympathetic to the personal circumstances for the Secretary did not feel this amounted to overall ignorance from the Club on well-established Regulations pertinent to Promotion from this level."

37. The Appeal Board itself also considers that given promotion is important to the Appellant, which we have no doubt is the case, as the relevant deadline is in published Regulations which are freely available to all, we would have expected all "other management members" (to use the language of the Notice of Appeal) to have been fully aware of the timeline of steps needed to secure promotion, assuming that the Club's competitive performance on the pitch entitled it to seek promotion. If they were not, or even if they failed to check them in the absence of the secretary, the responsibility must lie with the Appellant.

38. Even though Regulation 2.1. of Appendix A appears to contain an absolute deadline, the Appeal Board notes that the Decision Letter evidences that the Committee did not only consider the Regulation but also specifically considered the circumstances of the underlying request for an extension as well as noting the impact the failure to meet the deadline would have on the Appellant. The Appeal Board agrees with this reasoning. Far from being an irrational, arbitrary or capricious decision, the Committee acted entirely reasonably.
39. Mr Budworth's written submissions, expanded orally, also emphasised that in the Appellant's submission the Committee's failure to grant an extension of time, on general legal principles as opposed to the application of any particular rule, was disproportionate which, the written submissions identified, was said to be part of testing reasonableness.
40. Whilst it is accepted that the failure to meet the deadline has the effect the Appellant cannot seek promotion at the end of the current Playing Season, in so far as it is asserted it is part of testing the reasonableness of the Committee's decision, it has to be taken into account in all the circumstances as they have been identified above, rather than viewing the consequence in a silo. In this context the Appeal Board is unpersuaded by the argument, especially in the context of it essentially seeking to re-write Regulation 2.1 of Appendix A of the National League System Regulations.
41. Complaint was also made that the Appellant had not been accorded natural justice as it had not been afforded a hearing. Whilst it is of course true that there was not a hearing in the sense of arguments being presented in a similar form, for example, as before the Appeal, two points arise. The first is that there is no requirement for such a hearing in the Rules and Regulations. The second is that the application was dealt with by the Committee on paper. The Decision Letter notes "*The Sub-Committee was constituted in accordance with Regulation 5.3 of Appendix A of the National League System Regulations to consider the request from the Club to apply for promotion beyond the regulated deadline.*" We are of the view that was still a hearing, during which the Committee clearly had regard to both Regulation 2.1 and the underlying circumstances advanced on behalf of the Appellant as to why it had missed the deadline.

42. Finally, a point was taken that the decision was a restraint of trade. This was a point which not articulated in detail, it being asserted that the effects of not obtaining promotion, even at the lower levels of football, can have income consequences. It was accepted there was no evidence before us on this.

43. In the Appeal Board's view, we were unable to see how a published deadline applicable to all who wish to seek promotion, but which the Appellant itself failed to meet, can properly be said to be a restraint of trade, nor how the failure to grant an extension (even though there was no express power to do so) changes that position. In reality we think the point was a further expression of why it was said the decision was disproportionate. However, it does not affect our view on this as expressed above.

44. Overall, there is no doubt it is hugely unfortunate for the Appellant to have missed the deadline for applying for promotion stated in Regulation 2.1 of Appendix A of the National League System Regulations. The Notice of Appeal identifies changes that have been made since January, so there can be confidence the same situation will not occur again.

45. However, for all the reasons identified above we dismiss the Appellant's appeal on both the grounds advanced in the Notice of Appeal. The decision of the Committee contained in the Decision Letter remains in place.

46. In addition, the appeal fee of £50 will be forfeited by the Appellant. No other application was made on costs and no other orders are made on costs.

47. Pursuant to Rule 22 of Regulation 11, Part C, the decision of the Appeal Board is final and binding.



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Christopher Stoner KC

(as Chair for and on behalf of the Appeal Board)

21 March 2024.