

**IN THE MATTER OF AN INDEPENDENT ARBITRATION PANEL CONSTITUTED
UNDER THE FAW RULES**

Before:

William Norris QC (Sole Arbitrator)

BETWEEN:

THE FOOTBALL ASSOCIATION OF WALES

Applicant

and

CONNAH'S QUAY NOMADS FOOTBALL CLUB

Respondent

WRITTEN REASONS FOR THE DECISION

References to the agreed electronic bundle are shown [___].

Introduction and Summary

1. On 2 March 2022, I conducted a remote hearing of two disciplinary charges brought by the Football Association of Wales ("FAW") against one of its Member Clubs, Connah's Quay Nomads FC ("the Club").
2. As will be apparent from the Summary of my Decision which was issued at 10:00am on 3 March 2022, the charges arose out of the fact that the Club registered two new players, Paolo Mendes ("PM") and Neal Eardley ("NE"), after the closure of the first Professional Registration Period (commonly known as the first transfer window) on 31 August 2021 and before the second such window opened on 1 January 2022. The FAW rules, however,

only permitted one such registration and the consequence was that the second player (NE) played for the Club when he was ineligible to do so.

3. This registration of two new players and their addition to List A (see further below) was framed as Charge 1 and as a breach of FAW Rule 38.1.1 and / or Rule 38.1.2 and CPL Rule 12(6)(b).
4. The second and related breach of Rules 38.1.1 and/or 38.1.2 and CPL Rule 14.1 arose because that the second such player (NE) was selected for and played in six Cymru Premier League (CPL) matches, for which he was ineligible.
5. In my capacity as Sole Arbitrator and therefore, in effect, exercising the powers of a Disciplinary Panel, I find both charges to be proved. I further consider that I have no alternative other than to impose the penalty of a deduction of three points per game played by NE by way of penalty. That means the Club suffers the very substantial sporting sanction of having 18 points deducted.

The Parties and the Cymru Premier League

6. The FAW is a private limited company registered in England and Wales, and is responsible for the regulation and administration of Association Football in Wales. It does so through its rules (“the FAW Rules”) and through regulations that are issued from time to time and by reference to guidelines intended to assist in the interpretation and application of those rules (which must be read and construed in conjunction with FIFA Rules and UEFA Rules).
7. It is relevant to observe at this point that in the event of any conflict between the FAW Rules and those of FIFA or UEFA, the latter prevail (and indeed if there is any conflict between the UEFA Rules and FIFA Rules, the FIFA Rules prevail)¹.
8. The Club is run as a private limited company also incorporated in England and Wales, and a Qualifying Club, as defined by the FAW Rules, and a Member of the FAW. The Club competes in the CPL, which is made up of 12 teams. The Club has a distinguished

¹ See Section A.1 of those rules [8]

and successful history in that league although, at the end of what is Phase 1 of the current competition, it lay fifth (having played 22 matches) with 34 points.

9. It is relevant to note (at least as regards the timetable of the hearing as well as because of the consequences for the Club) that the Premier League competition is divided into two Phases. Phase 1 concluded and was completed on 26 February 2022: Phase 2 was scheduled to commence on 4 March 2022. The top six teams, as at the end of Phase 1 (which was completed on 26 February 2022), then compete in the Championship Conference. They play each other on a *home* and *away* basis (ten matches) which determines the champions and runners-up. This is of more importance than mere prestige because the champions of the CPL at the end of Phase 2 are eligible to be nominated by the FAW for the UEFA Champions League, and the runners-up to be nominated for the UEFA Europa Conference League for the following season.
10. The remaining six teams (in what is therefore the second tier of the CPL) compete with each other in a similar way as the Playoff Conference from which the bottom two sides are relegated at the end of the season.

The Relevant Rules and Regulations

11. In interpreting and applying the various rules that have to be considered in this case it is important to recognise that they are the product of agreement between the sporting bodies' constituent members². They should therefore be construed in that context and in such a way as to make them workable³. But I also agree, as Mr Budworth for the Club submits, that natural justice dictates that there must be clarity in the formulation of any rule in respect of which breach is alleged.
12. FAW Rule 3 states that:

“Every Member, Associate Member, Subordinate or other person or organisation involved in the game of Association Football in Wales shall observe these Rules and Regulations and the principles of fair play as well as the principles of loyalty, integrity and sportsmanship.”

² The members' participation in agreeing the rules of the FAW and CPL demonstrate that this is a real as opposed to theoretical concept.

³ See the decision of the FA Rule K arbitral tribunal in *South Shields FC v The FA* on 5 June 2020

13. As is explained in the Witness Statement of Mr Howard, Head of Competitions for the FAW, the CPL is the “*Premier Domestic League Competition within Wales*” which is administered by a Committee of the Directors of the FAW in accordance with its Standing Orders. This is done by the National League Board (“NLB”) which has responsibility for, amongst other matters, player registrations.
14. The CPL is governed by its own regulations (which I shall refer to hereafter as “Rules”) which are set by the NLB. It follows, as Mr Howard explains, that all Members of the CPL necessarily enter an agreement with each other, and with the FAW, to be bound by and comply with the CPL Rules (see CPL Rule 2.2). Those rules, in turn, bind the Member clubs to compliance with FAW Rules, FAW Regulations and the laws of the game (see CPL Rule 2.3).
15. Any alleged breaches of the CPL Rules must also be dealt with in accordance with FAW Rules and Regulations (CPL Rule 11) and CPL Rule 12 deals directly with the registration and transfer of both professional and amateur players. This provides that:

“Provisions relating to player registrations, contracts and transfers shall (if as so far as applicable) be dealt with in accordance with these rules and the FAW Rules and the FAW Regulations including Rules 55 to 91 of the FAW Rules.”
16. The registration of professional players is, as Mr Howard explains, governed by FIFA Rules as well as by the FAW Rules and the Regulations implementing those Rules. The material regulations are known as the *COMET* Regulations⁴.
17. For present purposes, it is sufficient to explain only this about the *COMET* system. It is for the clubs to enter the relevant details and upload the relevant material onto the system. When a club chooses to enter the details for a player that has never previously been registered, it will search to see if that player has held a previous registration in Wales. It will then initiate a new registration on the system, which the system shows as “*entered*” and then automatically generates a Registration Form for the club to complete. That form has to be signed by the relevant player and then uploaded onto *COMET* with the other required documentation which, in the case of a professional player, must include a copy of his Contract of Employment.

⁴ *COMET* being an electronic system which FAW (and other national associations) has introduced – an important function of which, in context, is to manage the registration of players

18. When that material is supplied by the club, the status of the registration on *COMET* changes to “*submitted*”. It is then the job of the FAW Registrations Department to review the material supplied (this is largely a human rather than a purely electronic process). If the Department is satisfied that the material is sufficient and accurate, the *COMET* status is automatically changed to “*confirmed*”: on the other hand, if there is some error in the request made or some insufficiency in the documentation supplied, the FAW then returns the status of the registration to “*entered*” and notifies the club accordingly.
19. These Regulations are to be found in the bundle at [70 - 90]. User Guidelines are also published and made available on the FAW website at [91 - 92]. Mr Howard explained in his Witness Statement and in his oral evidence that the system processes around 100,000 Player Registration Forms each year from around 900 clubs, with around 35,000 transfers, so that all clubs – particularly those in the CPL – may be expected to be familiar with how this all works in practice.
20. Changes were made to the CPL Rules following the CPL’s Annual General Meeting on 30 August 2020. The proposed changes were circulated amongst Member Clubs well in advance of the meeting and it was on that occasion (30 August 2020) that the clubs agreed the CPL “*Scale of Fines*” [116-120] to which I shall refer further later in this Decision.
21. There was a subsequent General Meeting on 9 June 2021. Again, details of the proposed changes to the Rules were provided in advance of that meeting (which, for personal reasons, the Club’s representative was unable to attend). The material rule change which was considered and unanimously agreed on that occasion was to CPL Rule 12.6. That, as I have said, is the one that is most material for present purposes.
22. The rule changes agreed and made at that meeting were as follows:
 - “12.6 Changes to a Squad List can be made as follows:
 - (a) During the period of a Professional Registration Period.
 - (b) Between the closure of the first Professional Registration Period and the opening of the second Professional Registration Period, a club may register a maximum of 1 new eligible player on List A after the above-mentioned deadlines, provided the quota of Locally Trained Player is respected and

- (c) Between the closure of the second transfer window until the end of the playing season, a club may register a maximum of 1 new eligible player on List A after the above-mentioned deadlines, provided the quota of Locally Trained Players is respected.”

23. Two other rules are relevant at this point. CPL Rule 12.4 provides that:

“No club may have more than 25 players on List A during the season. As a minimum, 8 places are reserved exclusively for Locally Trained Players and no club may have more than 4 Association Trained Players listed in these 8 places on List A. List A must specify the players who qualify as being Locally Trained, as well as whether they are club trained or association trained.”

24. Further, CPL Rule 12.5 provides that:

“if a club has fewer than 8 Locally Trained Players in its squad, then the maximum number of players on List A is reduced accordingly.”

25. The point of these rules, as Mr Howard explained, is to ensure that a significant percentage of the players on List A – that is effectively the first team squad – are either Academy products or have been coached and have progressed through the Welsh system.

26. Importantly, the effect of CPL Rule 12.6(b) is therefore that only one player can be added to List A between the first and second Professional Registration Periods – that is between 1 September and 31 December 2021.

27. Thus far, I have set out the rules that are most relevant to the first charge, but the related rule (which is the focus of Charge 2) is CPL Rule 14.1. This provides that:

“No club may play an ineligible player in any match. Any club which plays an ineligible player in a match will have three (3) points deducted from its record for that season (or in the case of a play-off match will forfeit the match) and will also be liable to a fine. If the player is a nominated but unused substitute for a match, he shall be deemed as not having played for the club in that match.”

28. Breaches of those rules are provided for in two provisions:-

- (i) FAW Rule 38.1 which provides that:

“It shall be a breach of the Rules for any Member, Associate Member or any Subordinate to do or permit or assist in the doing or permitting of any of the following whether in connection with the playing of association football...

38.1.1 violate the Laws of the Game or the Futsal Laws of the Game or the Rules or any Regulation or violate the FIFA Rules or UEFA Rules.”

(ii) FAW Rule 38.1.2 provides that:

“It shall be a breach of the Rules for any Member, Associate Member or any Subordinate to do or permit or assist in doing or permitting any of the following whether in connection with the playing of association football:

...

38.1.2 violate the Rules and Regulations (in whatever form) of any Member or Associate Member or any competition, sanctioned by a Member or an Associate Member or sanctioned by the Association.”

Jurisdiction and Process

29. According to Mr Howard, it was not until 16 November 2021 (by which time NE had played in six matches for the Club) that the FAW became aware there might be a problem with his eligibility. The FAW wrote to the Club seeking observations by letter of 19 November 2021 to which the Club replied [761-4 + appendices]. The Club was subsequently charged with breaches of the Rules (on 16 December 2021) and, after initial written submissions (dated 23 December 2021) had been received from the Club, amended charges were issued on 8 February 2022 [851-3].
30. Also, in the letter of 8 February 2022, the FAW gave notice that it was referring the matter to independent arbitration in accordance with the discretion afforded to its C.E.O under FAW Rule 40.1.
31. The Club was given seven business days in which to confirm its response to the charges, in accordance with FAW Rule 43.1.2. On 17 February 2022, the Club confirmed that the charges were denied and provided Amended Written Submissions [854 – 857].
32. On 22 February 2022, I held a Directions Hearing in which both parties helpfully co-operated to agree the hearing date of 2 March 2022, notwithstanding the considerable

practical difficulties that assembling their evidence and arguments in so short a space of time was likely to cause. At that same hearing it was also accepted, as it was at the full hearing, that I have jurisdiction to determine this matter as independent arbitrator and it is, as I understand it, common ground that as such I am exercising the full powers of a disciplinary tribunal.

33. As I have already noted, the remote hearing on 2 March was attended by both parties and their cases were presented, respectively, by Nick De Marco QC (for FAW) and Martin Budworth of Counsel (for the Club). I am extremely grateful to both counsel, to their instructing solicitors and to their clients for the co-operative approach and the constructive analyses that they were able to provide.
34. I also heard evidence from Mr Howard, as I have already noted, and from Mr Houghton, a Director, former Club Secretary and Financial Controller of the Club. Each witness confirmed the accuracy of the Witness Statements previously submitted and gave evidence supplementary thereto.

The Material Facts

35. In reality, there is very little dispute as to the material facts and history. I shall, therefore, summarise matters briefly and indicate how I resolve any fact that is in issue.
36. I accept, as Mr Houghton explains at paragraph 3 of his Witness Statement, that the Club only concluded negotiations with PM on the very last day of the summer transfer window, namely 31 August 2021. The relevant contractual document was signed at 10:31 Pacific Time – that is, at 18:31 BST.
37. As is apparent from the *COMET* record [753], Mr Houghton then made a *COMET* entry (shown as “*entered*”) at 18:36 on 31 August. This was, as Mr Houghton says, a Tuesday and the Club was playing Caernarfon Town FC at home that evening. As the Club was pleased with the signing, an announcement of it was made at the match that evening before kick-off. Mr Houghton says, and again I accept, that he countersigned PM’s contract at 19:29 BST with a second signature being added by the Club’s Secretary at 19:43. Documents were therefore in order for the registration process to be completed successfully before midnight on 31 August, which was when the first transfer window closed.

38. I accept that Mr Houghton thought he had successfully uploaded all the correct documents but I find as a fact, on the balance of probabilities, that he did not in fact succeed in doing so. Whether this was as a consequence of his own mistake or because of some electronic glitch somewhere in the system, I cannot say. But I consider that the FAW is correct to submit that Mr Houghton's assertion that he is "*as certain as [he] can be*" that he submitted all the relevant documentation is not enough to establish that he did in fact do so. That is because he has no documentary support for that assertion (such as a screen shot⁵) and because the FAW screen shots do not show any contract was uploaded on this occasion, although they do demonstrate that on other occasions.
39. The omission of the Employment Contract from what was uploaded is important because COMET Regulation 7.2 expressly provides that:
- "If the relevant registration form and employment contract is not Submitted on FAW COMET within the prescribed timeframe and / or is incomplete the registration will not be accepted, and the application will be returned to the Club by the Association and the Professional Player will be ineligible to participate in any Official Match." (my emphasis added)
40. That is why, at 23:24, when the documents that had been submitted had been scrutinised, the COMET status was marked "*rejected*". The system then automatically generated an email to the Club [887], also at 23:24, notifying it that the reason for the rejection was "*no Employment Contract submitted*". But no-one at the Club was logged on to or otherwise monitoring the system to receive that notification in any form.
41. Indeed, the Club apparently did not immediately notice that anything had gone wrong about the registration until 2 September 2021. Given that the attempted registration of PM had taken place in the final hours of the first transfer window and importance of ensuring that it had been completed successfully, it may seem surprising that no one had checked in the late evening of 31 August or even the following day (1 September) even though it would by then have been too late to have made a successful registration within the transfer window.
42. I accept that the Club first became aware of the problem on the morning of 2 September 2021. It then created a further draft (entered) contract submission for PM at 08:50,

⁵ See [883-886]

uploading (correctly) a copy of his Contract of Employment onto the draft submission a minute later [883-886]. The application status was then changed to “*submitted*” on the *COMET* log. Matters were then checked by the relevant Registrations Department, who changed the status to “*confirmed*” at 12:29 on 2 September 2021 [753].

43. It is common ground that PM was not in fact added to the Club’s List A until 14 September 2021 and it is accepted that PM then played in a number of fixtures during the first part of the season.
44. The significance of PM having been added to the list after the closure of the first transfer window (whether the addition was on 2 or 14 September may be immaterial to this point), is that it meant that the Club was not entitled to register any other player on List A until after the second Professional Registration Period (i.e. second transfer window) had opened.
45. Nevertheless, that is exactly what happened with the registration of NE, a professional player (and former Welsh international) and a “*free agent*”, as defined by FAW Rule 61.1, in October 2021⁶ (and therefore between the two transfer windows).
46. I accept this was not an intentional attempt to evade the Rules. But it was done without proper checks having been carried out by the Club, probably because it had been forgotten that PM had been registered and added to List A after the closure of the first transfer window and/or because someone failed to realise the significance of that⁷.
47. It is correct to say that the FAW Registrations Department raised no objection, nor did it give any warning about the fact that the Club had made a second registration of an additional List A player. But I also accept that it is for the clubs and not for the Association to ensure compliance with the rules and that it would place a very considerable burden upon the Registrations Department if they were required to check every registration in circumstances such as these. That obligation to ensure compliance must fall on the Club and not on the Association.

⁶ The request to register NE was actually made on 6 October 2021 and was formally confirmed on *COMET* by FAW at 09:46 on 8 October 2021. He first played for the Club on 9 October 2021.

⁷ If the explanation were that the Club was unaware of the rule-changes affecting CPL 12.6 then that would be no excuse either: but that is not the Club’s case.

The Charges

48. The original charges were, as I have said already, notified on 16 December 2021. The Club's response (particularly that sent on 23 December 2021), included the objection that the charges were "*fundamentally defective*". As I have said already, this resulted in amendment to the charges notified on 8 February 2022 [851 – 853].
49. The material sections of that notification state that the "*FAW have amended the charges as follows*":

WD184(i) – "Connah's Quay Nomads Football Club are hereby charged with the Disciplinary Offence as set out under FAW Rule 38.1.1 and/or FAW Rule 38.1.2, for an alleged breach of Cymru Premier League Rule 12.6(b), in that the club registered two new players, Paolo Mendes & Neal Eardley, on List A following the closure of the first Professional Registration period and before the opening of the second Professional Registration Period in the 2021/22 season."

WD184(ii) – "Connah's Quay Nomads Football Club are hereby charged with the Disciplinary Offence as set out under FAW Rule 38.1.1 and/or FAW Rule 38.1.2, for an alleged breach of Cymru Premier League Rule 14.1 for playing Neal Eardley as an ineligible player in six Cymru Premier matches. The matches are:

- a. Connah's Quay Nomads v The New Saints – 9th October 2021
- b. Connah's Quay Nomads v Newtown – 12th October 2021
- c. Cardiff Met University v Connah's Quay Nomads – 23rd October 2021
- d. Connah's Quay Nomads v Cefn Druids – 29th October 2021
- e. Bala Town v Connah's Quay Nomads – 5th November 2021
- f. Caernarfon Town v Connah's Quay Nomads – 9th November 2021."

50. Mr Budworth, on behalf of the Club, objected to the amendment of the charge on the basis that this has been done without the FAW having "*identified any rule permitting such post-response amendment*".
51. It is true that there is no particular rule about amending charges. But, just as there is no rule that expressly empowers the FAW to amend the charges, so also there is no rule prohibiting them from doing so. Accordingly, I consider that a decision-maker should allow

or reject such amendments on the basis of ordinary legal principles, of which the most decisive consideration is that of the potential prejudice to the parties affected.

52. In the present case, I conclude that any prejudice in the reformulation of the charges, as has happened here, is either illusory or at the very least minimal. I reject, therefore, the argument that there is some defect of process in the amendment.
53. Mr Budworth also submitted that the charges themselves are “*still bad*”, predominantly because, according to his submission, CPL Rule 14.1 does not adequately define who is an ineligible player and because Rule 12.6(b), to which the charges explicitly refer, is not intended to act as a prohibition being, rather, a permissive provision.
54. I do not agree. In my view, CPL Rule 12.3 [922 – 923] makes it clear that the Club must include all players that it intends to field on Lists A and B, and Rule 12.6(b) identifies how changes can be made to those Squad Lists and that it is only according to the terms of that sub-section that this can be done.
55. Mr Budworth also argued that Rule 12 does not require any submission or approval or verification of List A before it becomes effective. That is not the point. In my view, it is for the Club to create (by submission or addition) the players under List A, as specified by the Rules, which make it clear also that there cannot be more than 25 players on that List A (Rule 12.4), and that only one additional player can be added to the list in the material period (Rule 12.6(b)).
56. It is common ground that the Club submitted its original List A on 13 August 2021 through the *COMET* system and prior to the commencement of the season the following day. As I have indicated already, and as I find as a fact, PM was not actually added to List A until 14 September 2021, albeit an attempt was made to register him on 31 August 2021 (which was unsuccessful), which was followed by successful registration on the system on 2 September 2021.
57. I consider that the consequence of such registration and addition to List A (if the difference is material, which I doubt) means that the addition of a second player (NE) to the list in October 2021 means that the Club was in breach of CPL Rule 12.6(b) and, as such, constitutes a disciplinary offence under FAW Rule 38.1.1 and / or FAW Rule 38.1.2.
58. That being so, it necessarily follows that at all material times prior to the opening of the second transfer window, NE was ineligible to play for the Club. That must apply to each

of the six matches in which he played, the first of which was the game against the New Saints on 9 October 2021, the last (the sixth) being the game to which I have already referred against Caernarfon Town on 9 November 2021. The inevitable consequence, therefore, is that the Club was in breach of CPL Rule 14.1 when NE played in those matches.

Other Grounds of Challenge to the Charges

59. For convenience, I identify three other, related, grounds upon which the Club sought to challenge the charges.
60. The first is the complaint to which I have already referred to the effect that the *COMET* system and / or the FAW failed to notice and to warn that NE was an ineligible player and, perhaps, also there was no warning given to the Club that the registration in addition to List A of PM had taken place outside the first transfer window so that no further player (such as NE) could be added until the second window opened.
61. There is nothing in this contention. As I have said, I agree with the submission on behalf of the FAW that it is the Club's responsibility to ensure its compliance with the obligations of registration⁸⁸. Indeed, that is expressly stated in FAW Rule 7:
- “Qualifying clubs, national leagues, area associations and associate members shall have the following obligations:-
- 7.1 to comply fully with the FIFA rules, UEFA rules and the rules and regulations at all times to ensure that these are complied with fully by its Subordinates.”
62. The next issue is that of delay, a point I have discussed already. I do not accept there was any material delay, nor that the FAW can be blamed for having failed to discover the problems with NE's registration sooner than it did.
63. A separate, third, issue concerns whether the FAW had a discretion to treat PM's registration as having taken place satisfactorily on 31 August 2021 (and, if such a discretion existed, whether it should be exercised in the Club's favour).

⁸⁸ Many authorities emphasise the importance of eligibility in sporting competition and that compliance with the rules governing eligibility is the responsibility of the club fielding its players – see, for example, *CAS 2012/A/3013 Sudan FA v FIFA* and other CAS authorities cited in the ruling.

64. Rule 67 [41] states that:

“The application for registration of a Player shall be made in accordance with the systems and procedures prescribed by the Association from time to time. ... In deciding whether to accept or maintain the registration of a Professional Player, the Association shall have discretion to take account of any new or replacement contracts, contractual amendments or other arrangements between the Player and the Club that have not been duly submitted to the Association.”

65. When the FAW National League Board convened a meeting on 4 February 2022 to consider this issue of the discretion (the minutes of which were disclosed very late in the process), the view was taken that FAW Rule 67 derived from and had to be interpreted by reference to Article 8 of the FIFA Rules. Article 8 [138] provides that:

“The application for registration of a professional must be submitted together with a copy of the player’s contract. The relevant decision-making body has discretion to take account of any contractual amendments or additional agreements that have not been duly submitted to it.”

66. As is apparent from paragraph 1.3 of the introductory provision [132], the provision of Article 8 is mandatory – it “*must be included without modification in the Association’s Regulations*”.

67. Since, in the event of any conflict between different provisions, those of FIFA must prevail⁹, I agree with the submission of Mr De Marco QC that the use of the words “*new or replacement*” in relation to contracts is, in effect, just different ways of saying the same thing. It follows that the Members who met to discuss the matter on 4 February 2022 were correct to decide that FAW Rule 67 refers to amendments or additional agreements to relevant documentation that had already been submitted.

68. Since I conclude that the provision, as properly interpreted, does not allow for any discretion, it is immaterial to decide whether or not any discretion was properly exercised on the hypothesis that it existed when that was also considered at the same meeting. The summary of the discussion as recorded in the minutes is very brief and, as such, is not very helpful. But I would certainly not go so far as to say that, if there was a discretion, it

⁹ FAW Rule A.1 [8]

was exercised on an unreasonable basis. Nor would I, on the facts of this case, exercise the discretion any differently if the decision were mine alone.

Strict Liability and Fault

69. The relevant provisions are prescriptive and the interpretation of them depends on what lawyers call the principle of "*strict liability*". That is to say, in context, questions of ineligibility and of breaches of the Rules do not depend upon whether the party (in this case the Club) has been guilty of what one might characterise as blameworthy conduct.
70. I have said already, and I repeat, that I unreservedly accept that the Club was not intending to cheat. On the other hand, mistakes were made. The Club knew or ought to have known the rules. It was careless in the sense that it did not ensure that the correct documentation was submitted on 31 August 2021 and did not monitor the *COMET* system until midnight to check it had all gone through successfully. Nor did anyone from the Club check the success or failure of the registration on *COMET* until the morning of 2 September 2021. It is also the case that not only had the Club failed to complete the *COMET* system registration of PM by midnight on 31 August 2021, but it had not added him to List A either: though PM's registration was completed successfully on 2 September, he was not added to List A until 14 September.
71. The Club was also careless in signing a second List A player (NE) when it knew, or ought to have known, that it had completed the registration of PM after the closure of the first transfer window (on 2 September) and had not registered him on List A until 14 September.
72. None of those points are relevant to whether the Club is or is not in breach, although they do at least serve to provide some context for what might otherwise seem potentially draconian sanctions for mere mistakes. Whether the nature and circumstances of those mistakes have anything to do with the sanction that must be imposed is a matter to which I now turn.

Sanction

73. As the parties accept, I am exercising the powers of a FAW Disciplinary Panel. The penalties that such a panel applies are set out in Rule 46.1 of the FAW Rules [35].
74. The FAW's position is that the penalty is expressly provided for in CPL Rule 14.1 [101]. That provides as follows:
- “No Club may play an ineligible Player in any Match. Any Club which plays an ineligible player in a Match **will have three (3) points deducted** from its record for that season (or in the case of a Play-Off Match, will forfeit the Match) and will also be liable to a fine. If the Player is a nominated but unused substitute for a Match, he shall be deemed as not having played for the Club in that Match.” (my added emphasis)
75. By contrast, the “*Scale of Fines*” [116 – 120] of the CPL (to which I have already referred) is in less prescriptive terms: Paragraph 19 of that scale provides that:
- “Any club playing an ineligible player will have **up to 3 points** deducted from its record and be liable to a fine not exceeding £500.” (again, emphasis added)
76. Taken on its own, this latter provision would suggest an element of discretion. Nevertheless, I accept the argument on behalf of FAW that Rule 14.1, which is framed in mandatory terms, is the primary provision and that the “*Scale of Fines*” document is a subsidiary provision and that may best be regarded as an example of somewhat careless drafting which has taken place without regard to the potential significance of the language used¹⁰.
77. In any case, it is difficult to see how, even if there were some overall discretion, the decision-maker would not deem it appropriate to go to (or at least towards) the higher end of the scale in a case such as the present where an ineligible player has played when Rule 14.1 itself has made clear that the penalty is incurred simply by virtue of fielding the player. Would one then say that because the transgression arose through carelessness as opposed to deliberate action that the sanction would necessarily be reduced? That rhetorical question is not an easy one to answer but it is, as I say, hypothetical in the present case because I regard Rule 14.1 as having primacy for the reasons that I have given.

¹⁰ Perhaps because the heading and focus of the draft was upon “*finer*” rather than other, in this context, more draconian penalties. And the document is, of course, a schedule as opposed to an actual rule.

78. A related issue which the Club raises is whether such a penalty is disproportionate, bearing in mind the nature of the wrongdoing and the consequences for the Club, the most immediate of which will be the Club's relegation to the lower tier of the CPL for Phase 2. In this context, one has to recognise that this is a very substantial penalty for a successful and well-run Club, and that it will be felt both by those intimately involved with the Club and by those who support it. It is also possible to contrast this level of penalty with the kind of sanctions of which I gave examples in my short Summary, particularly those affecting clubs going into administration who suffer an automatic deduction of 12 points, and those who fall foul of the rules governing Profitability and Sustainability.
79. The answer given by the FAW, which I accept as being correct, is that rules governing ineligibility are different and have historically been, and are still, strict¹¹. If you play an ineligible player in a Cup Match, you forfeit the Match. There is no argument about that, and, by a parity of reasoning, it is why the rule exists that a club must lose three points for every match in which an ineligible player has taken part. That the player in question may or may not have made any significant contribution is nothing to the point.
80. Importantly, these sanctions are what the Clubs as members of the FAW have decided are appropriate. That, of itself, suggests that the members themselves regarded such points penalties as appropriate for breaches of the eligibility rules and it makes it all the more difficult to argue, even with hindsight, that their severity means the agreed penalties are disproportionate to the breach.
81. The same is true of any arguments relying upon the serious consequences for the Club. The authorities in the field of Sports Regulation are clear about this. The fact that a penalty may result in a club being relegated is not mitigation, not least because that would be to consider the circumstances of the particular club in isolation from those other clubs who may be directly affected – see, for example, the Decision of the Disciplinary Commission in the case of *EFL v Rotherham United FC* in April 2015, and that of the Disciplinary Commission in *EFL v Derby County FC* in June 2021.
82. On the other hand, I can and do take account of the impact on the Club in deciding whether it is necessary and appropriate, in addition to that points deduction, to impose any fine in

¹¹ See, for example, the decisions of the FAW's own Disciplinary Panels in *FAW v Goytre AFC* (1 February 2022), *FAW v Treharris Athletic Western AFC* (also 1 February 2022) and of an FA Disciplinary Commission in *EFL v Rotherham United FC* (25 April 2015).

relation to any or all of the matches in which any player or otherwise to impose separate penalties in relation to Charges 1 and 2.

83. In my view, the indirect financial consequences of the penalties that I must necessarily impose for Charge 2 (a deduction of 18 points) are such that the imposition of any fine would be an unnecessary penalty. Nor do I think it necessary to impose any separate penalty on Charge 1.

Conclusions

84. In those circumstances, I find both charges to be proved and I impose a sanction of a deduction of 18 points, such sanction covering the six matches in which NE played when he was an ineligible player. As a matter of form, I impose that sanction in relation to the second charge (that under WD 184 (2)) whilst imposing no separate penalty in relation to the first charge (under WD 184 (1)).

85. I have been told that the parties agree that they shall bear their own legal costs of this arbitration and that the FAW will be responsible for the costs of the arbitration itself.

86. The remaining issue is that of publication. I shall circulate this draft to the parties for any necessary amendments or corrections to be made before it is finalised, at which time I shall also consider any request for any redactions. Unless the parties say otherwise, when the decision is finalised, it will be published.



William Norris QC

Sole Arbitrator

London

07 March 2022



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