

**IN THE MATTER OF AN APPEAL AND THE HEARING
OF AN ADDITIONAL CHARGE BEFORE
THE SPORT RESOLUTIONS INDEPENDENT ARBITRATION PANEL**

Before:

Nick De Marco QC (Chairman, sitting alone)

BETWEEN:

BANGOR CITY FC

Appellant in the Appeal/
Respondent to the additional Charge

- and -

THE FOOTBALL ASSOCIATION OF WALES

Respondent in the Appeal/
Complainant in the Additional Charge

Decision of the Independent Arbitration Panel

I. SUMMARY

1. These are the written reasons for my decision ('**the Decision**') on (i) the appeal brought by Bangor City FC ('**the Club**') against the decision of Appeal Panel of the Football Association of Wales ('**the FAW**') dated 26 June 2019 and (ii) the Additional Charge brought by the FAW against the Club on 27 June 2019 which concerns the same fundamental subject matter.
2. Because of the urgency of this matter, and following a request from the parties, I communicated the Decision to the parties on the evening of 16 August 2019.
3. I previously determined by way of a Preliminary Issue on 12 August 2019 that I had jurisdiction to consider the Additional Charge in this matter. My written reasons for that decision are at **Annex I** to this Decision.
4. The fundamental question at the heart of both the Appeal and the Additional Charge was whether or not the player, Michael Williams ('**Mr Williams**') was a "*Professional Player*" according to the definition in the Rules of the FAW.
5. If Mr Williams was a Professional Player then he was ineligible to play for the Club in various matches in which he played (because he was not registered as a Professional Player by the Club), the deduction of points as applied by the FAW Appeal Panel must follow and the Appeal must fail; in addition the Additional Charge will be made out. If he was not a Professional Player at the time then the Club was not in breach, its Appeal must succeed and the Additional Charge must fail.
6. There is a subsidiary question: if the Club loses the Appeal and the Additional Charge is then proven, should the mandatory points deduction that would follow apply to the 2018/19 season or to the 2019/20 season?
7. For the reasons I set out below, I have found as follows:

- 7.1. Mr Williams did not have a "*written contract*" with the Club. As such, he did not fulfil the first condition of being a Professional Player for the purposes of the Rules.
- 7.2. In the circumstances, Mr Williams was not ineligible to play in the matches he played. He had been registered with the FAW as a non-contract player on 2 November 2018. He would only have been ineligible had he entered a written contract with the Club and become a Professional Player since that date and the Club had not then registered him. That did not take place.
- 7.3. The Appeal is therefore successful and the Club must have restored to it the 21 points and the £700 fine imposed by the FAW Appeal Panel.
- 7.4. The Additional Charge fails for the same reasons.
- 7.5. The FAW should pay 100% costs of this arbitration.
- 7.6. The parties to bear their own legal and other costs of the arbitration.
- 7.7. This Decision and these written reasons may be published.

II. BACKGROUND FACTS

8. The material background facts to the Appeal and the Additional Charge are as follows:
 - 8.1. During the 2018/2019 Season the Club played in the Huws Gray Cymru Alliance League ('HGA') at Tier 2 of the Pyramid System in Wales. At the end of the season the Club accumulated a total of **51 points**.
 - 8.2. The Club was subject to various charges on 15 March 2019 (i.e. during the 2018-19 season) relating (amongst other things) to it playing Mr Williams in

various HGA matches whilst he was allegedly ineligible to play. The penalty for playing an ineligible player in a match is (in addition to a fine) a deduction of 3 points for each match he played in while ineligible.¹

8.3. It is not disputed that the Club played Mr Williams in the various alleged matches, the dispute is whether he was ineligible to play. That depends on whether he was a Professional Player under the FAW Rules (as the FAW contended), in which case he had to be registered with the FAW as a Professional Player, and he was not; or whether he was an amateur (or "*non-contract*") player (as the Club contended) who would only need to be registered as a non-contract player (as he had been).

8.4. The definition of a Professional Player appears in the Definitions section of the FAW Rules. That provides that a Professional Player is:

"a player who has a written contract with his/her Club and is paid by his/her Club more of his/her footballing activities for the Club than the expenses he/she effectively incurs in performing his/her obligations to the Club."

8.5. That definition is based on the definition found in Regulation 2 of the FIFA Regulations on the Status and Transfer of Players ('**FIFA RSTP**').²

8.6. The parties agreed that the Definition of Professional Player in the FAW Rules should be read in conjunction with Rule 67 of the FAW Rules which provides in material part that:

¹ HGA Rule 7 applicable at the time provided as follows "*Any Club found to have played an ineligible player in a league fixture will be dealt with by the Management Committee. If found guilty they will be deducted 3 points per game played and fined a maximum of £200.00 per instance.*"

² Regulation 2 of the FIFA RSTP concerns the "Status of players: amateur and professional players" and provides:

- (1) Players participating in organised football are either amateurs or professionals.
- (2) A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.

“A Professional Player must have a written contract with his/her Club in a form approved by the Association and the application process for a Professional Player shall include providing the Association with a copy of the Player’s contract.”

8.7. On 25 January 2019, following the making of a complaint by him about not being paid by the Club, Mr Williams provided the FAW with a contract that he purported was a written contract with the Club making him a Professional Player. The contract was in standard form. It is said to have commenced on 1 January 2019. It stipulates that the Club shall pay Mr Williams £250 per week. It was signed by the Player but not by the representative of the Club. When Mr Williams originally sent the contract to the FAW he filled in the name of Mr Gwynfor Jones, the former Club Secretary, above the space for the Club signatory. He later admitted, by way of an email dated 20 March 2019, that he had entered the details of the Club Secretary on the contract, and it had not been signed by or sent to the Club Secretary, who had in fact resigned from his role on 30 December 2018.

8.8. Mr Purcell, who is employed by the Club, did however sign the contract as a witness to the other signatures. He explained to the FAW Appeals Panel that he had been foolish to do so. According to the Appeal Panel, he said that “*no contract was agreed but that the Club had made an offer to Mr Williams*”. He also said that he had told Mr Williams that the contract “*needs to be agreed and confirmed.*”³

8.9. A Disciplinary Panel of the FAW found on 17 May 2019 that Mr Williams was a Professional Player. The Club were initially deducted a total of **42 points**. The points deduction was subsequently reduced to **21 points** by the FAW Appeals Panel on 24 June 2019.⁴ That decision was communicated to the Club on 26 June 2019.

³ Paragraph 31 of the decision of the Appeal Panel.

⁴ The reason for the reduction in the points deducted was (i) some of the points deducted related to another alleged ineligible player. The FAW Appeals Board found that that player was not ineligible and so no points should be deducted for the matches in which he played; and (ii) Mr Williams was a professional from 1

- 8.10. As a result of the reduced points deduction the Club finished in 13th position in the HGA league with 30 points and a +20 Goal Difference. That meant Holyhead Hotspur FC (16th position with 19 points and a -42 Goal Difference) and Denbigh Town FC (15th position with 29 points and a -28 goal difference) were relegated to Welsh Alliance League Division 1 with Holywell Town FC (14th position with 30 points and a -20 goal difference) relegated to the Welsh National League Premier Division. Both the Welsh Alliance League Division 1 and Welsh National League Premier Division are situated in Tier 3 of the Pyramid League System in Wales.
- 8.11. The day after the outcome of the FAW Appeal Panel was communicated to the Club, on 27 June 2019, the FAW brought the Additional Charge against the Club for playing Mr Williams in a match between Prestatyn Town Football Club and the Club on 22 March 2019.
- 8.12. It is not disputed that the Club played Mr Williams in the fixture on 22 March 2019. If the Club is successful in the Appeal then doing so will not have constituted a breach; if the FAW is successful then the breach of the Additional Charge shall be proven.
- 8.13. If the Additional Charge is found proven the Rules provide that there be a deduction of 3 points against the Club. If that points deduction was applied to the 2018/19 season total (as the FAW contended it should be) then the Club would have **27 points** and would be relegated instead of Holywell Town FC. That is why the Appeal itself and the Additional Charge are both being dealt with in an expedited manner – something that was requested by both the FAW and the Club.

III. THE DECISION OF THE FAW APPEAL PANEL

9. The FAW Appeal Panel found that there was no written contract in place between the Club and Mr Williams between November and the end of December 2018.⁵ However, with respect to the 1 January 2019 contract, the Appeal Panel found that it represented an offer to Mr Williams when it was sent to him and that he accepted the offer when he signed it. As such, the FAW Appeal Panel found that a written contract was in place and the fact it was not registered was irrelevant as to whether or not it existed.⁶
10. The Appeal Panel also found that the Club had failed to adduce sufficient evidence to show that the sums it paid to Mr Williams were only for his expenses and not for wages. They found that they were satisfied that *"the accepted sum of £150 per week paid to Mr Williams was not by way of expenses."*⁷
11. As such the Panel found that Mr Williams was a Professional Player for the purposes of the FAW Rules and the failure of the Club to register him as a Professional Player meant he was ineligible to play in the various fixtures after 1 January 2019 to which the charges related. That led to the (reduced) points deduction.

IV. THE SCOPE OF THE APPEAL AND THE ADDITIONAL CHARGE

12. The Club appealed against the finding that there was a written contract in place. It did not appeal against the finding in relation to expenses.
13. Both parties agreed that the Appeal was by way of a review of the evidence adduced in the two hearings below and not a re-hearing.

⁵ Paragraph 51c.

⁶ Paragraph 51f.

⁷ Paragraph 51j.

14. The Appeal and the Additional Charge came before me sitting as an Independent Arbitration Panel appointed by Sport Resolutions in the following way:

14.1. The Club submitted a Notice of Appeal against the decision of the FAW Appeal Panel on 1 July 2019. That notice confirmed that the Club wished to appeal against the finding that it had a written contract with Mr Williams.

14.2. The FAW Rules provide that a party can appeal against a decision of the FAW Appeals Panel to an Independent Arbitration Panel:

(a) Rules 45.1 and 45.3 set out the procedural formalities for such an appeal;

(b) Rule 42.3 provides that for an appeal relating to a Disciplinary Offence (other than a doping offence) the Chief Executive Officer of the FAW shall select an independent sports arbitration service to act as an Independent Arbitration Panel and the composition of such panel shall be in accordance with the rules of that organisation. The Rules also provide that the Independent Arbitration Panel may consist of only one person if such appointment is permitted under the organisation's rules.

14.3. On 4 July 2019, the FAW confirmed receipt of the Club's appeal and advised that it had appointed Sport Resolutions as the organisation to provide the Independent Arbitration Panel.

14.4. On 19 July 2019, the FAW Chief Executive Officer, Mr Johnathan Ford, exercised his discretion pursuant to FAW Rule 40 to refer the Additional Charge to the same Independent Arbitration Panel considering the Club's Appeal given that the ineligibility allegation related to the same set of circumstances that formed the subject matter of the Appeal.

14.5. I was appointed by letter from Sport Resolutions dated 2 August 2019 to act as the Independent Arbitration Panel to consider both the Appeal and the Additional Charge on an expedited basis.

14.6. I held a telephone Directions hearing with the parties on 5 August 2019. The parties agreed that (subject to the Club's challenge to the bringing of the Additional Charge) the Appeal should be consolidated with the Additional Charge, and the following directions were then made by me:

- (a) The Appeal is to be a Review and not a Re-Hearing.
- (b) The Club to submit its written submissions with respect to (i) the Appeal and (ii) whether the FAW has jurisdiction to bring the additional charge, by 6pm on 7 August 2019.
- (c) The FAW to submit its written submissions in reply to (i) and (ii) above by 6pm on 9 August 2019.
- (d) The parties to disclose to each other and to copy SRUK a list and copy of all documents that they will seek to rely on in addition to the documents before the previous appeal hearing by no later than 6pm on 9 August 2019. Any documents not disclosed by this time will not be placed in the bundle and cannot be relied on at the hearing unless permission is granted by the Independent Appeal Panel Chairman.
- (e) The FAW is to prepare and provide to the Club and SRUK an agreed bundle of documents for the Appeal hearing by no later than 6pm on 12 August 2019.
- (f) The Chairman to determine the issue of jurisdiction in respect to the additional charge in (ii) in an expedited fashion on the papers only and communicate the decision to the parties by 6pm on 12 August 2019.
- (g) The parties to agree and provide to SRUK a List of Issues for the Appeal by no later than 48 hours before the hearing.

- (h) The hearing of the Appeal to take place on 16 August 2019 in Birmingham with a time estimate of one day.
- (i) The parties agree and acknowledge that by agreeing to these matters being determined by the Chairman there is no further right of appeal in respect to (i) the appeal or (ii) the additional charge.

15. On 12 August 2019, I determined the Preliminary Issue that I had jurisdiction to consider the Additional Charge.

V. THE PARTIES' SUBMISSIONS

16. The hearing was held in Birmingham, by agreement between the parties as a neutral venue, on 16 August 2019.

17. Mr Christopher O'Neal represented the Club and Mr Karl Thomas represented the FAW in the proceedings before me. Both Mr O'Neal and Mr Thomas provided comprehensive written and oral submissions before me. I am extremely grateful to them for the helpful way in which they presented their cases. I was also taken to two lever arch folders of evidence and rules relevant to the Appeal and an additional short bundle relevant to the Additional Charge. While no "*List of Issues*" had been agreed between the parties, the issues were in fact quite clear and narrow.

The Club's submissions

18. The thrust of the Club's case can be summarised as follows:

- 18.1. Mr Williams was not a "*contract player*". In order to be a contract player and not a "*non-contract player*" Mr Williams would have had to (i) enter a written contract of employment with the Club and (ii) have the contract registered with

the FAW by way of a "J5" Registration form. Neither of these two steps were completed by the Club because the Club had not concluded a contract with Mr Williams.

18.2. Mr Purcell had signed the contract as a witness foolishly, but his signature did not represent agreement by the Club, and he had said the contract would still need to be agreed by the Club.

18.3. Mr Jones did not sign the contract or enter his name on it, He had resigned from the role of Club Secretary on 30 December 2018 before the contract was said to have been entered.

18.4. Mr Williams had admitted that he had filled in the name and details of Mr Jones on the contract.

18.5. Neither the contract nor the J5 registration form was ever sent by the Club to the FAW.

18.6. The FAW (accurately) recorded Mr Williams as a non-contract player on the *"Player's Passport."*

18.7. The Club had accepted a number of other charges brought by the FAW against it in relation to the non-payment of wages of professional players. It did not accept the charge in relation to Mr Williams as it did not believe he was at any stage a Professional Player employed under a written contract.

18.8. The contract was dated 1 January 2019, but it was not clear who had completed the date. The rules specify a contract has to be registered within 5 days of signature but it was not brought to the attention of the FAW until 25 January 2019 when Mr Williams brought it to their attention. By 1 January 2019 the Club Secretary who is purported to have agreed to the contract on behalf of the Club had, in any event, already resigned from that role.

19. Mr O'Neal accepted, when asked, that if there had been a concluded written contract then the fact it had not been registered by the Club on the proscribed J5 form could not act as defence to the Club. The question was whether there was or was not a written contract in place.

20. Mr O'Neal was also asked how he dealt with the Appeal Panel's findings that there had been an offer that was accepted by Mr Williams. He said that it is impossible to confirm any offer was made. It is not clear who (if anyone) made any offer. It is not clear who filled in the non-standard parts of the contract (for example the date and the purported weekly wage of £250) and in any event the amount said to have been paid to Mr Williams was £150 not £250.

The FAW's submissions

21. On behalf of the FAW, Mr Thomas' key submissions were:

21.1. The issue was whether there was a written contract. The 1 January 2019 contract was a written contract, made in the form approved by Rule 67 of the FAW Rules, and therefore Mr Williams was a professional player (there being no appeal against the decision that he was not only paid expenses).

21.2. Mr Paul Grindley, on behalf of the Club, had previously said in a letter dated 20 March 2019 responding to the charges that while Mr Williams was registered as a non-contract player on 2 November 2018 the Club had agreed to review his status "*when the January transfer window opened*". Mr Grindley had gone on to state in that letter that Mr Williams was "*given a contract signed by Luke Purcell (General Manager) as a witness, but this contract was never handed to the club secretary at the time...*"

21.3. There had therefore been an offer (providing Mr Williams with the contract) which Mr Williams had accepted by signing the contract. This meant there was a

legally binding agreement between the parties. It did not matter that the contract had not been signed on behalf of the Club.

21.4. There was no evidence either way as to who filled in the non-standard parts of the contract.

21.5. Even if neither party had signed the contract it could be effective where it reflected the agreement between the parties and both parties then performed their obligations pursuant to it.

21.6. In this case, Mr Williams had signed the contract and the parties proceeded to perform their obligations under it. Mr Williams continued to play and the Club paid him.

22. With respect to the last point, Mr Thomas was asked if there was any evidence that the Club paid Mr Williams £250 per week, i.e. the alleged amount he was entitled to under the contract. Mr Thomas accepted there was none, that the only evidence was the Club's acceptance that it paid him £150 per week, but that the Club had failed to provide sufficient evidence of what it actually paid to him so the FAW did not accept it only paid him £150 per week.

23. Mr Thomas accepted that the contract had not been executed by the Club but said that the Rules did not provide for there to be an "*executed written contract*" only a for there to be a written contract.

24. Mr Thomas was also asked if there was another rule that dealt with circumstances in which a club might agree to employ a player but not by way of an FAW approved contract, or not by a written contract at all, and thus a club may conceal from the FAW its employment of a professional player. Mr Thomas confirmed there was no such rule addressed to those specific circumstances, though FAW Rule 72 might sometimes apply. The only relevant rule was where a club did enter a written contract with a player and then failed to register it.

VI. DECISION ON APPEAL

25. For the charges to be proven and for Mr Williams to be regarded under the Rules as a Professional Player there must be **both** (i) a written contract in place **and** (ii) payment to Mr Williams of sums in excess of expenses. Both parties agreed that it is not enough for only one of these conditions to be met.

26. The issue in the Appeal was whether or not there was a **written contract** between Mr Williams and the Club, the Club not having appealed the findings in respect to expenses.

27. The requirement for there to be a written contract in place is regulatory one. It does not reflect common law legal principles governing such things as whether a legally binding agreement was in place. There may be an oral employment agreement by which a player is paid a salary for playing football but he shall not be regarded as a Professional Player for the purposes of the Rules because there is no written agreement.

28. This potential oddity is not peculiar to the FAW Rules. As I have explained, the definition is based on the definition in FIFA's RSTP. The requirement for there to be a written contract in place for a player to be regarded as a professional is common to other football associations and leagues.⁸

29. The question is not whether there is a binding legal contract but whether there is a written contract. It does not necessarily matter whether there has been an "offer" and

⁸ For example, in England, FA Rule A.2 provide that a "Contract Player" means any player (other than a Player on a Scholarship) who is eligible to play under a written contract of employment with a Club"; The English Premier League Regulation A.1.44 provides that a "'Contract Player' means any player (other than an Academy Player) who has entered into a written contract of employment with a Club;" and Regulation 1 of the English Football League Regulations provides that a "'Contract Player' means any Association Football Player (except a Scholar or Academy Player) who is playing under a written contract of employment with a Club."

"*acceptance*" for the purposes of contract law, what matters is whether there is a written contract.

30. The FAW submitted that there was a written contract, and there would be one even if neither party had signed it. I find this difficult to accept. Where a written contract requires the parties to sign it for it to be executed or otherwise concluded, that is to say for it to become a written contract and not a proposed written contract, then the fact that the parties have not signed it means it is not a concluded written contract.

31. The FAW further submitted that the parties had agreed to the written contract even if it was not signed, and this was evidenced by, amongst other things, the fact that they performed their obligations under it afterwards. There are three difficulties with this submission:

31.1. First, as a matter of law, the parties subsequent conduct is not evidence of what they agreed at the time of making the contract.

31.2. Second, in any event, there was no evidence before me at all that the Club did in fact pay Mr Williams a salary of £250. In the emails from Mr Williams complaining about not being paid he never specified the amount he claimed to be entitled to, and the Club's case was that he was paid £150. While the FAW did not accept this, there was no evidence upon which I could conclude Mr Williams was paid £250 per week. There was therefore no evidence upon which I could conclude the parties proceeded upon the basis of the alleged agreement in the contract.

31.3. Third, even if the contract reflected the real agreement between the parties then that real agreement was made either orally or by conduct. It was not made by the written contract since it was not agreed by both parties in the written contract.

32. The FAW were right to point out that the definition does not expressly require a written contract to be "*signed*" or to be executed by the parties. However, as I have

said, where a written contract requires the parties' signature then it cannot properly be regarded as a written contract before the parties sign it. It may be a draft written contract; it may be an offer; it may reflect the actual agreement between the parties not yet executed in writing; but it is not, in my view a "*written contract*".

33.If the parties had concluded a written contract but the Club simply failed to register it as it is required to do the failure to register could not possibly be a defence to the charge – in fact the failure to register is a component of the charge. The argument that the contract does not come into force until it is registered is not a good one (and in fairness was wisely not pursued by the Club at the hearing). In any event, it is not a requirement of the definition of a Professional Player that the written contract be registered. A player who has a written contact with a club shall be a Professional Player where he is paid more than his expenses even if the club has failed to register that contract, whether deliberately or otherwise.

34.On the other hand, a player may be a professional player in the normal meaning of the words; he may be paid a salary for playing football under an oral agreement or an agreement based on the parties conduct. But he will not be a Professional Player for the purposes of the Rules. The FAW and other football authorities have decided to include with the definition of a Professional Player the requirement for there to be a written contract – perhaps in order to have certainty – and as such a player who does not have a written contract will not be a Professional Player according to the Rules. In the same way, a document signed by neither party or by only one party but not the other is not a written contract so the player shall not be a Professional Player.

35.I had suggested to the parties the possibility of a club being in breach of a rule for paying a player a salary when it had not entered a written contract with him, for example. There is apparently no such rule. FAW Rule 72 might apply in some circumstances, however, since it provides that all payments to players must be fully recorded and appropriate taxes paid. If a club and player entered into an oral agreement by which payments were made and not properly recorded and/or tax was avoided there would be a breach of this rule. But the rule might not apply in other

circumstances. There is no reason why the FAW could not have a rule which goes further and prevents payments of salary to a player without a written contract.

36. In any event, in this case I am unable to conclude there was an agreement between the parties as to the payment of salary, or what that agreement was, or when it was made. In those circumstances, it is very difficult to conclude there has been a breach of the Rule in substance even if not in form.

37. Mr Williams' assertion in emails to the FAW during January 2019 that he did have a professional contract had to be treated with caution for three reasons:

37.1. First, he had originally claimed (as part of his complaint regarding non-payment of wages) that he had a professional contract from November 2018, though he could not produce it. However, on 2 November 2018 he signed a registration form agreeing he was a non-contract player, that is a player not entitled to any salary. The FAW submitted that he was sufficiently experienced to understand the rules and I agree. The FAW Appeal Board found that there was no written contract until 1 January 2019, and that decision was not appealed by the FAW.

37.2. Second, Mr Williams himself had entered the name of the Club's supposed signatory on the contract before sending it to the FAW. It was not until after the Club was charged that he admitted he had entered the name on the contract.

37.3. Third, Mr Williams gave no evidence before the FAW Disciplinary Panel, the Appeal Panel or indeed before me. The emails he had sent, despite claiming he was not paid, did not even specify the sum he claimed to have been owed or entitled to. There was no reliable evidence from which I could conclude he was in fact ever paid £250 per week or that the Club ever agreed to pay him that amount.

38. I should add that while the Club suggested that Mr Williams may have attempted to defraud it by his conduct I make no such finding. It would not be appropriate for me

to do so, not least because I have not heard from Mr Williams. There may be totally innocent reasons for Mr Williams to have been confused about his circumstances and for his conduct. My concern was to consider whether there was evidence from which I could conclude that, despite the fact that the contract was not signed on behalf of the Club, it reflected the real agreement between them. For the reasons I have already explained there was no such evidence from which I could safely reach that conclusion.

39. I am not persuaded that there was a written contract for the purposes of the Rules. As such, the Club was not in breach of the Rules. It had previously registered Mr Williams as a non-contract player at a time when he was a non-contract player and it was not required to register him as a contract player in the absence of a written contract.

40. It follows that the Club is successful in its appeal and it should have restored to it (i) the 21 points deducted from the HGA league record for the 2018/19 season and (ii) the £700 fine imposed upon it by the FAW Appeal Board.

VII. THE ADDITIONAL CHARGE

41. It further follows that the Additional Charge is not proven. Both parties agreed that the Additional Charge was dependent on the outcome of the Appeal. As I have found there was no written contract between Mr Williams and the Club then Mr Williams was not ineligible to play in the match between Prestatyn Town Football Club and the Club on 22 March 2019.

42. It is therefore not necessary for me to consider the subsidiary question of whether the mandatory 3-point deduction that would have applied had the Additional Charge been proven should be applied to the 2018/19 season or the 2019/20 season. However, given this issue raised important general matters of fairness and sporting integrity I set out for good order what I would have found on this point if the Additional Charge had been proven.

43. It was of some concern to me that the Additional Charge was not brought until **after** (i) the Club succeeded in reducing the points deduction applied to it on appeal, such that the result meant it narrowly escaped relegation and (ii) the 2018/19 season had in fact ended. This was of particular concern given that the FAW accepted it knew of all the facts necessary to bring the Additional Charge before the appeal was concluded and before the season ended, but chose not to do so.
44. The FAW submitted that there is the power under Rule 35 for the FAW Council to extend the duration of the playing season, and that it had in fact done so (until 10 June 2019) in relation to an appeal brought in other proceedings concerning the South Wales FA. However, the FAW did not vary the 2018/19 playing season in which the Club competed so as to extend it until the Additional Charge was brought (on 27 June 2019), despite suggesting it had the power to do so. The Additional Charge was not brought until after the 2018/19 season had formally ended.
45. The FAW did, however, make powerful arguments in favour of retrospective sanctions being imposed as a result of late charges based on sporting integrity – giving by way of example doping and corruption cases where, for example, athletes had their medals withdrawn many years after the events in which they were awarded. I recognise the force in the FAW's submissions that the integrity of sport and the interests of other affected parties (for example in this case the clubs that may be relegated instead of the Club had the Club committed the breach) mean that there may be circumstances in which fairness requires a points deduction should be applied to a season that had finished even if a charge is not brought until after the season has finished.
46. There was no dispute that in this case that there was no express rule that either allowed or prohibited a points deduction to be applied retrospectively in this way. As Mr Thomas put it, there are no absolute rules about this, it is a matter of fairness and reasonableness.
47. However, there does appear to me to be a fundamental distinction between the type of cases the FAW relied on in support of its arguments about sporting integrity and

this case that goes beyond the existence or otherwise of a power to apply a sanction to a season already over before the charge is brought, and that is this: in all of the examples the FAW relied on the wrongdoers concealed their wrongdoing (doping/corruption etc.) from the sports' governing body such that charges could not have been brought until after the breaches were discovered. In this case, the FAW accepted it could have charged the Club before the end of the season but chose not to do so (no doubt for sensible and practical reasons). It decided only to do so **after** the Club succeeded in reducing the points deduction on its appeal before the FAW Appeal Panel thereby escaping relegation, and after the season had finished.

48. In those circumstances, had the Additional Charge have been proven, I would not have applied the 3-point deduction to the 2018/19 season but would have applied it to the 2019/20 season. So even if the Club had failed in the Appeal, the result would not have led to its relegation. Given that the Additional Charge has not been proven, however, no points deduction shall be applied in either season.

VIII. COSTS

49. While there was some disagreement between the parties as to the approach to costs, it was broadly agreed that (i) neither party to the appeal should be awarded its legal and other costs of the appeal; (ii) I could order the losing party pay all (according to the FAW) or 50% (according to the Club, but only if it lost, otherwise 100% if it was successful) of the costs of the arbitration.

50. I have taken the view that it is right in principle that I award the costs of this arbitration to the successful party (subject to any exceptional circumstances or conduct which I find does not arise in this case), and I shall do so in the sum of 100% of those costs. Given that both parties agreed that their legal and other costs should be their own I do not make any order in respect to those costs.

51. The parties agreed that I had a discretion to order costs including legal costs against the losing party in the Additional Charge and the FAW argued that it should have its

costs of the Preliminary Issue in the Additional Charge since it was successful on that point regardless of the outcome of the Additional Charge as a whole. However, both parties agreed that I was entitled not to make any order as to the parties' costs in relation to the Additional Charge.

52. I order that the FAW pay the costs of the arbitration in the sum of 100%. The Club succeeded in its Appeal, and the Additional Charge is not proven. Given the Additional Charge is not proven, I do not make an order that the FAW should have the costs of the decision on jurisdiction in relation to that charge.

53. I do not make any order in relation to the parties' costs of the Additional Charge. I see no reason to treat the costs of the Additional Charge in a different manner to those of the Appeal. Both parties shall bear their own costs of both the Appeal and the Additional Charge.

IX. PUBLICATION

54. The parties agreed that this Decision and these reasons should be published given the importance of this matter to Welsh football. In addition, publication is in accordance with Rule 135 of the FAW Rules and Rule 14.2 of the Sport Resolutions Arbitration Rules.

X. OPERATIVE PART OF THE DECISION

55. The operative Part of the Decision, as communicated to the parties on the evening of 16 August 2018 following the hearing, is as follows:

55.1. The Club is successful in its appeal. It follows that the Club should have restored to it (i) the 21 points deducted from the HGA league record for the 2018/19 season, and (ii) the £700 fine imposed upon it by the FAW Appeal Board.

55.2. The Additional Charge is not proven.

55.3. The FAW shall pay 100% of the arbitration costs.

55.4. No order of costs as between the parties.

55.5. Publication of the Decision and Reasons is permitted.

A handwritten signature in black ink, appearing to read 'Nick De Marco', is written over the left side of a large, light gray circular graphic that is partially cut off on the right.

Nick De Marco QC

20 August 2019

Annex I

**IN THE MATTER OF AN APPEAL AND THE HEARING
OF AN ADDITIONAL CHARGE BEFORE THE
SPORT RESOLUTIONS INDEPENDENT ARBITRATION PANEL**

Before:

Nick De Marco QC (Chairman, sitting alone)

BETWEEN:

BANGOR CITY FC

Appellant in the Appeal/
Respondent to the Additional Charge

- and -

THE FOOTBALL ASSOCIATION OF WALES

Respondent in the Appeal/
Complainant in the Additional Charge

Decision of the Independent Arbitration Panel

I. SUMMARY

1. Following a Directions Hearing held by telephone on 5 August 2019, and the making of an application on behalf of Bangor City FC ('**the Club**') that I determine whether or not there is jurisdiction to consider the Additional Charge in this matter as a Preliminary Issue before the main hearing of the Appeal on 16 August 2019, I directed that I rule on the Preliminary Issue on the basis of written submissions of both parties by no later than 6pm BST on 12 August 2019.
2. This is my Decision, and the reasons for my decision, on the Preliminary Issue.
3. As I shall explain in more detail below, I have decided that the FAW is entitled to bring the Additional Charge and therefore I have jurisdiction to consider it at the main hearing on 16 August 2019 (the parties having otherwise agreed that I could do so in a hearing consolidated with the appeal).
4. However, I am concerned about whether there is the power and/or whether it is fair to impose any sanction consisting of a points deduction that may follow a finding against the Club in relation to the Additional Charge on the final tally of points awarded during the 2018-2019 season. That is a matter about which I have not yet heard submissions and I shall invite the parties to make submissions on that matter at the hearing on 16 August.

II. INTRODUCTION

5. The reason for dealing with the Preliminary Issue in an expedited manner, and the background to both the Appeal and the Additional Charge can be summarised as follows:
 - 5.1. During the 2018/2019 Season the Club played in the Huws Gray Cymru Alliance League ('**HGA**') at Tier 2 of the Pyramid System in Wales. At the end of the season the Club accumulated a total of **51 points**.

- 5.2. The Club was subject to various charges on 15 March 2019 (i.e. during the 2018-19 season) relating to it playing the player, Michael Williams ('**Mr Williams**') in various HGA matches whilst he was ineligible to play. The penalty for playing an ineligible player in a match is (in addition to a fine) a deduction of 3 points for each match he appeared in while ineligible.¹
- 5.3. It is not disputed that the Club played Mr Williams in the various alleged matches, the dispute is whether or not he was ineligible to play. That depends on whether or not he was a Professional Player under the FAW Rules (as the FAW contends), in which case he had to be registered with the FAW, and he was not; or whether he was an amateur player (as the Club contends) who did not need to be registered. That fundamental dispute shall be determined in the Appeal.
- 5.4. The Club were initially deducted a total of **42 points** by a Disciplinary Panel of the FAW on 17 May 2019. The points deduction was subsequently reduced to **21 points** by the FAW Appeals Panel on 24 June 2019. That decision was communicated to the Club on 26 June 2019.
- 5.5. As a result of the reduced points deduction, the Club finished in 13th position in the HGA league with 30 points and a +20 Goal Difference. That meant Holyhead Hotspur FC (16th position with 19 points and a -42 Goal Difference) and Denbigh Town FC (15th position with 29 points and a -28 goal difference) were relegated to Welsh Alliance League Division 1 with Holywell Town FC (14th position with 30 points and a -20 goal difference) relegated to the Welsh National League Premier Division. Both the Welsh Alliance League Division 1 and Welsh National League Premier Division are situated in Tier 3 of the Pyramid League System in Wales.
- 5.6. The day after the outcome of the FAW Appeals Panel was communicated to the Club, on 27 June 2019, the FAW brought the Additional Charge against

¹ HGA Rule 7 provides as follows "Any Club found to have played an ineligible player in a league fixture will be dealt with by the Management Committee. If found guilty they will be deducted 3 points per game played and fined a maximum of £200.00 per instance."

the Club for playing Mr Williams in match between Prestatyn Town Football Club and the Club on 22 March 2019.

- 5.7. The parties both agree that, save for this matter of jurisdiction considered as a Preliminary Issue, the outcome of the Additional Charge shall depend on the outcome of the Appeal. It is not disputed that the Club played Mr Williams in the fixture on 22 March 2019. If the Club is successful in the Appeal then doing so will not have constituted a breach; if the FAW is successful then the breach of the Additional Charge shall be proven.
- 5.8. If the Additional Charge is found proven the rules provide that there be a deduction of 3 points against the Club. If that points deduction was applied to the 2018-19 season total then the Club would have **27 points** and would be relegated instead of Holywell Town FC. That is why the Appeal itself and the Additional Charge are both being dealt with in an expedited manner – something that was requested by the FAW as well as the Club.
- 5.9. The Club explained during the Directions Hearing that it was crucial for its financial and structural existence for this issue to be determined as soon as possible, because the threat of it being relegated was having an impact on its ability to properly exist or compete within the 2019-2020 season already commencing. On this basis I was persuaded to deal with the jurisdiction part of the Club's case so far as the Additional Charge is concerned on an even more expedited basis. In short, if there is no jurisdiction to consider the Additional Charge then regardless of the outcome of the Appeal the Club shall not be relegated from Tier 2 of Welsh football.

III. SUBMISSIONS ON PRELIMINARY ISSUE

6. Mr Christopher O'Neal, on behalf of the Club, made submissions in writing relating to the Preliminary Issue on 7 August 2019. In summary the Club submits as follows:
 - 6.1. The FAW were aware of the matters comprising the Additional Charge before the Club's appeal was heard but did not bring the charge until after the Club

succeeded in reducing the number of points it would be deducted at the appeal, and thus it avoided relegation.

6.2. The Additional Charge alleges a breach of HGA Rule 7. The HGA held its AGM on 15 June 2019 and became dysfunctional thereafter. A breach of HGA Rule 7 cannot be brought after the HGA ceases to exist.

7. Mr Karl Thomas on behalf of the FAW, made written submissions in response on 9 August 2019. In summary, the FAW submit:

7.1. The timing of the Additional Charge is irrelevant, there is no prejudice to the Club.

7.2. The FAW has previously acted in a similar fashion: in bringing various charges relating to betting offences in 2016, the FAW applied the rules as they existed at the time of the alleged offences (2013/14) and not those in existence in 2016.

7.3. While there is some dispute about whether the HGA has actually been dissolved, this is also largely irrelevant because (i) the FAW has taken over the administration of the league previously controlled by the HGA and (ii) even if a charge could not be brought for a breach of HGA Rule 7, the failure to register Mr Williams would also constitute a breach of FAW Regulation 67, and the Independent Arbitration Panel would have the power to impose a points deduction for such a breach (though it appears not to be a mandatory penalty as it was under HGA Rule 7).

IV. DECISION

8. The fact that the HGA may have ceased to exist before the Additional Charge was brought does not prevent the FAW from bringing a charge against a Club or a person who may have breached the HGA rules in existence at the time.

9. The Additional Charge is brought under FAW Rule 38.1.2 which provides that the FAW can charge a club for violating any rule of a competition sanctioned by the FAW. The rule in question is cited in the Additional Charge as being Rule 7 of the HGA league competition, a competition which was at the time sanctioned by the FAW.
10. In the same way the FAW had the power to (and did) bring a charge against the Club pursuant to FAW Regulation 38.1.2 for its alleged breaches of HGA Rule 7 before the HGA was arguably dissolved, it also has the power to do so afterwards. The HGA Rule existed at the time that the alleged breach occurred, and while the FAW could have brought the charge earlier, the fact the rule and/or the HGA may not now exist does not matter. I agree with the FAW that one must look at the rules in place at the time of the alleged breach, not those in place after.
11. I would not have been persuaded by the FAW's alternative case, that the breach constituted a breach of FAW Regulation 67. The Additional Charge does not allege a breach of Regulation 67, despite the fact that some of the earlier charges relating to the Club playing Mr Williams did. The FAW would have had to apply to amend the charge if it was to succeed on this ground. It does not matter, however, as I have found it has the power to bring the charge pursuant to Regulation FAW Regulation 38.1.2 in any event.
12. However, I am concerned at the timing of the bringing of the Additional Charge. The FAW accepts it knew of the facts necessary to bring the charge at an earlier date, and it chose not to do so. Its reasons for not doing so may well have been sensible ones, but the fact is it did not bring the charge until after the appeal.
13. That means the Additional Charges was not brought until after then end of the 2018/2019 season. Rule 8 of the HGA Rules in place at the time provided that "*Promotion and relegations will be as per FAW pyramid regulations*". Regulation 3(a) of the FAW Pyramid Regulations applicable to the 2018/19 season provides that:

"At the end of the 2018/19 Playing Season, save where the FAW otherwise directs under Regulation 3(i), there shall be automatic promotion and relegation between the Tiers of the

Pyramid Tiers 1 – 4 (and promoted/relegated into and out of Tier 4), provided the promoted club meets the necessary Ground Criteria...”

14. Thus, before the Additional Charge was brought promotion out of, and relegation from, the league ought already to have taken place. Where a charge is brought after the end of a season, and after the point at which relegation takes place, I do not understand how a points deduction that may arise as a result of a finding that the charge is proven could be applied to the season that has already finished.
15. I can understand that different considerations may apply to circumstances where a charge is brought **before** the season is concluded, even if the final determination of that charge does not place until after the conclusion of the season. All of the relevant and interested parties will know that the outcome of those proceedings may determine the final tally of points, and no doubt all parties will work to ensure the proceedings are concluded either before the end of the season or very quickly thereafter.
16. In this case the Additional Charge could have been brought before the end of the season, as the other charges were. It was not.
17. I have not heard submissions from the parties on this issue, and so I have not reached any final conclusion, but at the hearing of the Additional Charge I shall invite the parties to tell me whether, if that charge is proven, any points deduction should be applied to season 2018/19 or to season 2019/20, and to explain the basis in the rules, or otherwise, for their submissions on that issue.
18. In conclusion, I have decided that I have jurisdiction to consider the Additional Charge and I shall determine that charge along with the Club's Appeal at the hearing on 16 August 2019. I shall invite the parties to address me on the issue I have mentioned above, namely upon which season any points deduction arising as a result of a finding that the Additional Charge is proven should be imposed.

Nick De Marco QC (Chairman, sitting alone)

London

12 August 2019





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