

IRISH FOOTBALL ASSOCIATION

APPEALS COMMITTEE

In the matter of an appeal by DERGVIEW FOOTBALL CLUB ('the Appellant') against a decision made by the IRISH FOOTBALL ASSOCIATION'S CHALLENGE CUP COMMITTEE ('the Respondent').

Appeal Board

Steven Keenan

Barry Finnegan (Vice – Chair)

Mervyn Wheatley

Attendees:

1. The Appellant was represented by Mr Roy Lecky (Chairman) and Mr Nigel Lecky (Committee Member) at the Appeal hearing.
2. The Appeal Board also have the benefit of written submissions prepared by Mr Jamie Bryson on behalf of the Appellant.
3. The Respondent was represented at the hearing by Mr. Thomas Stewart BL, Mr. Andrew Raffan (Solicitor), Mr. Andrew Johnston (Head of Competitions and Football Governance and Mr Mark McAlister (Competitions Officer).
4. The Panel wishes to express its gratitude to the parties for their attendance at the hearing and for their helpful written and oral submissions.

Background

5. This appeal relates to the Appellant's decision to not fulfil their Irish Challenge Cup 4th round fixture that was due to be played against Wellington Rec Football Club on 23rd November 2024 at 1.30pm at Brookvale Park in Larne.
6. On Saturday 23rd November 2024 due to what the Appellant will say was unprecedented weather conditions caused by Storm Bert, a decision was made not to travel to Larne as it was unsafe to do so.
7. Mr Nigel Lecky of the Appellant and Mr Andrew Johnston of the Respondent had exchanged telephone calls and WhatsApp messages on the morning of Saturday 23rd November 2024 from 7.26am onwards with the focus on the weather conditions.
8. Mr Johnston during their discussions had made Mr Lecky aware that the Respondent could not convene a meeting prior to the Appellant's planned departure time and relayed to Mr Lecky the content of Rule 20a of the Irish Challenge Cup Committee Rules for Season 2024-25, ("the Rules") which sets out:

"Any club refusing or failing to play against the club against which it has been drawn on the date fixed by the Committee and without sufficient reasons for so doing, shall be adjudged to have lost the match and will be otherwise dealt with as the Committee may determine. Also, any club leaving the ground before the expiration of the game must be adjudged to have lost the match and shall be liable to be dealt with by the Committee".

9. Mr Lecky advised Mr Johnston at 9.51am that due to these conditions they had taken the decision not to travel to safeguard the safety of their players, staff and supporters and as such were unable to fulfil the fixture.

10. On 25th November 2024 at 5pm, the Respondent held a meeting via Microsoft Teams. This meeting for arranged at short notice and the sole purpose of the Appellant's decision not to travel for the scheduled fixture due to adverse weather conditions caused by Storm Bert. Mr Nigel Lecky had attended part of the meeting to provide submissions on behalf of the Appellant.
11. Following the conclusion of the Respondent's meeting, a letter was sent to Lydia Cousins, the Secretary of the Appellant dated 25th November 2024 setting out that the Respondent had unanimously agreed that the Appellant be dismissed from the Irish Challenge Cup competition for breach of Rule 20a of the Rules. The Respondent further agreed that a fine of £250 should be imposed on the Appellant in accordance with Rule 32b of the Rules. For the avoidance of doubt Rule 32b of the Rules sets out as follows:

"The Committee shall also have the power to deal with any other matter not provided for in these rules".

Points raised on Appeal

12. The Appellant brought this appeal based on four grounds:

- a. **The committee misinterpreted Rule 20a of the Irish Challenge Cup Committee Rules for Season 2024-25.**

The Appellant's submissions

In summary the Appellant relied on a dossier of documentation collated from social media, local news outlets and local advice, which in their opinion supported their position that due to unprecedented weather conditions, it was not safe to complete their journey to Larne. They were of the opinion that this was clearly a sufficient reason, which the Respondent had failed to consider when deciding to remove them from the competition; particularly as the Appellant will say the facts were not contested much less rejected at first instance on the 25th November 2024.

The Appellant adduced evidence in respect of fixtures in the Ballymena and Provincial Football League, which the Appellant's opposition Wellington Rec Football Club are members. The Appellant submitted that all fixtures on the 23rd November 2024 were postponed by the League due to unprecedented weather conditions.

The Appellant then referred to a previous Appeal Board decision in the matter of *Raceview Ladies FC v NIWFA (2024)*. Within their submissions they referred to Raceview Ladies FC making a request for a fixture to be changed as a number of players were unavailable due to their participation in the 'Black Saturday Parade' on the same date as their fixture. The Appellant submitted that the Appeal Board was satisfied that Raceview Ladies FC had 'sufficient reason' to request a change of date for the fixture. The Appellant's view was that if availability of players is deemed a sufficient reason, there is no question that the health and safety of players and staff is also a sufficient reason for the Respondent to change a fixture.

The Appellant within their addendum submission does look to suggest that if the Appellant established a sufficient reason then arguably the "evidential burden" switches to the Respondent to prove why the reason is not sufficient.

The addendum submission also questions the failure of the Respondent to provide any rationale or explanation as to why the factual circumstances set out on behalf of the Appellant were not deemed to fall within Rule 20a of the Rules. The Appellant looked to rely on the decision in *Linfield FC v IFA Disciplinary Committee (2024)* in support of this point.

The Respondent's submissions

The Respondent submitted that based on the evidence presented by the Appellant they were entitled to find that the Appellant did not have sufficient reason to fulfil the fixture.

The Respondent did acknowledge that there is no definition of the term "sufficient reason" within the Rules. In the absence of such guidance the Respondent considered what they say were a number of factors at its meeting on 25th November 2024, at which the Appellant was represented by Mr Nigel Lecky.

The Respondent does acknowledge that due to the absence of guidance around what is deemed to be a "sufficient reason" that under Rule 32b of the Rules, they have a wide discretion to decide what a "sufficient reason" is.

The Respondent reiterated that after hearing representations from the Appellant on 25th November 2024, on account of the factual background available, it was not satisfied that their reason given was sufficient.

In respect of their Respondent's response regarding the *Raceview Ladies FC v NIWFA* decision, they suggest that the Appellant's reliance is misplaced and indeed the subject issue was significantly different than in this case.

The Respondent also submitted that that each case must be considered on its own merits and indeed the Appeal Board are not bound by the decision of any other case.

The Respondent did not agree with the Appellant's stance regarding the evidential burden and reiterated that it remained the Appellant's position to prove it had sufficient reason.

In respect of the Respondent's position on their alleged failure to provide sufficient reasons, they suggested that Appellant was well aware of the issues involved and the arguments advanced at the Committee meeting, which Mr Nigel Lecky of the Appellant attended. The Respondent added that given that the Appellant had representation at the meeting and the factual background was largely uncontested, it was difficult to see why the Respondent would have been required to "rehearse" the facts already known to the Appellant.

In respect of the decision in *Linfield FC v IFA Disciplinary Committee (2024)*. The Respondent submitted that this case arose out of materially different circumstances and in that case the Disciplinary Committee had issued a suspended sanction on Linfield which could be activated by another breach. The Respondent added that the Disciplinary Committee were found to have erred in failing to indicate in precise terms the nature of the subsequent breach before the Disciplinary Committee subsequently activated the sanction.

b. Mr Johnston failed to consider Rule 20b, Rule 26c and Rule 26d of the Irish Challenge Cup Committee Rules for Season 2024-25

The Appellant's submissions

The Appellant's position is that due to the exceptional circumstances of the unprecedented weather conditions, the Respondent was in a position to implement Rule 20b of the Rules, which for the avoidance of doubt sets out as follows:

"The Association reserves the right to implement a protocol in the event of exceptional circumstances".

The Appellant also suggested that the Respondent did not adduce any evidence at the meeting on 25th November declaring their consideration of Rule 20b.

In the alternative, the Appellant submitted that the Respondent failed to correctly

consider Rules 26c and 26d, which for the avoidance of doubt sets out as follows:

(c) "No game shall be postponed without an inspection by a referee appointed by the Association, who shall take due cognisance of local advice and the travelling supporters."

(d) "Notwithstanding the above, in the event of extreme weather conditions the Association reserves the right to declare any match or matches postponed without a formal pitch inspection."

In support of these points, the Appellant suggested that the Respondent failed to seek any local advice or give consideration to travelling supporters. The Appellant added that the Respondent had complete discretion of the fixture in light of the extreme weather conditions, but failed to invoke same.

The Respondent's submissions

In respect of Rule 20b, the Respondent suggests that while the Appellant did not advance this proposition at the meeting of 25th November 2024; the Respondent will also say that it is under no such obligation to enact such a protocol.

The submission by the Respondent sets out that the protocol is one with general application and they could only implement a protocol when "quorate", which they will say could not possibly have been obtained on the morning 23rd November 2024. Furthermore, no single employee of the Irish FA or a member of the Respondent could implement a protocol unilaterally.

The respondent suggests that both rules 26c and 26d have been misconceived.

In general terms rule 26 makes provisions for formal pitch inspections, with the Respondent suggesting the emphasis on the Home club to request same.

The Respondent will say Rule 26c, relates to a request from the home club in the context of "unfavourable weather" conditions. The Respondent will say no request was made by Wellington Rec Football Club.

In respect of Rule 26d, the Respondent will say that this rule applies in the context of "extreme" (rather than unfavourable) conditions. The Respondent suggests that the Rules provide that the Association has a right – but by no means an obligation to postpone a match without a Home club extending an invitation to it to do so.

c. The Respondent misinterpreted Rule 32b of the Irish Challenge Cup Committee Rules for Season 2024-25

The Appellant's submissions

The Appellant submitted that the Respondent's decision to fine the Appellant £250.00 under Rule 32b was a misdirection of the rule. If the Respondent was to impose a fine they should have directed same until Rule 20a. The Appellant submitted that there was no basis in which to sanction a fine under Rule 32b.

The Respondent's submissions

The Respondent remained of the view that the penalty was appropriate and they had the power to impose same under Rule 32b.

d. The Respondent panel that attended the meeting on 25th November 2024 were conflicted in their decision

The Appellant's submissions

The Appellant's submission was that the decision made by the Respondent committee consisted of members of football clubs who were still participating in the Irish Challenge Cup and as such apart from the Chair of the Committee all other members held a conflict of interest.

The addendum submission of the Appellant suggested "apparent bias" in that there is at least a strong potential that clubs who are represented on the Respondent committee will act in their own interest, for example to take the opportunity to eliminate higher ranking clubs in favour of lower ranking clubs progressing, in order to assist their own club's progress.

The Respondent's submissions

The Respondent noted that the allegation of a conflict of interest or alleged bias was not raised at the meeting on 25th November 2024. They suggest as it was not advanced at the first instance stage, it should not be considered now.

The Respondent does however set out that if the allegation is to be considered, they would suggest that the only member of the Committee without any personal connection to a club competing in the competition is the President of the IFA and furthermore it would be impractical to continually adapt throughout the life of any given season the Committees' composition to include only officers without a connection to clubs still at play.

13. The Appellant provided further submissions after the conclusion of the oral hearing, on the basis that one of their representatives was unable to attend due to unforeseen circumstances; however the Appeal Board having considered same, were of the opinion that they do not add anything further to what was presented in earlier submissions or in particular during oral submissions at the Appeal hearing.

Analysis

14. During the oral submissions presented before the Appeal Board, it was established that a point of contention was whether or not members of the Appellant had actually commenced their journeys with the intention of travelling to Larne.
15. Mr Nigel Lecky of the Appellant, had suggested that players based in Donegal had started their journey on the morning of the 23rd November and indeed players and officials had also started to commence their journey from in and around the Castlederg area.
16. The Respondent's representatives were of the opinion that this was not their understanding following the meeting that took place on the 25th November 2024 and indeed the Appellant had not attempted to travel to the game.
17. It became clear to the Appeal Board that a crucial document was missing from the Hearing Bundle.
18. The Appeal Board during the Oral hearing asked for reasoning behind why the minutes of the meeting of the 25th November 2024 were not included within the Hearing Bundle. Mr Johnston of the Respondent set out that the Respondent's committee had not met since the meeting of the 25th November and as such the minutes had not been formally approved.
19. The Appeal Board were also informed that the representatives in attendance on behalf of the Respondent had previously had sight of the draft minutes, however the Appellant nor the Appeal Board had been afforded the opportunity to do so.
20. The Appeal Board requested that the draft minutes of the subject meeting be provided to the Appellant and the Appeal Board for consideration; which they were immediately after the

conclusion of the oral hearing for consideration.

21. The Appeal Board was of the opinion that this document could be considered to be a contemporaneous document that may feature further information relating to the decision of the Respondent but also the submissions made by the Appellant at the hearing at first instance.

Minutes of Meeting dated 25 November 2024

22. Upon review of the detailed minutes of the meeting on the 25th November 2024, the Appeal Board would make the following comments:

- a. The Chairman of the committee set out the following "key points" at the start of the meeting:
 - i. *No committee members had a direct conflict of interest, as Round 5 of the competition had not yet been drawn;*
 - ii. *The Committee has authority under Rule 20a and Rule 32b of the Competition Rules to decide on this matter*
 - iii. *Wellington Rec FC had not lodged a formal protest regarding the fixture*
- b. There is confirmation of the discussions between Mr Nigel Lecky and Mr Johnston of the Respondent on the morning of the 23rd November 2024 as had been referred to earlier within both parties submissions.
- c. The second page of the Minutes of the Meeting focused on Mr Nigel Lecky's verbal observations on behalf of the club. Mr Lecky confirmed to the Chair of the Committee that if he was required to answer further questions he would be happy to do so.
- d. It is noted within the minutes of the meeting that Mr Lecky reported that *"many players were due to travel from" areas including Donegall, Derry/Londonderry and the Castlederg area. It is also noted that Mr Lecky confirmed that "...the club, players and coaching staff came to the conclusion that they felt it was unsafe to travel and thus fulfil the fixture.."*
- e. Mr Lecky was asked by the Chair of the Committee if the club were able to provide details of any evidence of official traffic reports for Saturday 23 November through a recognised source. Mr Lecky was not able to provide any further information on top of the dossier that had previously been forwarded to the Respondent and subsequently the Appeals Board.
- f. At paragraph 5 of Mr Lecky's submissions he was asked if *"any attempt was made to try and travel to fulfil the fixture"*. In response Mr Lecky suggested *"this was not considered at the time, due to the weather reports that the club received from social media and other local sources such as local news pages. Due to this that the club felt it was unsafe to attempt to travel."*
- g. Mr Lecky was also asked if the Appellant had considered a later kick off; however Mr Lecky suggested that he did not know this could have been an option and it was not offered to the club.
- h. The Chair of the Committee explained to Mr Lecky that *"other clubs from the Castlederg area had fulfilled fixtures on Saturday 23rd November. There is no response from Mr Lecky to this within the minutes of the meeting.*
- i. Mr Lecky in his closing submission set out that the club's decision to travel was solely about the safety of their players.
- j. Page three of the Minutes essentially set out the reasons behind the Respondent's decision.

- k. Upon review of same the Respondent referred to a number of clubs who had travelled on the 23rd November including two teams also from Castlederg and furthermore a team travelling from Enniskillen to Larne to fulfil a fixture.
- l. The Respondent also took into consideration information regarding road closures and set out that the following:
 - i. There were no official major road closures out of Castlederg towards Derry/Londonderry.
 - ii. There were no official major road closures out of Castlederg towards Omagh/Enniskillen.
 - iii. The A5 road from Derry/Londonderry to Omagh remained open throughout Saturday 23 November 2024.
 - iv. The Glenshane pass remained open throughout Saturday 23 November 2024
 - v. The M2 and A8 roads towards Larne remained open throughout Saturday 23 November 2024.
- m. It was then decided by the committee that the Appellant be removed from the competition in reach of Competition rule 20a.
- n. It was then that a member of the committee proposed that the Appellant under Rule 32b were imposed with a further monetary sanction of £250.00 which was approved by all committee members present.

23. The Appeal board has noted having had the opportunity to consider the draft minutes, there is no objection raised by the Appellant regarding the content or indeed facts reported within the document.

Decision

The Appeals Board considered the four grounds of appeal that had been presented by the Appellant in respect of this action.

The committee misinterpreted Rule 20a of the Irish Challenge Cup Committee Rules for Season 2024-25.

The Appeal Board unanimously agreed that the Respondent has not misinterpreted Rule 20a in that they have not only taken into consideration the views of the Appellant at the hearing at first instance but they have also undertaken their own investigations before arriving at their decision that the Appellant had not provided a sufficient reason for fulfilling their fixture.

The Appeal Board also noted that upon review the draft minutes of meeting that it is accepted by the Appellant that no player, official or supporter attempted to travel; despite the suggestion from Mr Lecky during oral submissions at the Appeal Hearing that players and officials had already commenced their journeys before a decision was made not to travel.

The Appeal Board do accept that the discretion under Rule 20a is very wide, however based on the Rules as they are, the Appeal Board are not in a position to direct that the rule has been misinterpreted.

The Appeal Board do agree that the Respondent's decision letter dated 25 November 2024 did not provide the level of detail that they would have expected when setting out their decision to remove the Appellant from the Competition. We do appreciate that the factual background and indeed the issues at play were known to the Appellant; however the Appeal Board would recommend that in the future a consistent detailed and substantive approach should be taken by the Respondent when setting out any decision in writing following such a hearing.

While the Appeal Board are critical of lack of detail within the Respondent's decision letter, they do not see that as a reason to uphold this ground of the appeal; as they remain of the position that Rule 20a has not been misinterpreted by the Respondent.

Mr Johnston failed to consider Rule 20b, Rule 26c and Rule 26d of the Irish Challenge Cup Committee Rules for Season 2024-25

The Appeal Board noted that this ground of appeal was not raised at the hearing at first instance on 25th November 2024.

Upon consideration of the Rules, however, the Appeal Board unanimously agreed that based on the evidence before them that there was no onus on Mr Johnston to consider implementing a protocol based on exceptional circumstances as per Rule 20b.

In respect of Rule 26c there was no request by the Home club nor the Appellant to postpone the fixture.

In respect of Rule 26d based on the evidence; it would appear that there were no "extreme conditions" to suggest that the governing body postpone the fixture.

This ground of appeal is dismissed.

The Respondent misinterpreted Rule 32b of the Irish Challenge Cup Committee Rules for Season 2024-25

The Appeal Board unanimously agreed that the Respondent had no reason in their opinion to refer to Rule 32b if it was their intention to impose a fine on the Appellant. The sanction could have been made as part of Rule 20a as per the Appellant's initial submission.

The Appeal Board as per Article 14 6 (f) of the Articles of Association has the power to exercise their discretion and as such it is the Appeal Board's decision that the fine of £250.00 be nullified accordingly.

The Respondent panel that attended the meeting on 25th November 2024 were conflicted in their decision.

The Appeal Board are of the opinion that the decision was made prior to the draw of the 5th Round of the Competition and furthermore note that the members of the committee were appointed prior to the start of the season.

Based on the evidence before the Appeal Board, the Appellant did not raise any issue regarding a conflict of interest or indeed the allegation of bias at the hearing of first instance.

Based on the above this ground of appeal is dismissed.

Appeal Outcome:

1. The Appellant's appeal to be reinstated in the Irish Challenge Cup is dismissed.
2. The fine imposed by the Respondent of £250.00 against the Appellant is nullified.

Dated 13 December 2024

Appeals Board