

IN THE MATTER OF A LEAGUE ARBITRATION PANEL UNDER SECTION 9 OF THE REGULATIONS OF THE ENGLISH FOOTBALL LEAGUE 2022/23

AND THE ARBITRATION ACT 1996

Before:

Mr William Norris KC (Sole Arbitrator)

BETWEEN:

BLACKBURN ROVERS FOOTBALL CLUB

Claimant

and

ENGLISH FOOTBALL LEAGUE

(Trading as the “English Football League” or “EFL”)

Respondent

DECISION AND AWARD OF THE SOLE ARBITRATOR

INTRODUCTION

1. This is an Appeal by Blackburn Rovers Football Club (hereafter “**the Club**”) brought under Regulation 96.4 of the EFL Regulations. In very short summary, the Club challenges a decision of the EFL Board which met on 9 February 2023¹ and rejected the Club’s appeal

¹ The full Decision in writing was sent out on 13 February 2023.

against a decision of the EFL Executive to reject Lewis O'Brien's proposed loan transfer to the Club from Nottingham Forest FC.

2. The short point is whether the Board and the Executive should have decided in the Club's favour that the loan transfer was submitted and received within the prescribed timescale. The Club contended that, although the required documentation was sent through after the 23:00hrs deadline on Transfer Day, 31 January 2023, it was made under the "Quick Application" process and had been initiated within time (prior to the deadline of 23:00). Further, it was contended that, since the supporting documentation was permitted to be sent through "*immediately following*" the passing of that deadline, the Board and Executive were in error in approaching the time of 23:15 which they had set for receipt of such documentation as a legal deadline with the same status as that of 23:00. The Club characterises this as an error of law or as an approach that was *ultra vires*.

The Arbitrator's Jurisdiction

3. This arbitration is conducted pursuant to Section 9 of the EFL Regulations and the dispute between the Club and the EFL constitutes a "*Board Dispute*" within the meaning of Regulation 96.2.
4. Regulation 96.4 provides that the jurisdiction of the League Arbitration Panel ("**LAP**") is as follows:

"In the case of a Board Dispute, the League Arbitration panel sits as a review body exercising a supervisory jurisdiction and this section of the Regulations shall not operate to provide an appeal against the decision and shall operate only as a forum and procedure for a challenge to the validity of such decision under English law on the grounds of:

96.4.1 ultra vires (including error of law); or

96.4.2 irrationality; or

96.4.3 procedural unfairness,

and where the decision directly and foreseeably prejudices the interests of a person or persons who were in the contemplation of The League or Board."

Process

5. The Club served a Notice of Arbitration on 13 February 2023 and an Amended Notice of Arbitration on 14 February 2023.
6. The matter is obviously urgent, not least because the Player in question is in a state of limbo since he has not been accepted as a transferee to Blackburn, nor has he been included in the transferor club's list of squad players. Accordingly, the process was an expedited one in respect of which I gave Directions, and a hearing took place remotely on the morning of Friday, 24 February 2023.
7. In advance of that hearing, the parties provided a very helpful Agreed Chronology (to which I shall return in a moment) as well as their Written Submissions and an Agreed Bundle of Documentation and Bundles of Authorities.
8. The Club's submissions were advanced by Kendrah Potts of Counsel, instructed by Centrefield LLP. The EFL was represented by Robert Weekes KC and Ava Mayer of Counsel, instructed by the EFL.
9. I wish to record my gratitude to the parties, to their lawyers and to both advocates for the efforts they made to meet such a tight schedule for the expedited hearing and for providing all the necessary documentation and other evidence that was put before me.
10. In addition to the bundle of evidential material, I should record that I also had a Witness Statement from Nicholas Craig, Chief Operating Officer of the EFL. There was some disagreement between the parties as to whether that evidence should be treated as agreed or unchallenged, or whether it could have been challenged, but I consider that nothing whatsoever turns on that issue.

The Relevant Chronology

11. The parties accept that the 2023 Winter Transfer Window closed at 23:00hrs on 31 January 2023. There is a considerable amount of documentation supporting the

contention that all clubs, including the Club, which is the Appellant here, were well aware of that.

12. Although the window closed at 23:00, the EFL has, since January 2018 operated a “*Quick Application*” process which was (and here I quote Mr Weekes’s Written Submissions)²:

“...introduced by the EFL to assist club secretaries who might find themselves in an invidious position on transfer deadline days when player transactions are agreed late in the day and they have to upload all the registration documents into the electronic portal (known as ‘iFAS’) and submit them to the EFL. It effectively grants a 15-minute extension of time for that process. This, however, is provided that basic details about the transfer, as well as the relevant transfer form (which in this case was a H4 loan transfer form) is uploaded and submitted (i) from 22:45 (when the Quick Application process becomes available); and (ii) before the 23:00 deadline.”

13. Explanations of the “*Quick Application*” process were provided annually. Indeed, the EFL wrote letters to all clubs on 30 January 2019 [61]³, with similar letters being written in January 2020 [66], 2021 [226] and 2022 [68].

14. On 12 December 2022, all clubs were sent information about the January Transfer Window [25] and were informed that “*the Board has determined that the Transfer Window will close on Tuesday, 31 January 2023 at 11.00pm*”.

15. On 30 January 2023, the EFL sent all club secretaries what was called an “*Attached Circular*” in relation to the Winter Transfer Window, together with the “*User Guide for the Quick Application*” [52]. The circular itself [54-55] explained (in the material section) that:

“As in previous transfer windows, Clubs still have the option to complete a ‘Quick Application’ from 22.45 and this will also stay live up to 23.00. Please remember, the most important form we need prior to the deadline⁴ is the appropriate Registration Form (H4, H1 or G1/G2) signed by all parties. Both facilities will disappear at 23.00 but where a registration has been submitted using the Quick Application prior to the 23.00 deadline, you must still complete a ‘Full Application’ in the normal manner, and this will need to be uploaded and submitted prior to 23.15 on 31 January.”

² This factual summary being unchallenged.

³ All references in square brackets are to the main Hearing Bundle.

⁴ This reference to “*deadline*” is clearly a reference to the 23:00 time.

16. Much of the background to the events of 31 January 2023 is helpfully recorded in the Agreed Chronology, which I shall include here verbatim:

Time	Event
23:03	BRFC submitted a copy of LO'B's passport on iFAS system.
23:03	BRFC submitted a further signed copy of Form H4 (a repeat of the document sent at 22:54) in respect of LO'B on iFAS system.
23:04	BRFC submitted a signed copy of LO'B's Bonus Schedule on iFAS system.
23:05	BRFC submitted a signed copy of the Tripartite Representation Agreement between BRFC, Kevin Sharp and LO'B on iFAS system.
23:09	The Loan Agreement, signed by BRFC and NFFC, was sent to LO'B for counter-signature. (LO'B had been undergoing a medical in Manchester earlier in the evening, at or around 21:00)
23:15	BRFC received LO'B's signed copy of the Loan Agreement.
23:27	BRFC submitted a signed copy of Form IM1 in respect of LO'B on iFAS system.
23:28	BRFC submitted the fully executed copy of the Loan Agreement in respect of LO'B on iFAS system.

Time	Event
20:28	<p>In accordance with Regulation 47.3, a draft copy of an option deed between Lewis O'Brien ('LO'B') and Blackburn Rovers FC ('BRFC') was submitted for EFL Board approval.</p> <p>The loan transfer of LO'B from Nottingham Forest FC ('NFFC') to BRFC (the 'Loan Transfer') included an option to buy. This necessitated the preparation of the option deed between BRFC and LO'B to ensure that in the event the option in the Loan Agreement was exercised, BRFC would have already concluded an agreement with LO'B to join on a permanent basis as opposed to running the risk that terms could not be agreed at that point in time.</p>
20:47	The EFL's Player Administration Team confirmed that the form of the option deed was in order. At the same time, the EFL Executive requested a copy of the draft playing contract that would be entered into by BRFC and LO'B in the event the option was exercised.
21:21	<p>BRFC received a copy of the Loan Agreement signed by NFFC.</p> <p>BRFC subsequently printed and signed the Loan Agreement.</p>
21:21	BRFC provided a copy of the draft playing contract to the EFL Executive.
21:21 – 21:48	Emails and calls between Louise Smith (EFL) and Ian Silvester (BRFC) regarding the terms of the draft playing contract.
22:54	BRFC submitted a signed copy of Form H4 in respect of LO'B on iFAS system.
22:55	Quick Application for the Loan Transfer submitted to the iFAS system.

The Relevant Regulations

17. The EFL Regulations provide (at paragraph 3.1) that:

“3.1 Membership of The League shall constitute an agreement between The League and each Club to be bound by and comply with:

3.1.1 these Regulations and the Articles of Association;

3.1.2 the Football Association Rules;

3.1.3 the Laws of the Game;

3.1.4 the Rules and Regulations of any body of which The League is a member;

3.1.5 the terms of the Tripartite Agreement insofar as such terms apply to the members of The League for that Season;

3.1.6 the terms of any agreement entered into by The League;

3.1.7 the terms of any Cup or other competitions conducted or controlled by The League; and

3.1.8 each of the aforesaid as altered, revoked or added to from time to time.”

18. The relevant provisions with which the present appeal is concerned are set out in Section 6. For convenience, I shall record the entirety of Regulation 43 and 44, and the Guidance in relation thereto. Note particularly that it is Regulation 43.3.2 which provides the Board with the power to determine the end of the transfer window in accordance with Regulation 43.4 and Regulation 44.1 which states that registrations of players are permitted only during a Transfer Window (subject to Regulations 44.2, 44.2.3 and the Guidance under Regulation 44.8.4)

“43 TRANSFER WINDOWS

43.1 The Summer Transfer Window shall commence on the later of:

43.1.1 00:01 on the day immediately following the last day of the Season; ;or

43.1.2 00:01 on the date 12 weeks prior to the date on which it is to conclude (in accordance with Regulation 43.2 below).

Guidance

Where a Summer Transfer Window is scheduled to close at 23:00 on 31 August, the transfer window will open at 00:01 on 8 June being that date 12 weeks prior to 31 August.

43.2 Subject to Regulation 43.4, the Summer Transfer Window shall conclude as determined by the Board. The Board shall determine the time the Summer Window closes after consultation with the Premier League and Football Association.

43.3 The Winter Transfer Window in any Season shall:

43.3.1 commence at 00:01 on 1 January; and

43.3.2 shall end on 31 January next (at a time to be determined by the Board), or at such other date and time as the Board shall determine in accordance with Regulation 43.4.

43.4 If:

43.4.1 *the Winter Transfer Window is scheduled to end on a day which is not a Normal Working Day; and/or*

43.4.2 *the Board determines that the Winter Transfer Window shall commence at a date and/or time other than 00:01 on 1 January after consultation with the Premier League and Football Association,*

then the Board shall also have the discretion to amend the time and/or date upon which the applicable Transfer Window(s) shall be deemed to end.

Guidance

See the guidance under Regulation 44.8 about the EFL's approach on deadlines.

43.5 *Where the opening date of the Winter Transfer Window (whether in accordance with Regulation 43.3, or following a determination of an alternative date in accordance with Regulation 43.4) could (having regard to the operation of Regulation 44.8) result in some Clubs being unable to register Players for the round of League Matches scheduled on or around that opening date, but others would, then The League shall be entitled to withhold confirmation of registration (for the purposes of Regulation 44.8.2) until the next following League Match.*

Guidance

The purpose of this Regulation is to give The League an element of flexibility in its application.

By way of example, in Season 2020/21 it was applied as follows:

- *the Winter Transfer Window in Season 2020/21 opened on 2 January 2021.*
- *in the Championship division, Match round 23 was scheduled for 2 January 2021 and some fixtures were moved to 3/4 January 2021 to accommodate TV selections.*
- *In order to ensure that all Clubs were treated equitably for Match round 23, the League withheld confirmation of registration for applications lodged on the morning of Saturday 2 January 2021, until after completion of match round 23, so Clubs selected for TV did not gain an advantage over the majority of Clubs who would play at 3pm on the Saturday.*

44. REGISTRATION OF PLAYERS

44.1 *Unless otherwise permitted by Regulation 44.2, registrations of Players are only permitted during a Transfer Window.*

44.2 *Subject always to the provisions of Regulation 44.3, after the expiry of each Transfer Window in each Season registrations of Players and transfers of*

registrations will, except as permitted in Regulation 58, be declined or will only be approved:

44.2.1 where the Player is an Out of Registration Player;

44.2.2 where the Player was last registered as or is being registered as a Scholar or Academy Player (subject to such conditions by which the Club making the application and the Player shall be bound); and/or

44.2.3 if agreed by The League (including where the Player was last registered with a Club (or club) which has ceased to trade, including during the Closed Period) subject to such conditions as determined by The League and by which the Club making the application and the Player shall be bound.

44.3 Where any new registration or transfer of a Player is received by The League after 5pm on the fourth Thursday in March in each Season, that Player will not be eligible to play in any match organised by The League in that Season, except as permitted in Regulation 57.

Guidance

The fourth Thursday in March is the traditional 'transfer deadline day' and remains in place to ensure Clubs cannot add to their squad for the final remaining fixtures of a Season thus impacting on the integrity of the competition in those final stages. This deadline is also used in other contexts – see for example the requirements on full strength sides in Regulation 25.1.

Academy Players will not be caught by this restriction in respect of non-first team matches. However, Clubs will not be permitted to register an Academy Player after this date and then utilise him in League Matches.

44.4 A Registered Player is one who has signed an appropriate registration form or forms and/or contract (such signature to be witnessed by a second person) and whose registration has been approved by The League. Notwithstanding the foregoing, only those Academy Players over the age of 15 years on 1 September in any given Season may play football for a Club's first team in that Season, and then may only do so with the written permission of his Parent, his school's head teacher and the approval of The League.

Guidance

Registration of Players – FIFA Article 5.3 – Three & Two Rule

In accordance with FIFA Regulations a Player may be registered with a maximum of three clubs during one season. During this period, the player is only eligible to play in official matches for two clubs. As an exception to this rule, a player moving between two clubs belonging to different associations with overlapping seasons (i.e. start of the season in summer/autumn as opposed to winter/spring) may be eligible to play in official matches for a third club during the relevant season,

provided he has fully complied with his contractual obligations towards his previous clubs.

Clubs are advised that domestically the above applies to all registrations except Non-League, Short Term and Youth Loans, although Foreign Associations may include these loans as counting towards the rule. Clubs should take this into account should a Player in these circumstances be considering a move to another Association, whether on a temporary or permanent basis. More detailed guidance is published on the Club Portal on a season by season basis – please refer to the Player Administration Section of the service.

44.5 No Player may play in any competition organised by The League unless and until his registration has been so approved.

Guidance

A player's registration will not be completed until all the required documentation, clearances and monies have been received by the League and found to be in order. Only the receipt by the registering Club of confirmation of registration will determine the eligibility of the Player to play in EFL Matches. International clearance and receipt of monies are not required prior to the deadline but must be received before the Player plays.

Once you have received confirmation of registration from the League please ensure your squad numbers are updated on iFAS via the Club Portal.

Clubs are also able to use iFAS on the Club Portal to check the availability of players for any fixture

44.6 It shall be the responsibility of all Clubs playing in any competition organised by The League to ensure that all Players are so registered. Failure to do so constitutes misconduct.

Guidance

Registration is now carried out via an online process through iFAS on the Club Portal. Only in rare cases will it be necessary to email registration documents to the EFL. If documents are sent via email Clubs will receive an automated response when emailing registration documents to playeradmin@efl.com. If you do not receive this auto-acknowledgement, please notify the Player Administration department. The auto acknowledgement is not a confirmation of registration.

In the absence of confirmation by The League confirming a Player's registration, clubs should always check a player's eligibility by telephone or via iFAS on the Club Portal. The penalties for playing an ineligible player can be severe – see Regulation 45.2.

44.7 An additional copy of the appropriate registration papers shall at the same time as a copy is despatched to The League be despatched to The Football Association.

Guidance

All registration types are now completed online, so the system will manage that process for you. It is imperative that you obtain confirmation of registration from the Football Association. The reason is that it is the Football Association that is responsible for the application of any applicable FIFA Regulations (for example, confirming whether a player requires an International Transfer Certificate), and will also be able to advise on any 'work permit' requirements for overseas players. Separate guidance on those requirements (now known as Governing Body Endorsements) is published on the Club Portal on a season by season basis – please refer to the Player Administration Section of the service.

For Players requiring international clearance, please note that the FIFA Transfer Matching System operates with a strict deadline at the closure of each Transfer Window.

44.8 Subject to Regulations 44.2, 44.3, 44.9 and 58, a Player will only be eligible to play in a match organised by The League if:

44.8.1 the appropriate forms for his registration or the transfer of his registration (including, for the avoidance of doubt, Temporary Loan Transfers) are submitted (in such manner as the League shall specify from time to time) to and received by The League by 12:00 noon on the day prior to the date of such match; and confirmed by the League to be in order; and

44.8.2 in respect of any League Match to be played between the date for submission of the Squad List as determined in accordance with Regulation 44.9.4 and the end of the Season, the Player:

44.8.3 is included on the Squad List; or

44.8.4 is not required to be included within the Squad List in accordance with Regulation 44.9.2.

Guidance

All registration types are now required to be submitted via an online registration system which is shared between the EFL, Football Association, the Premier League, FA of Wales and National League System.

Application of the Deadline

The League's policy is that a Club will be deemed to have met the deadline if this office receives a completed copy of the appropriate registration form (G1/G2, H1) or loan form (H4) in advance of the deadline determined by The League in

advance of each Transfer Window. If the Player is a Contract Player, then a copy of the relevant completed parts of the Standard Contract must be received by the League either before the specified time or immediately following. A short application process has been created within the online registration system to enable this to happen as we approach the closure of each transfer window. Similarly, if a Player is transferring his registration with an agreement between a Transferor Club and a Transferee Club, a copy of such an agreement must be received by the League either before the specified deadline or immediately following. It is expected that any Standard Contract or transfer agreement must have been agreed before the deadline and that the only reason for any delay resulting in these being received immediately following the deadline is due to prioritising the transmission of the appropriate registration form or loan form. A Club will still be deemed to have met the deadline if, even after the deadline, amendments are requested by the League to correct errors or omissions in the documents already submitted, but both the League and the FA will not complete the registration of the Player until the amendments are provided and found to be in order.

A Club will still be deemed to have met the deadline for submission of documents even if the Intermediary forms and Representation Agreements are received after the deadline. The FA has also confirmed that they would accept these documents after the registration deadline but both the League and the FA will not complete the registration of the Player until the documents are provided.

International clearance and receipt of monies are not required prior to the deadline but must be received before the Player plays. However, ITC must be received 75 minutes prior to kick off.

Clubs are asked in view of the number of documents received by this Office on transfer deadline days not to submit non urgent registrations, for example, registrations for players that are being upgraded and improved contracts.

Regulation 44.2.1: See also the guidance under the definition of Out of Registration Player. Unless otherwise agreed, Players registered at any level including on a Non-Contract registration are not deemed to have 'out of registration player' status if still registered during a Closed Period.

Regulation 44.2.2: Players being registered on a YD4 registration are not subject to the same restrictions as an Out of Registration Player.

Regulation 44.2.3: is not intended to provide Clubs with the opportunity to register new players outside of the existing transfer windows and have those players eligible to play. The purposes of this Regulation is to deal with those exceptional circumstances which arise from time to time and conditions around ineligibility to participate in matches will be part of any conditions imposed.

A player registered on a Standard Loan in accordance with Regulation 56 at a Club may subsequently be permanently transferred to that Club at any time including during a Closed Period.

Academy Players will not be caught by these restrictions in respect of non-first team matches. However, the League reserves the right to impose restrictions on first team eligibility e.g. in circumstances where applications could be considered to be trying to register players who are ostensibly professional players as scholars (e.g. when 17 or 18) to avoid the application of transfer windows.

44.9 Squad Lists

44.9.1 Clubs shall be permitted to name up to a maximum number of Players in their Squad List based on the following provisions:

- (a) in respect of Championship Clubs, 25 Players of which a minimum of 8 must be a Home Grown Player; and*
- (b) in respect of League One and Two Clubs 22 Players of which a minimum of 8 must be a Home Grown Player.*

44.9.2 The following Players do not need to be included in the Squad List to be eligible to play in League Matches:

- (a) in respect of Championship Clubs, any Under 21 Player (save for any Under 21 Player who is registered with the Club on a Temporary Loan Transfer); and*
- (b) in respect of League One Clubs and League Two Clubs:
 - (i) any Under 21 Players; and*
 - (ii) goalkeepers.**

Guidance

Clubs are required to declare whether or not a Player is goalkeeper when submitting a registration application. Inaccurately declaring an outfield Player as a goalkeeper will constitute misconduct as a breach of the Club's obligation to behave towards the League with the upmost good faith (as per Regulation 3.4).

Under 21 Players who are on Loan to Championship Clubs are counted towards the 25 Player limit for the purpose of the Squad List Regulation.

44.9.3 Each Club shall submit its Squad List to The League:

- (a) within 24 hours of the conclusion of the Summer Transfer Window; or*
- (b) such other date and time as may be notified by the Board.*

Guidance

The inclusion of this power is to amend the deadline for submitting Squad Lists where the 24 hour deadline would impact on a weekend/bank holiday.

44.9.4 A Club shall apply to:

- (a) include a Player on its Squad List; and/or*
- (b) remove a Player from its Squad List,*

by submitting a request to that effect to The League (in such manner as The League shall direct from time to time).

Guidance

All details to be uploaded via iFAS.⁵

44.9.5 A Player shall be deemed to have been included or removed from a Club's Squad List on receipt of The League's confirmation of the same (which may be given electronically).

44.9.6 Changes to a Squad List may be made:

- (a) during the period of a Transfer Window; and*
- (b) at other times only with the permission of The League.*

Guidance

Changes inside a Transfer Window:

- Changes to the Squad List can be made at any time during the Transfer Window:*
- Clubs do not need to apply to the EFL for approval to make the change, Clubs only need to make the changes via iFAS.*
- In order to be eligible for a League Match during the Winter Transfer Window, the Player (unless an exclusion applies) must be registered with the EFL and be included on the Squad List, before the relevant League Match. The EFL recommends uploading the updated Squad List not less than 24 hours before the relevant League Match.*

Changes outside of a Transfer Window:

The League will only consider granting permission to make changes to the Squad List outside of a Transfer Window where:

⁵ This is the central online portal, the formal title of which is the Interactive Football Administration system – iFAS for short.

- *the Club's current Squad List contains less than the maximum number of Players permitted to be included on the Squad List and the Club wishes to add an Out of Registration Player or another Player registered with the Club but not currently included on the Squad List, or*
- *in other truly exceptional circumstances.*

44.9.6 The League will publish each Club's Squad List and a list of all other Contract Players eligible to participate in League Matches but are not included on the Squad List, on the League's official website within 7 days of the closing of a Transfer Window."

The issue between the parties in summary

19. The parties are agreed it is the Regulations which must be applied rather than the Guidance: the Guidance, insofar as it has any legal status, provides an explanation⁶ as to the basis on which the EFL will apply the Regulations, especially insofar as the Regulations have any flexibility as to their application.

20. In context, then, the real issue between the parties focuses on the Guidance to Regulation 44.8 and, particularly, on what is meant by or is the legal status of the sentence beginning:

*"Similarly, if a Player is transferring his registration with an agreement between a Transferor Club and Transferee Club, a copy of such an agreement must be received by the League either before the specified deadline or **immediately following**" [emphasis added].*

21. The Club's case, as I have already said, is that the EFL was wrong to regard 23:15 as a hard deadline with the same status as the 23:00 deadline. Mr Craig's evidence, and the EFL submission (which I paraphrase), is that the only significance of 23:15 in context was that it acted as an endpoint or long stop for what would be regarded as the period 'immediately following' that deadline of 23:00 and that submission of the requisite material as late as 23:28 could not sensibly be regarded as coming within the prescribed timescale as having been received 'immediately following' 23:00 (or 23:15, for that matter).

⁶ Such as might create what lawyers know as a "*legitimate expectation*" on the part of one or both parties.

The Board's Decision

22. The material parts of the Board's Written Reasons are as follows:

- “7. It was determined that Regulation 44.1 is clear, in that subject to Regulation 44.2, registrations of Players are “only permitted during a Transfer Window”. It was noted that the ‘Quick Application’ process, including detail of the deadlines of: (1) 23:00 for the ‘Quick Application’ to be submitted and (2) 23:15 for the relevant Club to upload and submit a full application together with all necessary document before 23:15 has been explained to all Clubs in several explanatory notes and a training session hosted by the EFL, which BRFC’s Club Secretary attended. The suggestion that use of the word “immediately following” in the guidance to Regulation 44.8 should be read as affording the Club some latitude was rejected; the context had been clarified to all Clubs in clear and simple terms which were well understood by all Clubs.
8. Accordingly, the Board confirmed that the EFL shall apply the same rigour to both full applications and ‘Quick Applications’.
9. BRFC had reasonable opportunity to provide its evidence in support of its position but on both the Loan Transfer and the Permanent Transfer these applications were submitted late.
10. The Board considered whether it had discretion to consider whether to accept the Loan Transfer and the Permanent Transfer notwithstanding the fact that they were late.
11. Having considered the Written Submissions, the relevant Regulations and guidance, the Board determined that it did have the discretion to consider individual cases and the facts surrounding the late submission of an application.
12. BRFC’s arguments set out in the Written Submissions, as to why the Loan Transfer was late in being submitted, were considered in turn, including but not limited to:
 - a. Delays caused by communicating with EFL regarding the Option Deed which BRFC argue delayed their preparation by circa 30 minutes in respect to the Loan Transfer.

The Option Deed was sent to the EFL for approval. The EFL considered it in a timely manner. The Club had failed to submit the playing contract, which was to form part of the Deed, so this was requested. On receipt this was reviewed and the EFL requested two amendments. One of the amendments was accepted by BRFC and the other was confirmed as not relevant after further clarification. The Club presented a transaction for approval and having regard to the

obligations of the EFL to act fairly across all Clubs the response of the EFL Executive was considered timely and appropriate. The Board concluded that the matter was dealt with and resolved over 1 hour before the transfer deadline.

- b. *BRFC had a FA Cup replay, away against Birmingham City, on deadline day and so BRFC were at a disadvantage to 80% of its competitors in the transfer market as senior executives of the Club were at the FA Cup replay and delayed due to traffic.*

The BRFC executives had a choice: (1) to make themselves available to assist with transfer or (2) attend the FA Cup replay. Nor were they the only team to play that night. On the same night there were also the following fixtures:

- i. *Luton v Cardiff*
- ii. *Carlisle v Barrow*
- iii. *Crewe v Stockport*
- iv. *Salford v Walsall*

- c. *LO'B's medical was also conducted late in the day due to the FA Cup replay.*

BRFC had enough time to arrange more medical staff to be at the training facility rather than the FA Cup replay (if required). That is a matter solely within the control of the Club.

- d. *LO'B's signed Loan Agreement was late in being received and uploaded to iFAS (at 23:29) as the player was at the BRFC training ground (whereas the Club Secretarial Team were at the stadium).*

The Club should have considered where their Club Secretarial Team were best situated on deadline day. This isn't a reason for any discretion to be applied in this case.

- e. *Complexity of transaction – BRFC provide submission as to the complexity of the transaction in respect to LO'B.*

*The 'Quick Application' was created help Clubs with the process of submission of applications close to the deadline. The Board considered the guidance below Regulation 44.8.4 which states that it is expected that any "Standard Contract or transfer agreement must have been signed before the deadline and **that the only reason for any delay resulting in these being received immediately following the deadline is due to prioritising the transmission of the appropriate registration form or loan form**". (Emphasis added).*

BRFC had the benefit of the 'Quick Application' process, to enable it to upload and submit the registration form before 23:00, with fully executed document to follow immediately before 23:15 and the evidence is clear that BRFC failed to do so until 23:28 (some 13 minutes after the deadline has passed). Further, the Loan Agreement (a required document for the registration to proceed, was on the Club's own case, not signed by LO'B until after the 23:00 deadline. As such, this was not a reason for any discretion to be applied in this case.

13. *The Board, decided that the application to register the Loan Transfer was submitted late and after consideration of the submissions provided by BRFC, the Board determined that it was not prepared to exercise discretion to permit the registration outside the Winter Transfer Window. As such, the Loan Transfer shall remain rejected by the EFL.*
14. *These reasons constitute a Board Decision and is based on the information available to the Board at the time of the decision. The League reserves the right to supplement any points and/or adduce further evidence in the event of a challenge to this decision under the Regulations."*

The Appellant's Submissions

23. As I have already said, the Club submits that the Board erred in law and / or acted *ultra vires* and that it treated the time of 23:15 as a "fixed deadline that had to be complied with for an application to be in time for the purposes of Regulation 43 and 44"⁷, whereas it should have decided whether the Quick Application was "made by the hard deadline of 23:00 and whether the other relevant documents were sent 'immediately following' the 23.00 deadline"⁸.
24. The Club's argument may seem counterintuitive in the sense that it is arguing that the relevant documents were submitted not 13 minutes late (at 23:28 after a 23:15 deadline), but, instead, were submitted 28 minutes after the real deadline of 23:00. But Ms Potts says that the Board's approach to identifying the actual deadline was wrong as a matter of law so that the matter should be remitted to it. The Board should then reconsider the matter on the basis that the fixed deadline was the deadline of 23:00 and that 23:15 was not a deadline at all, but an arbitrary figure that had no such status according to the Regulations.

⁷ See paragraph 2 of Ms Potts's Skeleton.

⁸ Again, see paragraph 2 of Ms Potts's Skeleton.

25. In summary and recognising the economy of expression and focus with which Ms Potts has addressed this matter, I quote from her conclusion at paragraph 38. She submits, succinctly, as follows:

“The EFL will no doubt argue that BRFC’s appeal amounts to a distinction without a difference. However, that would be wrong. There is a significant difference between (i) approaching the time of 23:15 as a hard deadline and asking whether the EFL Executive and Board should exercise a discretion to permit a late application, in which case it is to be expected that there is a high threshold to exercise the discretion; and (ii) asking whether the Quick Application process was made before the hard deadline of 23.00 and whether other relevant documents were sent immediately following the deadline. BRFC is merely asking the EFL Executive and Board properly to construe and apply its Regulations.”

The Response of the EFL

26. The EFL’s submission, reduced to its simplest formulation, is that whilst the strict deadline was indeed 23:00, nevertheless the time of 23:15 was legitimate and helpful guidance as to what would be regarded as (and this is my expression) a “*long stop*” for what is meant by the guidance as to “*immediately following*” under Regulation 44. As such, the Board and the Executive were entitled to treat it in the way they did.
27. In my view, the EFL’s analysis is correct and that, essentially, is the short answer to this appeal. Nevertheless, I shall say something about the other grounds upon which the EFL responds to the appeal.
28. Mr Weekes submits – and, again, this is clearly correct – that the Clubs and EFL are bound not by the Guidance but by the Regulations. He also contends that this Tribunal – that is I – sit as a review body exercising a supervisory jurisdiction and the only bases upon which the Board’s decision could be challenged are on the familiar public law grounds of *ultra vires* irrationality or procedural unfairness. He submits there is a material distinction to be drawn between the interpretation of the Board’s powers (which would be a matter of law) in relation to the application of the deadline, and whether it has acted *ultra vires*.

29. Whether the two theoretically distinct legal concepts are meaningfully different in practice in the current context is an issue that I do not intend to address in any more detail. In short, that is because I accept that the Board's interpretation of its powers was a reasonable one and that its use and application of such guidelines was in any case not *ultra vires* given that providing for a structure to and guidance on the Quick Application process enabled all parties to know what was required by the process in the interest of ensuring consistency and fairness. That means that I accept that it was within the power of the Board to decide that the time of 23:15 would be a long stop, determining the conclusion of the "*immediately following*" period⁹. Having so decided, it provided clear notice to all Clubs that it would operate the Quick Application process on that basis¹⁰.
30. Mr Weekes also submits that, standing back from matters, even assuming that there was no fixed deadline for the submission of documents via the Quick Application process after the 23:00 deadline had expired, no reasonable Board could have concluded that the submission of documents 28 minutes after the deadline had expired could fairly be characterised as "*immediately following*". Accordingly, he also submits that, even if Ms Potts were right on the analysis of the correct deadline and the Board were wrong in its approach thereto, it would be pointless to remit the matter to the Board, given that there could only conceivably be one answer, namely that the documents submitted at 23:28 were submitted too late. He therefore argued that to remit the matters on these facts where the result would inevitably be the same would be contrary to common sense and good practice¹¹.

⁹ Although, as paragraph 11 of the Board's decision recorded, it considered that it nevertheless still had a discretion to depart from the 23:15 long stop if appropriate to the individual case which, for the reasons analysed in paragraphs 12 and 13, it was not.

¹⁰ Which is why the Club was apologetic for having missed what it clearly thought of as a deadline (whatever its correct legal status) it had missed – see the email of 1 February 2023 [130-132, 137-139] and of 2 February 2023 [141-142]

¹¹ As reflected in section 31.2A of the Senior Courts Act 1981 in relation to judicial review proceedings

Conclusions & Award

31. In discussing the submissions of the competing parties, I accept that it is important¹² that there is clarity and consistency in the application of the Regulations¹³ and in the way in which the Board conducts itself in relation to guidance given which is intended to assist in the implementation of those Regulations. I believe that the EFL's approach, as set out in this Decision, is consistent with the ordinary principles of contractual interpretation set out in several authorities, but in respect of which the *locus classicus* is probably the Judgment of Lord Neuberger in *Arnold v Britton* [2015] AC 1619.
32. For all the foregoing reasons, I consider that the Appeal must fail, unfortunate though the consequences are for the Club and, perhaps more seriously, for the Player in question. But I am afraid the reality is that somebody failed to upload the documents in time, which may be understandable in the particular circumstances faced by the Player and the Club's officials as the 23:00 deadline passed and the 23:15 long stop time approached, but it is not a sufficient excuse. In my view, the Board was entitled to approach matters as it did and was also entitled to decide not to exercise its discretion in the Club's favour.
33. For those reasons, the Appeal must be dismissed, and I will await the Parties' submissions on costs before making any further Award in that respect.

¹² If authorities for this proposition and for the associated principles of contractual interpretation were needed, they are cited in Ms Potts's written submission at paragraphs 17-22 and *The FA v X* (22 January 2020) in her authorities bundles

¹³ The interpretation of those rules is, of course, a matter of law for the arbitral body – see paragraph 77 of *The FA v Sturridge* – FA Appeal Board 27 February 2020



William Norris KC

Sole Arbitrator

28 February 2023

London, England



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