

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ENGLISH FOOTBALL
LEAGUE REGULATIONS**

Before:

William Norris QC

BETWEEN:

Nottingham Forrest Football Club Limited

Appellant

and

English Football League

Respondent

DECISION OF THE LEAGUE ARBITRATION PANEL

Introduction

1. There are two main issues which arise in this arbitration. The first is whether Nottingham Forest FC (hereafter “the Club”) succeeded in registering the loan of a West Bromwich Albion FC (“WBA”) player, Kamil Grosicki, within what is known as the “*Summer Transfer Window*”. The answer to that question depends upon resolving the parties’ competing arguments as to whether such window closed at 5pm exactly (which one could also

express as 17:00:00 or as 5:00:00pm) on 16 October 2020 or whether it closed at 17:00:01 on the same day.

2. The second issue presupposes that I prefer the EFL's analysis of the time at which that Window closed (in which case the registration was 15 or 20 seconds late). The questions which then arise concern the nature of any residual discretion the EFL had to allow a late registration to be treated as valid and whether it has exercised such a discretion properly in all the circumstances.

The Factual Context

3. As the Summer Transfer Window drew to a close, the Club was negotiating with WBA to conclude the registration of Kamil Grosicki (hereafter "the Player") on loan. I accept without reservation that completing the loan was a matter not only of great importance to the Club, who hope to start him in their Championship team as soon as possible, but also to the Player who, as he explains in a supporting submission included in my papers, finds himself very short of playing time at WBA and is anxious to play regularly so as to improve his prospects of being part of the Polish International Squad in the upcoming Euros.
4. Those last-minute negotiations were ultimately successful but concluded only in the final minutes before 5:00:00pm on 16 October 2020 and the appropriate documentation was received by the Club from WBA in the last "*minute beginning at 4:59:00*"¹.
5. One of the material documents had to be uploaded to the EFL site² in order to complete this part of the Registration process. In the event, as the Notice of Arbitration records, there was a successful upload of the Quick Registration accompanied by the Loan Form at 5:00:20pm at the latest. It may be that the upload in fact occurred at some time between 5:00:10 and 5:00:15pm, but the difference of five or ten seconds is not material: it is common ground that the upload occurred *after* 5:00:00pm/17:00:00.

¹ I quote paragraph 17 of the Written Submissions of Mr Darling QC, in the Notice of Arbitration served on behalf of the Club.

² Rather than by email: see the Guidance to Regulation 43.6 of the EFL Regulations (hereafter "the Regulations").

6. The Club was understandably optimistic that its Registration had been completed in time because it received an automated response by email timed at 17:00:00 on 16 October 2020. However, it soon became apparent that such email had been sent in error and it is no longer contended that it gives rise to any estoppel, although such mistaken notification is said to be a material factor which should have been taken into account by the EFL when exercising its discretion to allow the registration of the Loan Agreement out of time (if such it was).

7. The Club made detailed and careful submissions (drafted and signed by its Chairman, Nicholas Randall QC) on 17 October 2020, the effect of which was to explain the Club's contention that the relevant documentation had been provided in time, developed the "estoppel" point and (in effect) invited the EFL to exercise a discretion to allow the registration to be treated as valid, it being (per para. 35.4 of those submissions) only "11 seconds out of time", which it was said would be "grossly disproportionate on the parties with no benefit to the EFL as a whole".

8. The Governance & Legal Director of the EFL, Nick Craig, considered and gave written reasons for his decision on 20 October 2020. He "reconfirmed" his decision to reject the application as out of time but added (in a passage that is said to be relevant to the EFL's discretion on this matter):

"It is open to the Club to apply to register the loan out of time but based on the principles in what is now Regulation 43.2.3, this would be subject to conditions that he remain ineligible to play until 2 January 2021 (being the date the Winter Transfer Window will open)".

9. The Club appealed against that decision and Mr Randall QC provided further detailed submissions in a document dated 22 October 2020. Within that document, Mr Randall QC drew the EFL's attention, in particular, to a Canadian decision, Bradscot (MCL) Ltd v Hamilton-Wentworth Catholic District School Board, 1999 CanLII 2733 (ON CA). He argued that *Bradscot* was on all fours with (or very close to) the present case and submitted that the appropriate course was for the EFL to follow it and to regard the registration as having been completed in time.

10. In the alternative, Mr Randall QC invited the Board to exercise the discretion that the EFL acknowledged it had in the Club's favour in the light of what he submitted were compelling grounds for so doing. To quote the relevant passages from that submission³:

“46.1 Attached is a statement from the Player which shows the destructive personal detriment he faces to his career if the discretion is not exercised.

46.2 The time lag of 20 seconds can have resulted in no harm to the EFL in particular because all relevant documents were provided in good order by the 5:15pm deadline.

46.3 The Club received a receipt to the effect that the Quick Application had been submitted in time. This was more than just a normal receipt. It specifically stated that the application had met the deadline and stated that the remaining documents needed to be filed by 5:15. The Club acted on that and did so complete.

46.4 As stated above this case is unique. It does not open the floodgates to other cases. By accepting the Club's case, the window would still be closed by 5:01pm and any application received after that time would be invalid.

46.5 On any view the Regulation is not clear as it could have been if it was intended that time should be measured to the second.

46.6 When dealing with issues of employment the general principle of the freedom of the individual to work for the employer of their choice should be respected.

46.7 Common sense dictates that this case is worthy of the discretion being exercised in the Club's favour.

47. In all the circumstances the Club contends that it is entitled to succeed with this appeal and requests that the Board permits the registration of the Player.”

11. The Board considered the appeal on the evening of 22 October 2020 and, in an email timed at 21:19, notified the Club that the appeal had failed. In summary, the Board concluded that the Regulation imposed a time deadline and *“concluded that the phrase ‘at 5pm’ had the meaning that the Summer Transfer Window closed at 17:00:00 and did*

³ At paragraph 46.

not mean that the Summer Transfer Window closed at 17:00:59. The Board considered that there was no ambiguity in the Regulation”.

12. The Board went on then to consider the issue of discretion. The material provisions (in a version of the Decision with which I was provided) were these:

- “5. The Board then considered whether it had the power to exercise discretion to allow the Player to be registered with the Club. Having considered Regulation 43.2.3 and the accompanying guidance the Board determined that it did have the power to exercise discretion to register a player even where the application was received outside a transfer window.*
- 6. The Board then considered whether it would be appropriate to exercise its discretion to register the Player, and if so without condition to render him eligible to play for Nottingham Forest with immediate effect.*
- 7. Having considered the documents provided to it, Regulation 43.2 (particularly Regulation 43.2.3) and the accompanying guidance to Regulation 43.2.3, the Board determined that submitting registration documents 20 seconds following the deadline didn’t constitute ‘exceptional circumstances’ and therefore that the Board would not exercise its discretion to approve the registration of the Player at the Club without conditions on eligibility to participate in League Matches. Accordingly the Board upheld the original decision.”*

The Reference to Arbitration

13. This arbitration is conducted pursuant to Section 9 of the EFL Regulations for Season 20/21 (“the Regulations”).

14. Regulation 95 provides that:

- “95.1 Membership of The League shall constitute an agreement in writing between The League and Clubs and between each Club for the purposes of section 5 of the Arbitration Act:*

95.1.1 to submit those disputes described out in Regulation 95.2 to final and binding arbitration in accordance with the provisions of the Arbitration Act and this Section of these Regulations;

95.1.2 that the seat of each such arbitration shall be in England and Wales;

95.1.3 that the issues in each such arbitration shall be decided in accordance with English law;

95.1.4 that no other system or mode of arbitration (including arbitration under Football Association Rules) will be invoked to resolve any such dispute.”

15. Regulation 95.2 provides that:

“95.2 The following disputes fall to be resolved under this Section of the Regulations:

95.2.1 subject to Regulation 95.3 below, disputes arising from a decision of The League or

the Board (‘Board Disputes’)”

16. Further, Regulation 95.4 explains the jurisdiction of the Arbitrator as follows:

“95.4 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:

95.4.1 ultra vires (including error of law); or

95.4.2 irrationality; or

95.4.3 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.”

The Hearing

17. Having been appointed as Single Arbitrator pursuant to Rule 98.6, I heard this matter by Zoom on the afternoon of Tuesday, 27 October 2020. The Club was represented by Mr Paul Darling QC and the EFL by Mr Alan Maclean QC.
18. I am grateful to both Leading Counsel for the clarity and care with which they put forward their submissions. I am also indebted to them for their written submissions served in advance including, respectively, the Notice of Arbitration which stood as Mr Darling QC's written submissions and the Response thereto on behalf of the EFL from Mr Maclean QC.

The Material Parts of the EFL Regulations

19. The subject of Transfer Windows is addressed in Regulation 32. Because the relevant timings for the various windows are described in different terms⁴ within this Regulation, I shall set out all the provisions that may be material.

"42.1 Subject to Regulation 42.1A, the Summer Transfer Window shall commence either:

42.1.1 in respect of any application to register a Player who does not require clearance as described in Regulation 46.2 (International Transfer Certificate), at midnight on the last day of the immediate preceding Season (and for the purposes of this Regulation, those Clubs participating in Play-off matches shall be regarded as having completed their Season notwithstanding their participation in such Play-off matches, but this exception is subject always to Regulation 43.3); or

42.1.2 in respect of any application to register a Player that requires clearance as described in Regulation 46.2, at midnight on the date 12 weeks prior to the date on which it is to conclude (in accordance with Regulation 42.2 below).

42.1A For Season 2020/21 only, the Summer Transfer Window shall commence either:

⁴ And some significance may or may not attach to the difference in wording

42.1A.1 *in respect of any application made by a Club in League One or League Two registered a Player who does not require clearance as described in Regulation 46.2 and is an Out of Registration Player, at 9am on 17 July 2020; or*

42.1A.2 *in respect of any other application to register a Player (including but not limited to applications to register a Player that requires clearance as described at Regulation 46.2), at 00:01am on 27 July 2020.*

42.2 *Subject to Regulation 42.2A and 42.4, the Summer Transfer Window shall conclude as determined by the Board in accordance with Regulation 42.4 in each Season. The Board shall determine the time the Summer Window closes after consultation with the Premier League and Football Association.*

42.2A *For Season 2020/21 only, the Summer Transfer Window shall conclude:*

42.2A.1 *in respect of applications to register a Player that requires clearance as described in Regulation 46.2, at 11pm on 5 October 2020; or*

42.2A.2 *in respect of application to register a Player who does not require clearance as described in Regulation 46.2, at 5pm on 16 October 2020.*

42.3 *The Winter Transfer Window in any Season shall:*

42.3.1 *commence at midnight on 31 December; and*

42.3.2 *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 42.4.

42.4 *If:*

42.4.1 *the Summer Transfer Window for League One and Two Clubs and/or Winter Transfer Window are scheduled to end other than on a Normal Working Day; and/or*

42.4.2 *the Board determines that the Winter Transfer Window shall commence at a date and/or time other than midnight on 31 December 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 43.8 about the EFL's approach on deadlines."

20. Regulation 43 deals with the "Registration of Players". Rule 43.1 provides that:

"43.1 Unless otherwise permitted by Regulation 43.2, registrations of Players are only permitted during a Transfer Window."

21. Regulation 43.2 is the one which the EFL treated as giving itself a discretion⁵ to depart from the strict terms of the Windows as defined within Regulation 42. I will quote only the material parts:

"43.2 Subject always to the provisions of Regulation 43.3, after the expiry of each Transfer Window in each Season registration of Players and transfers of registrations will, except as permitted in Regulation 57, be declined or will only be approved..."

43.2.1 [Not relevant]

43.2.2 [Not relevant]

43.2.3 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."

22. Although the wording of the actual Regulations rather than that of the Guidance will ultimately be decisive, it is nevertheless relevant to consider the guidance provided in respect of Regulations 43.2, 43.3, 43.9 and 57. Again, I quote it in full:

"Guidance

⁵ Mr Darling QC accepts that this is where the provision as to a discretion is to be found

As indicated above, the majority of registration types are now required to be submitted via an online registration system which is shared between the EFL, Football Association and the Premier League.

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, EFL6) 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.

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 43.2.1: 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 43.2.2: Players being registered as an Academy Player (YD4, Scholar) are not subject to the same restrictions as an Out of Registration Player.

Regulation 43.2.3: 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 55 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."

23. Although such guidance is quoted in full, it is really only the guidance in respect of Regulation 43.2.3 which is relevant here.

Issue 1: When did the Transfer Window close?

24. The issue, as I have already explained, is what is meant by the Transfer Window concluding "at 5pm on 16 October 2020" as provided by Regulation 42.2A.2.
25. The Club's argument, in a nutshell, is that the natural meaning of "5pm" covers any second up to and including, but not after, 5:00:59/17:00:59 – or, putting it another way, any moment until the time changed to 5:01:00.

26. It might be thought that the reference to another transfer window commencing at “00:01am on 27 July 2020” as regards Regulation 42.1A.2 provides some support for that analysis. However, I am satisfied that this is simply a case of different terminology being used at different points in the same section of regulations and that, as such, it does not help to illuminate other matters of interpretation.
27. Mr Darling QC places considerable reliance on the Canadian decision in Bradscot which, he says, is as close as possible to being on all fours with the current case and supports his proposition that there is no “brutal cut off”⁶ at 5:00:00 but, rather, includes every second up to and including 5:00:59.
28. In the Bradscot case, Somers J, sitting in the High Court of Ontario, had to consider a deadline for the receipt of tenders for a commercial contract. The School Board’s “Instructions to Tenderers” provided (according to the report of the Court of Appeal for Ontario) that:
- - *Bids were to be submitted ‘only until 15:00 hours (3:00pm) local time on Wednesday, April 22, 1998 (1998 04 22).’*
 - - *‘Tenders not received by the time stated above WILL NOT be accepted by the Owner. Incomplete Tenders will be considered invalid.’*
 - - *Tenders were to be submitted to the reception desk at the School Board’s offices.*
 - - *‘Without explanation, the lowest or any tender will not necessarily be accepted by the Owner.’*
29. In the first instance decision, which the Appellate Court upheld, Somers J took a different approach from that adopted in another Canadian case, Smith Bros & Wilson (B.C.) Limited v British Columbia Hydro & Power Authority (1997) 33 C.L.R 2(d) 64. In that case, Shaw J, sitting in the British Columbia Supreme Court, held that a tender was late when

⁶ A colourful expression which might be applied to all time limits that are deadlines. It does not assist in deciding when that deadline passed.

submitted between 11:00am and 11:01am – i.e. late because it was after an 11am deadline.

30. Although the decision of the Ontario Court of Appeal is not binding on me, I do regard it as being of some persuasive value. Nevertheless it must be noted that its real ratio was only that Somers J's interpretation of the deadline rule was upheld because his considered to be a "*reasonable*" interpretation of the rule given "*the legal and factual context in which this issue arises*", albeit the different approach of Shaw J in the Smith Bros case was also characterised as reasonable⁷.
31. In my view, Mr Maclean QC, for the EFL, is right to say that the analysis of a time deadline in the Bradscot case was dealing with different factual circumstances insofar as it was concerned with the time at which a tender had to be submitted in a commercial situation, as opposed to the time for the submission of a registration document in a case such as this.
32. I also accept that a case rather closer to the present (in the sense that it is about time deadlines for football transfers) is the decision of the Single Judge of the Player's Status Committee regarding the transfer of Adrien Silva on 27 September 2017.
33. Even so, I do not intend to dwell on the Adrien Silva case, not least because it is dealing with different regulations and it is no more a binding authority than the decisions in Ontario to which I have already referred. All I would say is that the decision of Mr Raymond Hack, the Single Judge who made that determination, is supportive of and consistent with the arguments advanced by Mr Maclean QC, albeit I recognise that there was a challenge to the decision which might have proceeded to but was never in fact addressed by the Court of Arbitration for Sport ("CAS").
34. In my judgement, the correct approach involves applying common sense when interpreting the Regulations as they are drafted. The principles of contractual analysis (as this is) are well understood and there is nothing particularly controversial in stating that the Arbitrator's task in such a case as this is to ascertain, objectively, the natural meaning

⁷ As is apparent from the judgement of Laskin J.A

of the words in the context of a Regulation drafted with the intention of providing a transfer window with both an opening and a closing time⁸.

35. Thus expressed, the question is not whether it was intended there should be a particular deadline (albeit with a discretion to depart therefrom) but, rather, what that deadline was.
36. It seems to me to be clear that the moment the clock struck 5pm was clearly intended as the time the Transfer Window closed. Perhaps that deadline might better have been expressed as 17:00:00 or as 5:00:00 but I nevertheless consider '5 pm' means exactly the same thing (as would the expression '5 o'clock').
37. If one looks for illustrations in everyday life, it seems to me that they support this approach. When the Greenwich Time Signal sounds the hour, five pips⁹ are followed by a single longer pip. That final (sixth) pip, which here would have signified 5pm, is sounded at a particular moment in time marking the mid-point between one second before and one second after the hour. To my mind, suggesting that '5 pm' is not such a moment in time but is simply descriptive of the time that passes between 17:00:00 precisely¹⁰ and 17:00:59 is contrary to common sense and the ordinary use of time and language.
38. In the course of submissions, various illustrations were canvassed. To take one example offered by Mr Maclean QC, when a train is scheduled to leave at 5pm, and if it leaves 'on time'¹¹, one would expect it to leave at 17:00:00. One certainly could not insist that it delayed for up to 59 seconds because "5pm" was open to the interpretation of covering the 59 seconds following 17:00:00. To take another example perhaps even closer to home for us lawyers, when a judge announces that the court will 'sit again at 2pm', we do not return up to 59 seconds after 2 o'clock in the expectation that no one will even raise an eyebrow¹².

⁸ Various cases were cited which I take to support this approach. They include *Rainy Sky v Kookmin Bank* [2011] 1 WLR 2900, *Arnold v Britton* [2015] UKSC 36, *Wood v Capita* [2017] UKSC 24 and *TAQA Bratani v Rockrose* [2020] EWHC 58 (Comm).

⁹ Each shorter pip lasts for one tenth of a second.

¹⁰ To use the adverb that used to be (and perhaps still is) heard if dialling the Speaking Clock

¹¹ Assuming it leaves on time: hence Mr Maclean QC's example involved a Swiss railway

¹² Various other examples were discussed in the hearing or can readily be brought to mind. A customer knowing a shop shuts at 5 pm could not reasonably expect it to be open until 5:00:59. In his oral submissions, Mr

39. In summary, then, I consider that “5pm” means the moment when the clock strikes 5, just in the same way as it is midnight¹³ is when the clock strikes 12. I also think that such time is readily understood and seems to me to provide sufficient clarity for those who are contemplating cutting a deadline fine. It may well also be the case that anybody looking on the EFL website would have been able to notice the “*countdown clock*”, but I place no particular weight on that. If I preferred Mr Darling QC’s interpretation of what is meant by ‘5 pm’, then the fact that the countdown clock suggested otherwise would not be sufficient to contradict it. But it is, nevertheless, a consideration which may be indicative of what I have characterised as the “*common sense*” analysis.
40. Given that I find that there is no ambiguity in the use and meaning of the 5pm deadline, it is not necessary for me to address the interesting and competing arguments about how that provision might be interpreted if it was unclear and as to the application of the *contra proferentem* rule.

Issue 2: The Exercise of Discretion

41. It is trite law¹⁴ that a review body (as I am) should always approach any question of the exercise of a discretion with caution, allowing the decision-maker a wide margin of appreciation. Nevertheless, that presupposes that the discretion has been appropriately understood and exercised on a legitimate basis.
42. That Regulation 43.2 provides the EFL with a discretion to allow a late registration to be treated as valid is not in issue. However, whilst the circumstances in which such a discretion might be exercised could be rather better expressed than they currently are in Regulation 43.2.3, the Guideline¹⁵ does provide some help. In short, the intention of the Guideline is to explain that it is a discretion to be exercised only in exceptional

Maclean QC also offered the example of polls closing on Election Day. Mr Darling QC did not take exception to that example at the time but did so in a supplementary note received by me on the morning after the hearing. I accept that there is some ambiguity about when polls close and I shall disregard the example as not directly in point and as of no help to either party (notwithstanding Mr Darling QC’s ingenious attempt to enlist it in his own cause).

¹³ Notwithstanding Mr Darling QC’S neat forensic sidestep when seeking to distinguish between a particular time such as 12 o’clock and a word such as ‘noon’ or ‘midnight’.

¹⁴ If textbook authority were needed, it could be found in *Sport Law and Practice* (Adam Lewis QC and Jonathan Taylor QC), 3rd Edition at D2.42

¹⁵ Which, I reiterate, is what it is described as – guidance – and forms no part of the Regulation itself

circumstances, which is what I consider is indicated by the illustrative example included within the text of Regulation 43.2.3 itself.

43. As I have said, there is no doubt that the EFL does regard itself as having a discretion. That was clear both in the decision of Mr Craig on 20 October 2020 and in the decision of the Board in the appeal against that challenge.
44. So far as I am concerned, the exercise of the discretion which is material in the context of the present challenge is that of the Board on 22 October 2020.
45. It is clear from the extracts I have quoted from Mr Randall QC's written submission to the Board, that they were aware of the arguments submitted on behalf of the Club as to why the discretion should be exercised in its favour. Essentially, they were little different from the submissions of Mr Darling QC at this hearing. Although Mr Darling QC identified what he said were nine separate considerations, the main ones were probably that, first, the time overrun was only a matter of some seconds; second, the balance of the documents material to the application were all submitted by 5:15pm; and, third, the effect of not exercising the discretion in the Club's favour had potentially serious implications not only for the Club but for the Player himself.
46. In my view, looking at the eight paragraphs recording the Board's decision on 22 October 2020, which I have quoted above, one can see that the Board recognised that, whilst it had a discretion to allow the Player to be registered, it considered that such discretion should be exercised only in exceptional circumstances. Their approach seems to me to be consistent with the Regulations and Guidance as drafted and with what the reasonable person might consider fair.
47. The Board then went on to record (at paragraph 7 of its decision) that the circumstances identified were not exceptional. It is true that the Board's record of its decision focussed on the very short (20 second) delay without quoting the various other points Mr Randall QC had made. On the other hand, I do not think the Board can be criticised for focussing on that particular component amongst the various circumstances that had been drawn to their attention. It would in my view, have been entirely reasonable to regard the very short

time delay (whether it be 10, 15 or 20 seconds) as the only possibly 'exceptional' component in the circumstances but, nevertheless, as being insufficient to justify the exercise of the discretion in this case.

48. In all those circumstances, I consider that the Board approached the question of its exercise of the discretion on a sound basis and reached a decision that it was perfectly entitled to reach in all the circumstances.

Conclusion

49. For the foregoing reasons, I consider that the Board's decision must be upheld, and the Club's application must therefore be dismissed.

50. I will consider the question of costs after the Parties have received and digested this decision. As I indicated at the end of the hearing, I am content that the matter of costs is dealt with by me in writing on the basis of written submissions only.



William Norris QC

Sole Arbitrator

28 October 2020

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