SPORT RESOLUTIONS

SR/432/2024

**EFL CLUB FINANCIAL REVIEW PANEL**

**IN THE MATTER OF A COMPLIANCE MATTER REFERRED IN ACCORDANCE WITH PARAGRAPH 4 OF APPENDIX 6 OF THE EFL REGULATIONS**

Before;

Christopher Quinlan KC
Alison Royston
Nick Igoe

**BETWEEN:**

**THE CLUB FINANCIAL REPORTING UNIT**

**and**

**MORECAMBE FOOTBALL CLUB**

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**DECISION**

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## A. INTRODUCTION

1. In a Compliance Report dated 7 November 2024 ("the **Report**") the Club Financial Reporting Unit ("**CFRU**") detailed certain breaches of EFL Regulation 17 by Morecambe Football Club ("the **Club**"), namely the failure to self-report the non-payment of amounts due to HMRC within the required two working days on five separate occasions.

2. The Report was prepared by the CFRU in accordance with EFL Regulations (Appendix 6, paragraph 4) for consideration by the Club Financial Review Panel ("**CFRP**"). The report was accompanied by the following exhibits:

   a. Relevant correspondence.

   b. The relevant EFL regulations from Season 2023/24.

   c. A Disciplinary Commission decision dated 5 July 2024 concerning the Club's breach of EFL Regulation 52.6.

   d. A decision of the League Arbitration Panel dated 18 August 2020 concerning Macclesfield Town FC.

3. The Report was sent to the Club on 7 November. Pursuant to paragraph 4.3 of Appendix 6 to the EFL Regulations ("**Appendix 6**") the Club was informed that it had fourteen days to confirm whether it agrees or disagrees with the report or any part of the Report and provide any written observations, together with any supporting documentation.

4. On 15 November 2024 the Club informed the CFRU that "*that we have no further comments or objections regarding the submissions made by the EFL in this matter*".

5. The matter has been referred to the CFRP pursuant to Appendix 6, paragraph 4.1.

6. This is the CRFP's final decision. It is necessarily a summary. The CRFP considered and gave appropriate weight to the material made available to it.

## B. REGULATIONS & PROCEDURE.

7. The Report concerns breaches of EFL Regulation 17 – HMRC Reporting. The relevant provisions are:

> *"17.1 Current HMRC Debt. Any Club which has not within 2 (two) Normal Working Days of the relevant Due Date paid to HMRC the amounts due to be paid to HMRC to discharge the Club's full liability for:*

*17.1.1 PAYE & NIC due in respect of any and all employees or former employees of the Club for the immediately preceding payment period;*

*17.1.2 PAYE & NIC which becomes due as a result of an assessment issued by HMRC, subject to Regulation 17.8 below;*

*17.1.3 VAT due (where on a Club is paying VAT: (a) on a monthly basis and again at the end of the relevant quarter, whether by way of assessment or otherwise; or (b) where a Club pays its VAT on a quarterly basis, after each relevant quarter whether by assessment or otherwise);*

*17.1.4 Corporation Tax; and/or*

*17.1.5 any other liability to HMRC,*

*(each a 'Default Event') shall report the Default Event to The League within 2 Normal Working Days of the Default Event*

*<u>Guidance</u>*

*Following the AGM on 8 June 2023, Clubs are obliged to report the Due Date for payment of any current and unpaid PAYE, NIC, VAT or Corporation Tax within 2 Normal Working Days. For the avoidance of doubt, any time to pay arrangements entered into by the Club shall trigger a Default Event.*

*17.2 Reporting Default Events. When a Club reports a Default Event to The League it shall at the same time provide to The League full details of any and all amounts due to HMRC from the Club, together with the periods to which they relate.*

*17.3 Consequences of a Default Event. Without prejudice to the general position (pursuant to Regulation 44.4) that all registrations must be approved by The League and subject to Regulation 17.3A, a Club which is subject to a Default Event shall be subject to a registration embargo such that it shall not be permitted to register any Player with that Club without the prior written consent of The League for the period that the Club is subject to a Default Event.*

*17.3A Regulation 17.3 will not apply where a Club suffers a Default Event due to the failure to discharge a COVID PAYE Liability and has entered into a Time*

*to Pay Agreement and is compliant with the terms of that Time to Pay Agreement. For the avoidance of doubt, where a Club defaults on the terms of a Time to Pay Agreement, and such default results in all outstanding amounts becoming due to HMRC immediately, the Club shall remain subject to a Default Event until such time as the outstanding amounts are paid or included within any other Time to Pay Agreement.*

*17.4 Failure to Notify a Default Event. A Club which fails to report a Default Event shall be guilty of misconduct and shall be referred to a Disciplinary Commission in accordance with Section 8 of these Regulations."*

8. The requirement to self-report defaults on PAYE, NIC, VAT or Corporation Tax within two working days was effective from June 2023 following a vote by EFL Clubs.

9. The CFRU has delegated authority from the Board over matters concerning Financial Regulations. Additionally, Appendix 6, paragraph 3.1 states that the CFRP has jurisdiction over "*Compliance Matters*". These are defined within Appendix 6, paragraph 1.5.and include:

*"1.5.1 any allegation brought by the CFRU that a Club is in default of any obligation or other requirement as set out in any Financial Regulation(s) (whether such allegation was made by the CFRU (or The League) prior to the creation of the CFRP)"*

10. Therefore the CFRU concluded that it can refer a breach of Regulation 17 and the appropriate body to refer this to is the CFRP.

11. Appendix 6, Paragraph 4 provides:

***"Referral of Compliance Matters to the CFRP***

*4.1 The CFRU will be responsible for referring Compliance Matters to the CFRP.*

*4.2 When referring a Compliance Matter to the CFRP the CFRU will be required to submit a report to the Chair and the Club concerned which will include the following as a minimum requirement:*

*4.2.1 the CFRU's results of its review and questions that it has put to the Club;*

*4.2.2 the Club's responses to any questions raised by the CFRU; and*

*4.2.3 the CFRU's recommendation, (the '**Report**').*

*4.3 Within 14 days of receiving the report, the Club will confirm whether it agrees with the Report and any recommendations contained therein or not.*

*4.4 Where the Club confirms that it does not agree with the Report (or any part of the Report), the Club will at the same time, provide the CFRP and the CFRU with its written observations, together with any supporting documentation.*

*4.5 The Club will not be permitted to submit any further documents to the CFRP after that deadline save:*

*4.5.1 in exceptional circumstances and with the consent of the CFRP; or*

*4.5.2 where the CFRU consents; or*

*4.5.3 where the CFRP request additional documentation from the Club.*

*4.6 If the Club does not agree with the recommendation of the CFRU, both the CFRU and the Club will have the right to request a hearing before the CFRP. The Chair also has the right to order that a hearing take place where it deems appropriate."*

12. Appendix 6 is silent as to what procedure should or must be adopted where, as in this matter, there is agreement between a club and CFRU on the Report and the recommendations therein. However, since the CFRU has referred this Compliance Matter to the CFRP under Appendix 6, paragraph 4.1, the CFRP has jurisdiction over it and must determine it. Having considered the papers, and the agreement between the parties, the CFRP Chair deemed it not necessary nor appropriate to order a hearing. Further, the CFRP Chair appointed two members of the CFRP to consider this matter with him.

## C. FACTS

13. There are five instances where the CFRU alleged that the Club incurred a default event within the meaning of EFL Regulation 17.1 and failed to notify the EFL and/or CFRU within two working days thereof. In each instance, the CFRU alleged that such was a breach of EFL Regulation 17.1 and therefore the Club was guilty of misconduct under EFL Regulation 17.4.

14. The Club does not dispute the facts. It accepts that it breached EFL Regulation 17.1 and is thereby guilty of misconduct.

15. In summary the agreed facts are as follows.

(a) First failure to self-report

16. On 27 September 2023, the CFRU became aware that HMRC were attempting to contact the Club regarding a shortfall on amounts paid relating to PAYE which should have been paid on 22 September 2023, three working days after the due date.

17. The Club said that it was unaware of the default as it had recently engaged a third-party to provide payroll services. Upon being informed of the default by the CFRU, the Club ensured the outstanding amount of [redacted] was paid to HMRC on 27 September 2023.

18. The CFRU accepted that the Club was not aware of this debt until informed (by the CFRU). It was therefore not aware of the need to self-report.

(b) Second failure to self-report

19. On 26 January 2024, the Club informed the CFRU that it was late in paying its PAYE due on 22 January 2024 but had paid it on that date, four working days after the due date of 22 January 2023. The total owed was [redacted]

(c) Third failure to self-report

20. On 8 March 2024, the CFRU was informed by HMRC that the Club had VAT outstanding in the sum of [redacted] The Club did not inform the CFRU which, on investigation, discovered:

a. This amount related to input VAT claimed by the Club in a previous HMRC VAT return which HMRC subsequently requested to be paid back.

b. The due date for the said amount to be paid back was 24 February 2024 (ten working days prior to the CFRU being informed by HMRC).

c. With the Club unable to pay the said amount by the due date or soon after, a 'Time to Pay' (or "TTP") Agreement was made with HMRC allowing for the Club to pay the debt via monthly instalments with the last instalment being scheduled to be paid on or before 31 July 2024.

21. EFL Regulation 17 dictates that a TTP Agreement automatically results in a registration embargo. This was imposed on the Club on 18 March 2024 until 11 July 2024 (115 days), the point at which it was confirmed that the final instalments on the TTP Agreement had been made.

22. This breach resulted in the Club exceeding the 30-day threshold and becoming subject to a three-window transfer fee ban as provided by EFL Regulation 52.6. It was also fined £5,131.82. However, on appeal, a Disciplinary Commission reduced this to one transfer window fee restriction, suspended for two years, to be activated only in the event of a default on payments under the TTP Agreement[1].

(d) Fourth failure to self-report

23. On 29 April 2024, the Club notified the CFRU that it had not paid PAYE totalling [redacted]. The said amount was due to HMRC on 22 April 2024, meaning that it was five working days until the Club notified the CFRU of this default. In correspondence with the Club, the then CEO noted that the issue around self-reporting had been forgotten in the context of the Club attempting to resolve the issues relating to its VAT default.

24. The payment to HMRC was made on 2 May 2024. The EFL added a further ten default days to the total being monitored under EFL Regulation 52.6. This particular default

[1] Decision dated 5 July 2024.

occurred and was identified prior to the Disciplinary Commission decision of 5 July 2024 and so did not activate the suspended transfer fee ban.

25. No action was taken by the CFRU in relation to the failure to self-report at that point.

(e) Fifth failure to self-report

26. On 1 July 2024, the CFRU emailed the Club to ask about reports that players would not be paid on time. In its response the same day, the Club said that players were paid but noted that PAYE due on 22 June 2024 had not been paid on time. It was not paid until 29 June 2024. The amount owed was [redacted] The period to the date of payment was five working days. The period to the CFRU being notified of the default was six working days.

27. As part of the subsequent email correspondence, the CFRU noted the seriousness of the situation, in the context of the Club seeking permission to register certain players whilst still operating under the EFL embargo policy. In response the Club stated that it struggled with the loss of key staff, namely the Chief Executive and Head of Finance which has led to the Co-Chairmen having to operate within both roles whilst they are finding replacements.

28. A total of seven days was added to total of default days monitored under EFL Regulation 52.6. At the time of this PAYE default, the Club was already under embargo because of the VAT issue. Once more this breach did not activate the suspended transfer fee ban.

## D. DECISION

29. The CFRP considered the Report, supporting evidence, the facts of this case and with care.

30. The CRFP has jurisdiction to consider this matter. It is a "*Compliance Matter*" within the meaning of Appendix 6, paragraph 1.5. It has been properly referred.

31. As the Club accepts, it breached EFL Regulation 17.1 on five separate occasions.

32. In respect of sanction for those breaches, the Report recommends:

*"The Club receives a sporting penalty of a two-point deduction to be applied in whichever EFL division the Club is operating in. However, this penalty shall be suspended until 30 June 2026, to be applied immediately upon the first occasion of the Club failing to self-report within two working days per Regulation 17.1."*[2]

33. In considering the appropriateness and proportionality of the proposed sanction the CFRP had careful regard to:

    a. The facts and circumstances of the breaches, including:

        i. The repetitious and persistent nature of the failures.

        ii. The fact the Club did report in the second (unprompted and when the CFRU may not have been informed by the HMRC) and fourth instances.

    b. The other sanctions which have been imposed upon the Club for the said breaches:

        i. The transfer fee ban for one window.

        ii. The registration embargo of 115 days.

    c. As the CFRU has fairly noted "*the Club, at all times, has responded to information and meeting requests promptly and fully*"[3].

    d. We also note, as the CFRU has done, "*the HMRC VAT assessment which the CFRU understands has left the Club over* [redacted] *out-of-pocket and the departure of key management staff*"[4].

    e. The fact the Club accepts the proposed sanctions and has not suggested they are disproportionate or otherwise unfair.

34. The CFRP agrees with the CFRU that a financial penalty is not appropriate in this case. The Club has significant financial pressures and in any event such a penalty would not reflect the seriousness of the repeated breaches.

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[2] Report, §5.4.
[3] Report, §4.20.
[4] Ibid, §4.22.

35. The CFRP is also not minded to interfere with the suspended transfer fee ban, which remains in place until 5 July 2026.

36. The CFRP agrees that a two-point deduction is a proportionate and appropriate sanction for these breaches and imposes it. That sanction is suspended until 30 June 2026 and but will have automatic effect in the event of any further failure to report by the Club in breach of EFL Regulation 17.

37. Further, there must be clarity as to when the sanction, if activated, will take effect. The Report recommends – and the Club does not disagree with – the following:

    a. *If a failure to report is identified before the last regular league game of the Season (Match 46 – currently scheduled for 3 May 2025 for League Two), the points will be applied in that Season;*

    b. *If a failure to report is identified after the last regular league game of the Season, the points will be applied in the following Season (even if that is Season 2026/27 in the event that a breach is identified between the last regular league game of Season 2025/26 and 30 June 2026);*

    c. *Except For*

        i. *Where a breach is identified between the last regular league game of the Season and the time at which membership of a relegated Club transfers to a different division (including the National League) (in or around the first week of June)*

        *AND*

        ii. *an activated points deduction would result in the Club being relegated from the division in which they are competing,*

        *The Points will be applied to the immediately to the earlier Season* [sic]*"*[5].

38. Therefore, the sanction is as follows:

[5] With respect we did not understand the final twelve words

a. A two-point deduction suspended until 30 June 2026, but which will have automatic effect in the event of any further breach by the Club of the EFL Regulation 17.

b. Should the sanction take effect it will do so as follows:

i. If a failure to report is identified before the last regular league game of the Season (Match 46 – currently scheduled for 3 May 2025 for League Two), the points will be applied in that Season;

ii. If a failure to report is identified after the last regular league game of the Season, the points will be applied in the following Season (even if that is Season 2026/27 in the event that a breach is identified between the last regular league game of Season 2025/26 and 30 June 2026);

iii. Except For

1. Where a breach is identified between the last regular league game of the Season and the time at which membership of a relegated Club transfers to a different division (including the National League) (in or around the first week of June)

AND

2. an activated points deduction would result in the Club being relegated from the division in which they are competing, the points will be applied to the Season which has just been completed.

39. The scenario noted in paragraph 38(b)(iii) would result in the Club being relegated, potentially to the National League. That approach is consistent with League Arbitration Panel's decision in *EFL and Macclesfield Town*[6], namely the sanction must be related to level of wrongdoing itself, not the potential consequences thereof.

40. The CFRP records it gratitude for the extremely helpful Report, the thorough consideration given to the matter by the CFRU and for the Club's cooperation.

[6] Of which this Chair was a member.



**Christopher Quinlan KC**

**Chair, CFRP**

13 December 2024

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