Kent CA appeal against a decision of the controller in Kent –v- Middlesex

The facts

Kent fielded a player, James Scholes, in the match –v- Middlesex on 8th June 2013.

Mr Scholes membership expired on 30th April. He was sent a reminder to renew on 1st April.

The Kent captain verified that Mr Scholes was a member during April, but did not check membership status subsequently.

The County Championship Controller received an email on 9th June from the captain of Middlesex questioning the eligibility of the player Mr Scholes by way of non ECF membership, although this email did not constitute a formal protest.

When the Controller checked the membership status of all players in the match (as he does for all players in all matches), he found that Mr Scholes was not currently an ECF member and applied the penalty prescribed in the competition rules.

Kent appealed this decision on two grounds.

(i) That the Controller applied a similar penalty to their quarter final match result on the day of the semi final match. Had the Controller applied the quarter-final penalty at the correct time, the Kent captain would have been alerted to the possibility of mid-season expiries and would surely have avoided the second offence. As it is, the Controller has allowed him to offend twice before intervening - and the second offence has cost him dear. Therefore, the Controller's inconsistency contributed to Kent's offence.

(ii) Article 4.4 of the Company states that "A member shall cease to be a member:… in any case, if any subscription or membership fee due to the Company remains outstanding for more than three months unless the Board otherwise determines. Thus Mr Scholes, whose subscription was well short of three months overdue, had not ceased to be a member.

Decision

The appeal committee met on 12th June 2013 and dealt with these grounds in the order presented. Whilst it is clearly undesirable for penalties to be applied at any time other than as soon as practicable after a match, there is no time limit specified within the rules. That being the case, a failure to penalise a previous infraction sooner cannot be grounds for permitting a subsequent breach. Therefore, this part of the appeal is dismissed.

The Committee recommends that consideration should be given to a time limit for penalties to be applied, and to consider whether questions of eligibility should only be considered upon receipt of a properly formulated protest from the opposition.

In regards to the second point, Article 1.1 sets out the following definitions as used in the Articles:-

- member ("member of the company"),
- Full Members (Constituent Units, Counties, Leagues, Congresses etc) and
- Individual Members (individual players)

A 'member of the company' is someone who has signed a form to that effect, and guaranteed the debts of the company in the sum of £1 in the event of insolvency. Conversely, an Individual Member (of the federation) is a person who has paid the appropriate fee for Gold, Silver, Bronze or Platinum membership

Article 5 identifies different 'divisions' of members of the company. Direct Members are defined in Article 5(14). Critically, the Articles state that Direct Members are not required to be members of the Company.

In this context, the use of the word 'member' in Article 4.4 must have the meaning given to it by the definition in Article 1.1 and therefore Article 4.4 deals with membership *of the company,* rather than individual membership of the federation. As such, Article 4.4 does not extend the membership of an Individual whose membership has otherwise expired in the way that Kent had claimed in their appeal. Consequently, this part of Kent's appeal must also be dismissed.

It is noted that there is no discretion provided for within the rules of the competition in respect of the penalty for playing a non ECF member. Consequently the decision of the Controller to score the game as a win for Middlesex, and subtract a penalty point

from Kent's game point score, was correct. The match result of Kent 7 Middlesex 8 is confirmed. The committee notes that, as of 13th June 2013 the player James Scholes is still not a member of the ECF.

The Committee recommends that the Director should consider whether result altering penalties are desirable in cases such as this and, if not, alternatives should be considered for future seasons.

The Committee further recommends that the Company Articles should be reviewed in order to make this point clearer.

The £20 appeal fee will be returned to Kent CA.

This decision was the unanimous opinion of the appeal committee.

The Appeal Committee

Roger Edwards, President

Sean Hewitt, Non Executive Director

Jack Rudd, Non Executive Director

13th June 2013.