

Everton beat the drop and withdraw appeal to second points deduction

Insights - 22/05/2024

Everton FC has withdrawn an appeal to a two-point deduction following confirmation that it had avoided relegation from the Premier League (the **League**). Everton has preserved its position in the League despite being deducted eight points during the season arising from two separate breaches of the League's Profitability and Sustainability Rules (the **PSRs**).

The PSRs were established by the Premier League to promote the financial viability, stability and sustainability of Premier League clubs and to promote the integrity of fair competition. To achieve this, the PSRs include measures to limit the losses which clubs can incur without sanction.

Under which rule were Everton charged?

Upon reference by a "Rule W" complaint by Everton, the League contended that Everton was in breach of Rule E51 of the Premier League Rules (the **Rules**), which provides that a club's PSRs calculation shall not result in losses of above £105 million accruing over a 3-year period. The relevant Rules can be found in this season's [Premier League Handbook](#).

The first points deduction

The Premier League submitted that Everton's PSRs calculation for the 2021/2022 season (FY 22) was £124.5 million, resulting in a loss in excess of £19.5 million in contravention with the permissible quantum of net loss. In response, Everton claimed that properly calculated, it only exceeded the maximum permissible loss by £7.9 million above the permissible calculation figure, had the PSRs calculation excluded certain figures from the calculation which it claimed ought to have been excluded.

Everton further contended that there were mitigating circumstances for the breach which reduced its culpability. These factors included the impact of COVID-19 on their ability to sell players. On 6

August 2020, the Premier League shareholders approved amendments to the PSR so that losses incurred directly as a result of COVID-19 would be added to the list of costs that could be excluded when calculating their losses before tax in order to alleviate the effect COVID would otherwise have placed on clubs' profit and loss accounts.

Other factors included the club's full cooperation with League's investigation process into the club's finances, the impact of the conflict between Ukraine and Russia on investment and sponsorship of the club, their own mistreatment of interest charges as capital expenditure and not suing one of their players, "Player X", for losses suffered due to his contract termination following his arrest, on account of his psychological state.

An independent Commission (the **Commission**), constituted in accordance with the Rules, accepted only one mitigating factor proposed by Everton, that its losses over the relevant period of time displayed a positive trend which showed it was positively addressing its PSRs issues. The Commission agreed with the League's submission that on proper construction, Everton's loss for the 2022 financial year was £124.5 million.

The Commission declared that a 10-point deduction would be imposed against Everton FC with immediate effect. This was the largest points deduction in English Premier League history and Everton are the first club to be sanctioned under the PSRs.

| Everton's appeal

Everton appealed the points deduction, and an independent appeal board the initial sanction from 10 points to 6 points. An independent Appeal Board (the **Appeal Board**) accepted that the Commission had erred in relation to two important factors which, had they been considered, would have resulted in a lesser sanction being imposed, as follows:

1. it was not for the Commission to make findings that Everton had been "less than frank" with regards to the financing of the club's new stadium at Bramley-Moore Dock because no case had been made by the Premier League against Everton in this regard; and
2. the Commission had made a substantive error in not taking into account "relevant benchmarks" set by the English Football League in determining the appropriate sanction. The Appeal Board submitted that had they taken this precedent into account, that the Commission necessarily would have arrived at a less severe penalty.

A crucial point of note was that the Appeal Board stated that *"the assessment of how many points would be appropriate is neither a mathematical exercise nor, indeed an exercise in which the Premier League has given any guidelines"*.

| Everton's second points deduction

On 8 April 2024, Everton were handed their second points deduction of the season by the League. This time, the club's losses during the 2022/23 season (FY 23) were considered and Everton was handed a 2 point deduction for this period. A Commission found the club to have incurred losses of £121.6 million.

By 10 May 2024, Everton was mathematically guaranteed its safety from relegation notwithstanding the points deductions imposed and proceeded to withdraw its appeal.

Concluding thoughts

The deduction of points from Everton and Nottingham Forest in the past few months, in addition to 115 charges levelled against Manchester City for alleged breach of PSRs, shows that the League is aggressively pursuing any purported breaches of the PSRs. Indeed, both Everton decisions and the Nottingham Forest decision inform the treatment of the charges against Manchester City and give an indication of the likely sanction, if proven.

For more information on this or any sports law related topic, please contact our team via their contact details below.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Key Contacts



Paddy Murphy

Managing Associate

Ireland

E: paddy.murphy@ogier.com

T: [+353 1 584 6311](tel:+35315846311)



Jordan Kochanski

Trainee Solicitor

Ireland

E: jordan.kochanski@ogier.com

T: [+35315846767](tel:+35315846767)

Related Services

Dispute Resolution

Related Sectors

Sports