

Disputes Resolution Authority

An Córas Eadrána

DRA 36 of 2023: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

RUAÍRÍ Ó GALLACHÓIR

Claimant

v.

SAFEGUARDING APPEALS COMMITTEE (PANEL)

First Named Respondent

And

COISTI BAINISTI COMHAIRLE ULADH - ULSTER COUNCIL MANAGEMENT COMMITTEE

Second Named Respondent

And

Ulster GAA Adult Safeguarding Panel

Interested Party

Hearing: 1st February 2024, The Green Isle Hotel Dublin, St John's Dr, Newlands Cross, Dublin 22

Tribunal: Micheal O'Connell SC, Fiachra Breathnach BL, Con Hogan

Secretary to the DRA, Rory Hanniffy

VERDICT: The claim is dismissed.

KEYWORDS: *Debarment - Policy documents - Disciplinary jurisdiction - powers of panels under Policy documents - Official Guide Rule 7.3, Rule 7.8(a) - Ulster GAA Adult Safeguarding Policy and Procedures (NI), Section 7*

LIST OF REMOTE ATTENDEES:

Claimant

Feargal Logan - Solicitor
Patrick Lyttle, KC
Karl McGuckin BL
Rory Gallagher

First Respondent

Julie Galbraith

Second Respondent

Gerry O'Hare - Solicitor
Brian McEvoy - CEO
Bernie Fox - Ulster GAA Safeguarding Manager

FACTUAL BACKGROUND

1. Following the appointment in 2022 of a sub-working group and preparation of documents by that sub-working group, ultimately on 13 June 2023 the Ulster GAA Adult Safeguarding Policy and Procedures (NI) (*“the Adult Safeguarding Policy”*) was approved by the Management Committee of the Ulster Council, the Second-named Respondent in this Arbitration.
2. The Adult Safeguarding Policy is, we emphasise, a separate document and procedure to the various codes of behaviour relating to children and young people (under 18 years of age), provision for which is expressly made in Rule 1.13 of the Official Guide. This policy is focused on protection of adults from abuse and improper conduct.
3. The Adult Safeguarding Policy is divided into a number of sections with provisions enumerated within those sections. In Section 2 a number of definitions are set out. In Section 3, various pieces of legislation (all in force in Northern Ireland, not in the Republic of Ireland) are set out and it is noted that the practices and procedures within the Safeguarding Policy *“are based on the principles contained with NI legislation and Government guidance.”* Section 4 includes statements of best practice and guidance. Section 5 identifies what the expression *“abuse”* means for the purpose of the policy and gives illustrative examples. Section 6 gives guidance to persons involved in various activities as to what they should do when they become aware of allegations or concerns of abuse or inappropriate behaviour. Section 7 then sets out procedures for dealing with adult safeguarding allegations and concerns of abuse. These identify the role of the panel known as the Adult Safeguarding Panel (*“the Safeguarding Panel”*). Its function is *“to consider safeguarding cases presented by Ulster GAA safeguarding manager and to advise on any appropriate measures or sanctions that may be required in order to manage any such risk identified where possible, in accordance with the Safeguarding Panel Terms of Reference from time to time adopted.”* Although Section 7 sets out a number of procedures and options

available to the Safeguarding Panel, it is not set out as a logical structure of process whereby Step A leads to Step B and so on. In this respect, it reflects the disciplinary rules of the Association prior to the reforms in 2007 in which aspects of both adversarial and inquisitorial processes were somewhat intertwined.

4. A number of appendices appear with the Adult Safeguarding Policy, and were commented upon at the hearing but for reasons that will become apparent it is not necessary to discuss those in detail.
5. We have not seen the actual decision or resolution by which the Adult Safeguarding Policy was adopted but – although there is a general statement in the Claim Form that “*the legitimacy and authority of all bodies, committees and other parties involved in this process to date ...remain in question*” – the ultimate arguments turned on different issues: in particular the application of the Adult Safeguarding Policy and what can be done under it.
6. The Claimant was the manager of a County Senior Football team as at 9 May 2023, on which date a certain message was posted on social media by his former spouse, making serious allegations about his personal conduct. It appears that another social media post was made supportive of the allegations. On 14 May 2023, the Claimant advised Ulster Council that he would be stepping down on an interim basis from his position and on 16 May 2023, he published a statement to that effect.
7. On 27 June 2023, the Claimant was sent a letter by Ulster Council advising that it had appointed a Safeguarding Panel under the Adult Safeguarding Policy and that a meeting would take place on 3 July 2023 to determine the terms of reference for the investigation, after which those terms of reference would be advised to the Claimant. The terms of reference have been supplied to us and they refer to Section 7 of the Adult Safeguarding Policy. The terms of reference go on to set out the background to the establishment of the

Safeguarding Panel and identify the purposes for which it had been so established, namely:

“To establish what, if any concerns were raised within any unit of the GAA in relation to [the Claimant’s] behaviour.

To review the response to any concerns raised in line with the current GAA safeguarding policies and procedures.

Determine what risk, if any, derives from [the Claimant’s] behaviours in relation to the GAA.

To advise Ulster GAA of any appropriate measures or sanctions that may be required to manage any such risk identified, where possible.

To comment on any learning from this review.”

8. It appears that Ulster Council and the Safeguarding Panel were under the impression that, in stepping down from his role with the County team and having been notified of the Safeguarding Panel’s investigation, the Claimant would not partake in any Association activities while that investigation was ongoing. While that assumption is perhaps understandable, there is nothing in anything actually said by the Claimant that amounts to a promise or undertaking of this kind.
9. On 17 August 2023, Ulster Council wrote to the Claimant’s solicitor, reminding him that the Safeguarding Panel were considering matters as previously advised, and informing him that reports had been made that the Claimant had recently been involved in coaching a senior club team within the province. The email queried whether the Claimant had been involved in any coaching or other role within any unit of the Association since 16 May 2023 and requested a response by 22 August 2023. No response to this email was received. A reminder was sent by email on 4 September 2023. No response was made to this email either. Further communications were made with the club the subject of the query, in an attempt to establish whether indeed the Claimant

was coaching at that club. A response was received from the club that was, frankly, evasive, and the query remained unanswered.

10. By letter dated 10 September 2023, Ulster Council wrote to the Claimant directly noting *“concerns as you are reportedly currently involved in a coaching capacity with [...] GAA senior team.”* It refers to the communications on 17 August 2023 and 4 September 2023 and noted the absence of a response. The letter then states:

“In line with section 7.1(g) of Ulster GAA Adult Safeguarding Policy, and following consideration of the concerns outlined above in respect of any current involvement with [...] GAA senior team, the Ulster GAA Safeguarding Panel has recommended that you are temporarily debarred from any role or participation in GAA activities, with immediate effect from the date of this letter, 10th September 2023, without prejudice and until such time as the Safeguarding Panel have concluded their consideration of the matters referred to above.”

11. The letter goes on to explain the nature and effect of the debarment.
12. The Claimant’s solicitor wrote on 11 September 2023 raising a number of queries and they were responded to on 15 September 2023. In answer to a query as to the rule basis for the debarment, the Ulster Council said as follows:

“This interim temporary decision was taken pursuant to rules 3.30(n), 7.8 T.O. (2023), and the Ulster GAA Adult Safeguarding Policy, attached, ratified by Ulster GAA Coiste Bainistíochta on the 13th June 2023.”

13. A request by the Claimant’s solicitor for a variation of the debarment was addressed with certain amendments made to its scope.
14. On 20 September 2023, the Claimant lodged an appeal against the decision of the Safeguarding Panel. This was issued to the Central Appeals Committee and to the GAA Safeguarding Appeals Committee. It is not apparent on what basis either of these committees could hear such an appeal since there was no provision under the Adult Safeguarding Policy for an appeal, and indeed it

would seem that the GAA Safeguarding Appeals Committee was established under the Child Safeguarding Policy. Nevertheless, it appears that the Ulster Safeguarding Appeals Committee (the Second-named Respondent in this Arbitration) took up the Claimant's appeal in the interests of justice and to ensure there was a forum for it, and in the absence of a dispute about it, little turns on this peculiarity at this remove. Following a hearing, this appeal was refused by the Ulster Safeguarding Appeals Committee on 2 October 2023. The kernel of the decision on the appeal is in the following passage from the decision of the Ulster Safeguarding Appeals Committee:

"We find that it was a decision open to Ulster GAA, on foot of the recommendation of the Adult Safeguarding Panel to issue a temporary debarment in line with Riall 7.8(a) and the Ulster GAA Adult Safeguarding Policy."

15. A concurrent request by the Claimant for an amendment or lesser sanction than debarment was refused on the ground that the group best placed to make that decision is the Safeguarding Panel itself.
16. The Claimant brought his claim to the DRA by Claim Form dated 4 October 2023.

DISCUSSION

17. It is not necessary to discuss all of the grounds of challenge. As the submissions and hearing evolved, the case left three issues to be determined:
 - 1) First, a preliminary application was made on behalf of the Claimant by means of additional submissions sent by email dated 30 January 2024, contending that the DRA had no authority or jurisdiction to hear the matter on the grounds that the Adult Safeguarding Policy ousted its jurisdiction so that only the Courts of Northern Ireland could deal with a legal dispute arising out of it.

- 2) The principal substantive ground relied upon was that Rule 7.8(a) of the Official Guide did not authorise the imposition of debarment by the Adult Safeguarding Committee (and that the Safeguarding Appeals Committee erred in law in holding to the contrary).
 - 3) Finally, it was argued that debarment was disproportionate (and that the Safeguarding Appeals Committee erred in law in upholding it in consequence of that).
18. We propose to deal with these points in turn. Insofar as other issues arise on the claim form in response, it is not necessary to deal with them for reasons that will become apparent.

The Preliminary Application

19. The preliminary application, while it may not be unprecedented, is somewhat extraordinary, being, as it is, a challenge to the jurisdiction of an adjudicative forum by the very person who brought the dispute for adjudication by that forum. When questioned about this feature, Counsel for the Claimant submitted that the claim was only brought as a precaution against an accusation in court that the Claimant had failed to exhaust his remedies under the Rules of the Association.
20. The application is predicated on what was presented as an irreconcilable conflict between the provisions of the Adult Safeguarding Policy and the choice of law provisions in Rule 7.13 of the Official Guide. Rule 7.13 of the Official Guide provides that the Rules of the Association and the laws of Ireland shall govern dispute resolution by the DRA. By contrast, the Claimant contends, the Adult Safeguarding Policy is governed by the laws of Northern Ireland, and consequently, it is contended, only the Courts of Northern Ireland have jurisdiction to determine a legal dispute arising out of it.
21. We are of the view that the preliminary application and the propositions subtending it are unsustainable.

22. In the first instance, the making of a claim before the DRA – just like the making of a claim before any particular court – is an assent and submission to its jurisdiction. In the context of court proceedings, provision is made for the entry of conditional appearances by defendants who wish to contest jurisdiction and for applications to stay proceedings where an arbitration clause makes disputes referable to arbitration. In both cases, a defendant who participates substantively in the case cannot later challenge jurisdiction. No such procedures exist in respect of plaintiffs because the idea that a plaintiff might himself contest the jurisdiction of a court or other tribunal to which he had brought the claim is so unimaginable that no such procedure could exist. A plaintiff or claimant may always withdraw his claim, but in so doing he runs the risk that he will be left with no forum at all if he is wrong. The submission that the claim was brought as a formulaic step to comply with a duty to exhaust remedies is in the first place incredible since nothing in the Claim Form adverts to this intention (on the contrary, substantive reliefs were sought and it was not until the eleventh hour that the idea of challenging jurisdiction was articulated). But at any rate, no authority was opened to us – and we cannot conceive of any existing – to support the frankly illogical proposition that a party to a dispute about the rules of a sports organisation who maintains that an arbitration clause does not apply to the dispute must nonetheless avail of that arbitration clause for the sole purpose of procuring a renunciation of jurisdiction by an arbitrator appointed under it. Not even the most stringent exhaustion of remedies rule proceeds on the basis that a procedure must be pursued when it cannot as a matter of jurisdiction confer any remedy.

23. On the substantive basis for the application to decline jurisdiction, despite being taken to numerous references in the Adult Safeguarding Policy to various laws of Northern Ireland and various statutory bodies operating only in Northern Ireland, we were not shown any clause that applied or purported to apply the laws of Northern Ireland to its interpretation or application. This is hardly surprising. Insofar as the Adult Safeguarding Policy had any status, it

was a part of the rules architecture of the Association, contractual in nature and subordinate to the Official Guide (which – as noted earlier – expressly applies the laws of Ireland to the resolution of legal disputes under it): consequently, the Adult Safeguarding Policy would be inconsistent with the Official Guide if it required legal disputes to be resolved by reference to laws other than the laws of Ireland. It may be that in giving guidance, a policy will refer to public statutes and public bodies, and indeed (as is the case under the Adult Safeguarding Policy), it may adapt what it is doing where statutory bodies are dealing with the subject matter of a process. It will also be the case in all rule-regulated sports organisations that the law of the land will apply to persons engaged in activities of that organisation. None of these factors operates to imply a choice of law clause or to override a choice of law clause that may apply to the members by virtue of the constitutional documentation of the organisation. But even if they did, a choice of law clause is not the same as a choice of jurisdiction clause. The Claimant maintained that it did and rested his substantive challenge to the jurisdiction of the DRA (and consequently the applicability of the arbitration clause in the Official Guide) on that contention alone. It must therefore fail. It is open to parties to any contract to refer a dispute to an arbitral tribunal that operates under the laws of one territory, notwithstanding that the dispute must be resolved in whole or in part by reference to the laws of another territory: in such a case the foreign law is a matter of fact to be proved with evidence.

24. In the circumstances, the application to decline jurisdiction is refused.

The Powers of the Adult Safeguarding Panel

25. To deal with the question whether the Adult Safeguarding Panel was entitled to debar the Claimant as it did, one must assume that the Adult Safeguarding Committee is validly appointed and that it can take some steps, and we will do so (in this regard, although the Claim Form “*questions*” the constitution of all

“bodies committees and other parties involved in this process” no specific reference was made to the Adult Safeguarding Panel, and the issue largely fell away).

26. The issue that remains is whether the Adult Safeguarding Panel can debar members of the Association or indeed conduct any form of disciplinary action.
27. Rule 7.8 of the Official Guide (the edition of the Official Guide applicable to these proceedings is the first of two editions published in 2023, although the rules in issue here are in the same terms throughout 2023) provides as follows:

“7.8 (a) In appropriate cases, the Council or Committee-in-Charge may, by way of penalty, debar a member from identified privileges of the Association such as playing Games, attending Games, holding office, handling funds, attending occasions other than Games etc.

(b) Where the Management Committee or Competitions Control Committee (as the case may be) considers that the interests of the Association or its Members may be compromised during a period after notification of Disciplinary Action under Rule 7.3 and any Hearing on foot of that notification, Debarment may be imposed pending the completion of Disciplinary Action, subject to the right to a review by the Hearings Committee. This Rule shall not affect Suspensions that commence, under Rule 7.5(i), prior to a Hearing.

Penalty for Breach of Debarment: Suspension from all functions and privileges of the Association for the period of Debarment, together with further Suspension for 12 weeks.”

28. It is important to see this Rule in its context. Section 7 of the Official Guide is concerned with the enforcement of rules and, after Rule 7.3 which sets out the general procedures for disciplinary action, and Rule 7.4, which affirms the power of relevant councils and committees to initiate action in relation to team constitution of its own motion, the ensuing Rules outline a cascade of different types of penalties and sanctions that may be imposed:

- 1) Rule 7.5 deals with suspensions in some detail;
 - 2) Rule 7.6 deals with disqualification of teams and forfeiture of games;
 - 3) Rule 7.7 deals with fines;
 - 4) Rule 7.8 deals with debarment; and
 - 5) Rule 7.9 deals with expulsion.
29. This articulation of penalties and sanctions should be seen in the light of Rule 7.1(a) which provides *inter alia*:

“Central Council, Provincial Councils, County Committees and Overseas Units shall have within their respective jurisdictions the power to enforce Rules and Bye-Laws, investigate breaches of Rules and Bye-Laws, warn any Unit or Member as to future conduct, and impose upon Members, Teams and Units such penalties as may be prescribed, or where no penalty is prescribed, appropriate penalties, for such breaches.”

Where reference is made in Rule to Central Council, Provincial Councils or County Committees, such reference shall include or be a reference to their Sub-Committees having jurisdiction over Disciplinary Matters...”

(emphasis added)

30. Although one must, of course, examine the particular rules in their own terms, the context supports the proposition that debarment is part of the architecture of the disciplinary regime.
31. The Respondents’ position is that Rule 7.8(a) is entirely independent of Rule 7.8(b) and confers a broad discretion on councils and committees in charge to be applied outside the disciplinary regime and in such circumstances as they see fit. This is a difficult position to sustain. On such an interpretation, which necessarily implies that the procedures in section 7 of the Official Guide afford no protection to members against such debarment, it is impossible to identify

any criteria, principles or policies that might limit the power to debar. While, ultimately, the Association is a sporting organisation and the significance of its Units' decisions should not be overstated, nevertheless, as a matter of contractual interpretation, a court and an arbitral tribunal will lean against an interpretation that confers a power on a committee to deprive a member of the benefits of membership without controlling procedures or any limitation on purpose. Indeed, if that was the only interpretation of such a rule, it might be considered unenforceable on public policy grounds.

32. The alternative interpretation of Rule 7.8(a) and the debarment provided for therein is simply one of the cascade of penalties and sanctions identified between Rules 7.5 and 7.9 inclusive, which may be imposed on foot of disciplinary action, available by virtue of the general disciplinary jurisdiction expressed in the passage from rule 7.1(a) set out above. Viewed thus, it makes sense, both in its own terms, and in its location beside Rule 7.8(b). In our view, this is the inescapably correct interpretation of Rule 7.8. Rule 7.8(a) states in terms that debarment is a "*penalty.*" Rule 7.8(b) makes express provision for temporary debarment, while disciplinary action is pending. These two provisions operate and interact with one another analogously to (in the legal sphere) a permanent injunction (Rule 7.8(a)) and an interim or interlocutory injunction (Rule 7.8(b)).
33. It follows that rule 7.8(a) confers no jurisdiction on any Unit of the Association to operate as a temporary mandate pending disciplinary action, still less pending an investigation prior to any disciplinary action.
34. The question necessarily arises, then, whether Section 7.1.g of the Adult Safeguarding Policy confers a concurrent and independent jurisdiction to debar. This provision reads as follows:

"In its decision-making, the Safeguarding Panel will consider the following factors but will not be limited to them:

...

- g. *If the individual concerned has not already voluntarily stood aside from all Association roles nor been temporarily debarred from all Association roles, the panel may recommend a temporary debarment or voluntary stand aside in its place until the conclusion of their consideration and any subsequent decisions."*

35. Section 7.2.e of the Adult Safeguarding Policy also provides in similar terms as follows:

"[Where the Safeguarding Panel concludes that an individual poses an actual or potential risk of harm to children or adults at risk in Ulster GAA then the Safeguarding Panel may respond by reaching one or more or a combination of the following outcomes:]

...

- e. *Impose or extend a temporary debarment pending completion of any further investigation referral or risk assessment..."*

36. Section 7.7 of the Adult Safeguarding Policy makes further reference to debarment as follows:

"If at any stage during their considerations, the panel becomes aware that the person(s) concerned are subject to a live Police investigation into said matters, the Safeguarding Panel shall be obliged to pause their considerations and a temporary debarment may be put in place until the legal conclusion of the case."

37. We mention all three of these rules, but whether there is a power to do what any of them provide for turns on the same question. The Respondents squarely rely on Rule 7.8(a), not the Adult Safeguarding Policy, so it is perhaps unnecessary to delve any deeper into the issue. Nevertheless, for the assistance of the parties, we consider it necessary to confirm our own view that these provisions on their own cannot confer such a power. To accept that the

Safeguarding Panel, or Ulster Council merely on that Panel's recommendation, could impose a debarment independently of Rule 7.8 requires one also to accept the corollary that all of the safeguards prescribed in Section 7 of the Official Guide (in particular Rule 7.3) can be disappplied by a mere adoption by a Unit of the Association of a policy document creating a parallel procedure to the disciplinary procedures in the Official Guide. This would not be a tenable proposition, and we reiterate it is not one that the Respondents sought to rely on.

38. We are conscious of the fact that independent powers and procedures exist in the Code of Behaviour (Underage) which do operate as an independent process to section 7.3 of the Official Guide. However, the difference there is that Rule 1.13 of the Official Guide expressly confers powers on the relevant bodies to act in accordance with that Codes. That is not the case here, and the Claimant is correct to that extent when his Counsel submits that the Adult Safeguarding Policy has "*run ahead of the Rules*".
39. The foregoing conclusion is neither to invalidate the Safeguarding Policy nor to say that the Association is incapable of acting if serious matters come to their attention that require action in the short term.
40. The adoption of policies is perfectly within the powers of Provincial Councils and other Units, who may also establish committees and delegate such powers to them as are appropriate. However, where those powers are to affect the rule-based contractual rights of the members of the Association, they must be substantiated by an underlying rule in the Official Guide that disapplies the protections in Rules such as Rule 7.3. That is the case in relation to the Code of Behaviour (Underage) but there is no equivalent rule for any Adult Safeguarding Policy at present.
41. Moreover, the Association is not toothless when events come to its attention, outside the specified infractions identified in Rule, that warrant intervention. As the Claimant's representatives correctly noted, the "*disrepute*" provisions in

Rule 7.2(e) are available to deal with the type of unusual or unorthodox circumstances where specified rules are not available but action is warranted: conduct "*considered to have discredited the Association*" is punishable by suspension, debarment or expulsion as the circumstances of the case may require.

42. We are not, it must be emphasised, saying that this is a case in which that rule ought to be applied, or for that matter, ought not to be applied. However, we mention it because this decision should not be taken as meaning that nothing can be done in a case where a genuine concern as to the safety of adults arises or where the Association's reputation for protecting adults operating within its sphere is compromised by actions of its members. Clearly, in an appropriate case, it may commence disciplinary action asserting a breach of Rule 7.2(e), and in those circumstances Rule 7.8(b) is available to it to effect a debarment pending conclusion of the process.
43. We appreciate that there may be a certain weakness in Rule 7.8(b) insofar as it cannot apply before disciplinary action is commenced, and the necessity of accumulating sufficient evidence to decide to commence disciplinary action may mean that a period of time passes when there is no interim protection that may be put in place. However, the significance of this apparent weakness should not be overstated. In the first instance, it will be a very rare case where debarment before notice of disciplinary action is necessary: if a case were that serious, it may be that the civil authorities would consider it appropriate to intervene. Secondly, it is clear from Rule 7.3(h) and (i) of the Official Guide that disciplinary action may be commenced before all evidence that is ultimately relied on at hearing is available.
44. There may, however, be harder cases where immediate action prior to the issuance of a notice of disciplinary action may be required, and one might refer that to the Rules Advisory Committee.

45. One cannot leave this issue without a brief comment on the procedures in the Adult Safeguarding Policy, as it is open to Congress to pass a motion to create a Rule (similar to Rule 1.13) allowing for the creation of a parallel investigation and disciplinary process in the case of adult safeguarding. There is much in the Adult Safeguarding Policy that is not a disciplinary process *per se*, and we do not comment on that at all: the advice and guidance given therein has evidently been compiled by highly qualified persons, and represents a body of work on which we have no role or expertise to comment. However, insofar as disciplinary procedures are involved, there are some structural issues that would require attention. The regime established since 2007 in Rule 7.3 and elsewhere in the Official Guide is an adversarial one that sits comfortably in the legal regime applicable in Ireland (and for that matter Northern Ireland). The system it replaced was something of a mix between an inquisitorial and adversarial regime, an aspect that created some difficulties in application. The provisions in Section 7 of the Safeguarding Policy exhibit some of those features of the old regime and are liable to give rise to difficulty, and if it is proposed to introduce a Rule similar to Rule 1.13 to confer powers on new committees under new codes in parallel to Section 7 of the Official Guide, it would be advisable to review the Adult Protection Policy before that comes into force. Ideally, a standard safeguarding policy would be applicable across the entire Association. While the legal obligations in the two legal jurisdictions may differ somewhat, it is likely that a standard safeguarding policy could be drafted that would satisfy – by accumulation of provisions – the requirements of both legal jurisdictions.
46. However, that is not relevant to the outcome of these proceedings: Ulster Council did not have power to debar the Claimant in the manner it sought to do for the reasons discussed earlier.
47. We should also note that – in light of what we have said – the power of the Safeguarding Panel to impose “*final*” sanctions is similarly impaired and, while the panel may investigate as it wishes, the status of any report on foot of it is no

more than to assist the relevant Council or Committee-in-Charge in deciding whether it wished to take disciplinary action under the provisions of the Official Guide. It would not have the status of evidence in any disciplinary action.

Proportionality

48. In light of the foregoing, it is not necessary to decide whether the action of debarment was proportionate or not in the circumstances of the case. Nevertheless, in deference to the time spent by the parties on the issue, we express the view that – on the hypothesis (contrary to our decision) that there was a power to debar – the decision of the adult Safeguarding Panel was not disproportionate on the facts of the case. The Adult Safeguarding Panel was responding to a very unusual state of affairs and, whether one agrees with its decision to initiate an investigation or not, it was not unreasonable or malicious to do so. The steps taken by the Claimant to stand down from his position as manager of the County team was perfectly understandable, but it was a voluntary decision. The Safeguarding Panel was not entitled to assume that the Claimant would step aside from all activities, because he never said he would do so. However, they did make that assumption, and that excuses somewhat a degree of delay in deciding whether to impose any interim restrictions.
49. When they wrote to the Claimant’s solicitor twice on 17 August 2023 and 4 September 2023 and received no response, they were entitled to assume that he would continue to carry out such activities as he wished without reference to them. In this regard, the stated reason for not responding to those emails – namely that the Claimant took the view that they were some sort of trap-setting involved because (as he contended) the Ulster Council knew that he had been coaching the club in question for some time – is wholly unconvincing, because the response could have made that very point. Against that background, unless and until it was shown that to commence an investigation at all was irrational or otherwise legally improper, imposing interim measures on a non-

cooperating member is reasonable and proportionate (and we note that some allowances were made as regards the scope of the debarment on the request of the Claimant's solicitor).

50. Nevertheless, what we say on this issue is redundant given what we have determined on the main issue.

DECISION

51. In the circumstances, our award will declare invalid the decision of the Respondents to impose debarment on the Claimant and to refuse the appeal taken by the Claimant against that decision.

52. On the costs of this arbitration, we invite brief written submissions, and we will determine that question in a supplemental award. Such submissions to be received by the Secretary by close of business on Friday, 8 March 2024.

Date of Hearing: 31 January 2024

Date of Agreed Award: 26 February 2024

By email agreement on agreed date above.

Micheal O'Connell SC

Fiachra Breatnach BL

Con Hogan