

Decision of the Tribunal – St Mirren FC

At a hearing, by the Tribunal of the SPFL Board, sub-committee, the St Mirren Football Club Ltd as owner and operator of St Mirren FC where appeared Mr R McKenzie for the Board and Robert Milligan QC for St Mirren.

A complaint having been referred to the Tribunal, St Mirren admitted breaches of parts 3(1)(a) and (c) of the notice of complaint in terms as follows:-

Whether St. Mirren FC and/or St. Mirren Limited:

- (a) has/have, in the periods of 21 days prior to and on the dates of each of Matches 1 and/or 2, complied with the Testing, social distancing and other infection prevention and control measures specified by the Scottish FA and is thereby in breach of and/or has failed to fulfil Rule B4.3; and
- (c) has/have, in the periods of 21 days prior to and on the dates of each of Matches 1 and/or 2, failed to ensure that sufficient and effective training and guidance has been provided by each of them and/or understood by the Players registered with St. Mirren FC and eligible to Play in League Matches, who, amongst others, changed and/or trained together at the Home Ground, at an Away Ground or at a St. Mirren FC training facility, travelled together by bus provided by St. Mirren Limited, ate together at a meal or meals provided by St. Mirren Limited and/or engaged in car sharing, with all of such Players being from different households and whilst, from time to time, failing to comply with the minimum social distancing requirements and/or failing to avoid circumstances which had been identified as 'High Risk' in risk assessments and/or in the St. Mirren FC Operational Policy, all of which resulted in the infection of some of such Players with the coronavirus and the development by each such infected Player of Covid 19?

On the 10th November 2020 by Zoom call Tribunal the club admitted the breaches and the company accepted same, and instructed no further consideration be given to any other elements of the notice of complaint originally submitted for consideration.

REGULATORY BACKGROUND

Mr McKenzie then referred the Tribunal to the regulatory material set out at part one of the documents for the Disciplinary Tribunal, being documents 1 to 40 both inclusive, which we have noted and considered.

These regulatory materials included certain regulations of the Scottish Government, advices of the Scottish Government and guidance, Sports Scotland advices and guidance, Scottish Government Communications, NHS Scotland guides, SPFL protocols, Joint Response Group (JRG) guidance and statements as well as updates thereto, SPFL news release and fixtures skeleton document as well as premier league fixture dates, the terms of an SPFL presentation and testing and sampling SPFL information. The Tribunal utilised the procedures set out in annex 8 of the rules of procedure as it conducted the hearing, with particular reference to part three thereof.

The Tribunal were guided as well by part J of the rules and had regard to annex 11 (Covid-19 requirements and testing regulations) amongst all of the other documents produced.

We had earlier convened a hearing, on 9th November 2020, to deal with the issue of preliminary matters raised by the parties.

We are aware that there are 42 members of the company each owning and operating a club as they are found in the articles.

The aforementioned annex 11 (regulation 11) related to the requirement on clubs in the Covid-19 pandemic outbreak and how same, including testing, related to clubs in the Premiership.

The testing and procedures for the Premiership clubs was distinct and separate from all other clubs within the company, with the exception of when a Premiership club played a non-Premiership club during the course of the 2020/21 League cup. We noted there to be no disciplinary difference between the breaches of the rules and the regulations.

Should a club breach the rules and regulation then the member is liable for that breach.

We are aware that article 103 sets out the powers of the Board. These powers are relatively wide.

The rules themselves are to be construed as obligations of the utmost good faith between each of the member clubs, this is enshrined within rule B1.

This matter is concerned with the circumstances under which St Mirren were unable to fulfil 2 League fixtures during season 20/21 due to lack of sufficient players to do so, and consequently requested that the matches be postponed.

Premiership matches are official matches.

It is not questioned that St Mirren failed to fulfil the fixtures against Motherwell FC on 17th October 2020 at the Simple Digital Arena, and on 24th October 2020 against Hamilton Academical FC at the same arena. They applied to the SPFL to postpone those fixtures.

Only a player who has tested negative for Covid-19 within the 168 hours prior to the match, without a subsequent positive test, may play in a match between the clubs in the SPFL Premiership.

Annex 11 sets out in detail various regulations that applied.

In particular subheading 1 related to social distancing and hygiene principles that must apply, and did apply, to all clubs including St Mirren.

Subheading 2 confirmed that these were official matches.

Subheading 3 relates to the tests required of clubs including amongst other things, sample collecting, testing type and the target groups for testing.

It is these rules that St Mirren accept they breached, with specific reference to the 2 sets of circumstances admitted by them above. Rule B4.3 binds all SPFL clubs to the articles of association, protocols, procedures, rules, decisions and regulations of the Scottish FA and the statutes and regulations of FIFA and of UEFA.

Subheading 1.5 is the most directly relevant obligation in terms of annex 11 and related to the regulations in force up until the 2nd November 2020.

FACTUAL BACKGROUND TO THE CIRCUMSTANCES OF THE BREACHES

St Mirren had an obligation, to ensure that the playing staff maintained safe distances, and social distancing, between each other at all relevantly appropriate times.

There was no evidence that the club had provided written guidance and regular instruction to players regarding matters such as the dangers of sitting across from each other on a team bus trip ,or closer than two metres at a table, where a two metre gap between players would still require having been maintained. Although the club had their own risk assessment and recommendations document (p897) they still failed to implement the terms of same.

None of the players were members of the same household as each other.

The owners were carrying on a business and failed in their obligations with regard to social distancing on the premises and in the bus, and at the location where meals were provided for the players, and in shared car travel, and in that regard they failed under annex 11 to maintain social distancing.

The club did not argue that they qualified for the one metre rule, as they were not said to have applied additional measures to allow the reduction of the two-metre social distancing rule to one metre.

There are important restrictions of the numbers using the communal changing facilities which were not maintained by St Mirren either, and we were directed to a handwritten diagram (p931), within our papers, disclosing the cramped and overcrowded (for social distancing purposes) changing rooms utilised by the club, as well as their having inadequately sized gym facilities.

Zoom coaching did not appear to have been utilised when it could have been, as physical distancing applies to all parts of the business including when coaching is given to players outwith the field of play and coaching arenas.

Buses were used for related travel to and from the particular match against Queen of the South in Dumfries.

In addition, St Mirren allowed players to continue to utilise private vehicles, with up to four players in a vehicle, for travel to and from their place of work at St Mirren, and therefore failed to ensure that their players minimised the number of people travelling together in private motor vehicles. The club drew up a diagram of which players (not officially sanctioned by the club) had travelled together (p918) but this should have been forbidden before it even began.

The club failed to consider whether or not they should use buses, or a larger bus, and if so whether or not they would need more than one bus on the trip to Dumfries, having failed to consider the government and JRG guidance as a whole. Diagram p919 showed the bus seating layout.

The overarching principle was to ensure that there was created a low risk of transmission of the virus, but it is clear that the virus did transmit between players in the club. The club failed to ensure that transmission risk was as low as it could be.

The Joint Response Group produced documents initially referable to Premiership clubs only regarding returning to training protocol, and returning to matches protocol, and all clubs in the SPFL accepted same.

St Mirren did develop a Covid-19 operations policy but there is no evidence that they provided each player with a copy of same.

The club had a Covid-19 officer and a Covid medical officer, but neither were present at the pre match meal at on the way to the match in Dumfries, nor in the bus to and from the match at Dumfries.

There were failings of middle football management in failing to ensure that the playing staff are complying with, and that backroom staff maintained, the correct social distancing to minimise the risk of spread of the virus. There is no evidence of the management instructing players to cease breaching Covid-19 regulations and guidance, and in particular the Annex 11 regulations.

The failure was not that of the failure of players principally, but more the failure of the football management to prevent breaches of the Covid regulations and guidance, and to ensure safe social distancing to minimise the risk of such failures to occur. These failures were on a repeated basis within the club. For example, it would not be conceivably possible for a two-metre distancing to be socially maintained in the ordinary car, where two or more players were travelling to or from the club for training or matches.

There are red, amber and green zones in the club and we were referred to diagrams disclosing same for St Mirren. There is no evidence of cross infection at a match, but it is not clear how a risk assessment could have been carried out of the indoor training/ changing facilities to allow them to remain as they were shown in the diagram. For example, it must have been clear to the club that the changing rooms would be too small to allow two metre social distancing in their utilised layout.

Through the regulatory and advisory documents it is clear that the club was aware, or should have been aware that it would have been imperative to retain social distancing at all times other than on the field of play. This was one of the responsibilities of the Covid-19 officer.

Clubs of the SPFL were aware, before the outbreak at the club occurred, of the vital importance of matches not being postponed due to the pressure on the season that had already commenced, and the difficulty in finding alternative available dates for matches to be played. Almost all available fixture dates, it appears were scheduled in advance, and this was clear to the clubs before the season commenced. There was very significant pressure on potential fixture rescheduling because of the shortening of the season.

SPECIFIC ISSUES

Mr McKenzie, for the company, explained to us that there had been four areas of potential transmission between players and staff at the club. Further that there had been a significant outbreak of Covid-19 at the club, principally amongst the players. As a consequence, there was an IMT investigation, and an IMT report with findings which we shall refer to herein.

The first such area was on a bus trip to and from Dumfries, to play Queen of the South FC.

The second was at the meal on the way to Dumfries before that game.

The third was at the gym at Ralston Training Ground, and the fourth was car sharing used by players to go to and from home, the club and training.

We were shown a diagram of the bus trip ,which showed that in addition to there being staff members on board the bus there were a number of players, but they were not socially distanced, and a number were facing each other across a table whilst the journey was undertaken.

Secondly the meal at the facility prior to the game in the Dumfries area, was described by way of a lay out of players seated at round tables. It was clear that the number of players seated round any one table was in excess of the number that would be required for there to have been adequate social distancing.

Thirdly, the size of the gym at Ralston was inadequate. It meant that a system required to be put in place for the use of that gym to space out the number of players using the gym at any time, but the system of grouping and timings broke down when people transferred between groups .

Fourthly, car sharing was utilised by the players and known to the club, and this was surprising given that it was said to be inconceivable that anyone applying any attention to government guidelines (on the transmission of Covid) could think there could be any social distancing possible where two or more persons shared a normal family sized car for any journey other than or the most brief journey.

We were advised there were two other potential areas of transmission within the club, but these were not being considered as likely on the balance of probabilities.

Environmental health visited the club (p961 refers) and produced recommendations and, irrespective of the date of same, concluded that these were the likeliest cause of transmission.

Potentially the most important documents that we considered, with regard to the failures by the club, was the IMG meeting notes document (p960) and then the additional document provided to us entitled Summary of Public Health assessment and recommendations following Covid-19 outbreak at St Mirren dated 9 November 2020.

This Summary contained significant detail and highlighted the 4 potential areas of transmission at the club, namely the aforementioned Bus trip and pre-match meal both on 10th October, the gym at Ralston and car sharing. We placed great store in the very helpful IMT document which had been produced by the NHS Greater Glasgow and Clyde Public Health Protection Unit. It contained certain vital conclusions and recommendations, which included the following “ Better adherence to basic physical distancing guidance in ‘off-pitch’ parts of the club operations, including transport to and from training and matches; pre-match meal; and gym facilities, would likely have limited transmissions within the club, though cannot be guaranteed to have completely prevented it.”

We were directed to a large number of emails, but it was noted that 9 players and two staff members at the club contracted the virus.

The 17th October 2020 was the date of the first Premiership match that had been postponed. This was relevant due to the prior contracting of Covid-19, and the apparent transmission of same amongst the staff and players.

Although the club had provided their own risk assessments, and they were shown to us, it was clear that the club had failed to follow their own guidance.

Car sharing had been to and from the Ralston training facility. There was a list of those who had travelled together, over what time distances, to and from the training facility, and in what groups, and what cars. This was now held by the club but was not said to be officially sanctioned by the club.

Nonetheless it would be clear to the club that car sharing was occurring and was not prohibited by the club, nor was it discouraged.

There was said to be a “fair chance” that where two people in one vehicle had been infected, the second to be infected had contracted it during such a car journey, from the first infected.

We are told that all players and staff on the bus were wearing masks, although there is no formal vouching of same.

The use of the bus to and from the game in Dumfries was open to criticism because a larger bus, or indeed two buses, could have been utilised so as to increase the space in between players and allow for appropriate social distancing. It is clear that some players/staff on the bus contracted the virus, and this trip was identified as a clear source of transmission of the virus.

The layout of the changing facility, as provided in a document by the club, showed that there were ten names of players sharing an eight metre bench space which would have been grossly less than the required two metre social distancing. The gym at Ralston was found, by the IMT, to have raised significant concerns. Size, ventilation and cleaning were all criticised, as was the failure to form ‘bubbles’ for the gym use, and the club instead used a rolling system which meant that separation between gym groups was not maintained.

THE CLUB’S EXPLANATION

Mr Milligan QC, for the club, accepted that there were these four clearly defined areas where there were “issues” for the club.

He accepted that on the said bus trip to and from Dumfries there was not adequate social distancing, though he stressed that everyone had been wearing masks during the journey.

He accepted that at the pre match meal the club had not ensured social distancing between those utilising the facility whilst eating.

He reported that the Gym at Ralston was no longer being used and that a new facility, within the club's own ground, to ensure social distancing and appropriate organisation, was being used.

He stressed that the car sharing utilised by the group of players was not organised by the club but once the club became aware of it, through the investigation, they have taken steps to ensure that the car sharing has been stopped.

The club accepted that they should have been investigating matters of the type of car sharing previously, hence their admission thereof.

It was made clear that the club have a blemish free history of up to twenty years without disciplinary action having been taken against them, and no prior breaches of any government, or other agencies’, Covid-19 regulations.

It was submitted by the club that all breaches were significant but that in a spectrum of breaches this came at the lower end of the spectrum, that the various regulations are not straight forward, and that these breaches were not flagrant.

He further submitted, for the club, the club’s response was to take the matter seriously, and that they had previously appointed a Covid officer and a Covid medical officer, and had produced protocols

and policies for the club. The club had previous outbreaks within the playing staff but those had been successfully controlled and that it is not possible to stop players contracting the virus in the community in the West of Scotland. The club had utilised active control measures as well.

It was stressed that the club, over a very short time scale from being made aware of the nature of the complaint, ingathered a huge amount of information and provided that to the company before making an admission, and clearly focused upon the requirement by providing statements of key witnesses.

It was stressed that the club's conduct during these proceedings had been fully cooperative with the company and had admitted their responsibility without the need for evidence to be led to prove same. The club had not tried to shy away from the breaches and had dealt with matters appropriately.

They had taken steps to reduce further risks by moving the location of the gym which is a radical move, they are taking bigger buses when buses are required, players are taking taxis if they cannot drive as to avoid car sharing, and the overall picture is one of a club that takes the matter very seriously Mr Milligan stated.

He submitted that the club has already suffered penalty by not seeking to gain any competitive advantage by the postponement of matches, by having disruption to the playing season and the disturbance that it caused to club as a whole. Whilst two games were lost this was in respect of one outbreak of Covid within the club. They had been put to a substantial expense as a result of the legal proceedings which was a financial penalty in itself, he submitted.

He compared the Aberdeen and Celtic matters, previously dealt with by the Board, as more aggravating by way of offending, and he noted the substantial financial penalties imposed upon those clubs with some part of the penalty suspended. He argued that the level of penalties for St Mirren should be significantly lower than those of Aberdeen and Celtic.

The club had, since the postponements, implemented a ticket system for the bus and ensured that the Covid officer was always on the bus now.

THE COMPANY'S RESPONSE

Mr McKenzie reminded us of the option for a sporting sanction and that any suspension of sanction should be treated cautiously, due to the nature of the season that was already underway. The materiality of the breaches should be taken into account in determining the issue of suspension of any penalty.

The club had not yet fully documented all steps taking by them to prevent issues occurring in the future and though they have moved their training they have suffered no penalty, yet merely negative consequences.

The club circumstances were much more serious, particularly due to the postponements of matches, as opposed to the sanctions imposed on Celtic and Aberdeen. In the Celtic and Aberdeen cases, neither club had requested a postponement. Sporting sanctions, he reminded the tribunal, were only relevant where there is a sporting result, or outcome, to the conduct found to be in breach. It was due to Government intervention that the games involving these two clubs were postponed.

There had been multiple breaches here ensuring that only twelve players (at a maximum) had been available for the two affected matches, due to the Covid difficulties at the club. There had been an

absence of appropriate and effective controls at the club. The company argued that there had been a sporting advantage gained by St Mirren by not having to play two matches due to the Covid outbreak.

He submitted that the matter was serious, whether or not the breaches had been formally found to have resulted in transmission between players.

He submitted that this was not at the lower end of the scale of breaches and reminded the Tribunal that neither of the opponents of St Mirren had asked for the matches to be postponed. He reminded that whilst the Board would decide on whether or not there was an issue of expenses to awarded to or by either party, the Tribunal was not being asked by the company for any particular disposal or penalty today and that was a matter for the Tribunal.

Finally, in reply, Mr Milligan requested that we make comparison with Celtic and Aberdeen cases, and that in the Celtic instance (Bolingoli) there appeared to have had been untruthfulness on the part of the player, whereas St Mirren are not being duplicitous in their conduct. Aberdeen, he said, had not given adequate advice to their players, or if they had they did not filter through to them and two Aberdeen games have been postponed.

With regard to sporting integrity the club should not have to forfeit games, as the potential issue of relegation would undermine the sporting integrity of the competition if penalties were imposed that could lead to relegation.

He referred to the comparison of the Wasps v Bristol semi final of the English Rugby premiership, when it became clear that the Wasps might not be able to fulfil their place in the final due to a Covid outbreak. Bristol has been under consideration with regard to taking their former opponents' place in the final. However, he sought to distinguish St Mirren's situation and submitted that in this situation it would be wholly inappropriate for forfeit of the match to be the sanction imposed.

SANCTION CONSIDERATION

The club accepted that they had breached the SPFL regulations, on the admitted terms relating to a pre match meal and a team bus trip to a football game and in so doing in advance of relevant matches (against Motherwell FC and Hamilton Academical FC) had failed to comply with the social distancing and other infection prevention and control measures specified by the Scottish FA and/or JRG and in the 14 day period prior to match ,had failed to ensure that sufficient and effective training and guidance had been provided to or understood by the players registered with St Mirren FC and eligible to play in League matches, and who travelled together by bus provided by St Mirren Ltd and/or ate together at a meal provided by St Mirren Ltd. In short they had failed to comply with minimum social distancing requirements required of them in a bus journey to a football match and at a meal prior to said football match, as well at the club's training facility at Ralston and when players travelled to club events whilst car sharing.

As a starting point the club were party to and accepted the return to training protocol, and had accepted the return to playing protocol, and were due to have been adhering to the terms of those documents.

It was accepted by the club that in the instances of their failures to so adhere, for the aforementioned bus trip and meal as well as in Car sharing and the use of inadequate training facilities, they had breached the regulations, rules and guidance that were referable to the club and referred to in a notice of complaint and were referred to this board sub-committee.

The background to this season is one well known with regard to the nationwide Covid-19 Pandemic that has struck our country.

Against that general background SPFL teams were placed in a privileged position to be able to commence their tournament, albeit later than anticipated, and to run the tournament through to its natural conclusion. Senior, professional, sporting clubs like these were entrusted by the Scottish Government and footballing authorities to play football matches and be involved in a league competing against a number of other clubs, both for their benefit and for the benefit of their supporters ,and for the country as a whole.

In such a privileged position the football clubs of the SPFL were under no illusion that they should use every conceivable power within their abilities to ensure that they met, and followed, the NHS, government and footballing guidance, rules and regulations given to them as well as those provided to the general member of the Scottish public.

The SPFL was able to return to football because the Scottish Government allowed them to do so with the use of rules and regulations that had to be complied with.

Earlier on in the season, for actions by certain players which appeared to be outwith the possible control of their clubs, players from Aberdeen FC and Celtic FC breached certain government guidelines and or regulations, and those two clubs were fined (partially suspended) as a result. Players of both of these clubs had been involved in unregulated acts of folly and their respective clubs had not breached the aforementioned regulations but were sanctioned on a strict liability basis. No doubt it was hoped that lessons would be learned by the footballing fraternity and SPFL clubs in particular, as a result of the breaches noted by Celtic and Aberdeen players and upon which the First Minister of our country referred to the “yellow card” having been shown.

We were taken to documents that bore to show to us that on a particular bus journey to and from a match, insufficient social distancing was ensured to apply, by the club, in respect of players and staff who utilised the bus. Players on that bus, who failed to appropriately and clearly socially distance to two metres, contracted Covid-19 due to insufficient social distancing.

Whether or not the Covid officer or the medical officer of the club were on the bus that took St Mirren to their match, is perhaps irrelevant for these officers of the club should have ensured that those travelling with the team to any match were fully versed in the rules and regulations of safe social distancing, that had to apply to any member of the public as much as it had to apply to the players of their club.

We were also shown drawings and diagrams of the seating arrangements for players at a pre match meal where coaching of some nature (team talk or other) was to have taken place and no exception was taken to that claim.

Players sat at round circular tables but those tables, albeit tables provided at the location in question, were then used to seat up to 6 players or staff at a time ,thereby showing that the club did not have sufficient regard to the need for appropriate two metre social distancing and this allowed the potential for the spread of the virus amongst those players and staff.

It was clear to us that anyone who had been instructed in the regulations that applied, would have been able to determine that no more than four players should have been sitting at any one table instead of the six who were so seated. Indeed, it could be argued that less than four should have been so seated at any one table.

Again at the pre match meal, as with the bus journey, we noted that the Covid officer and the medical officer were not present but they should have ensured, as should have other management members of the club, that at all times players and staff adhered to the two metre social distancing and did not in any way breach same so as to lead to a potential spreading of the Covid virus.

Even if the tables had been set up in a certain way by the location organisers, it was required of the club to ensure that they only seated an appropriate number of players at any one table to ensure that social distancing continued.

In the case of St Mirren, a document produced after investigation by the local Health Board IMT was often referred to in these proceedings. Its provenance and its provision of a defined finding or outcome of investigation was clear during the course of the information and background that we heard. What is beyond doubt is that it had been prepared after a comprehensive Health Board enquiry and made clear findings with regard to the 4 areas of likely transmission within the club.

The recommendations made are for appropriate assessment of all areas identified as possible areas of transmission, and that included in particular a training facility where a pre-match training was held, the use of car sharing by players, and coach journey. This IMT assessment and recommendations summary is a very well-constructed and helpful document.

That document contains the telling findings that disclosed that the club had clearly, and in 4 clear areas of their business, failed the rules and regulations that they were to have been adhering to as an SPFL football Club.

We consider that we were taken, by both representatives, to all relevant documents in respect of the admitted breaches.

The club had an obligation to ensure that these actions were not undertaken by anyone within St Mirren Football Club, which is to say that lack of social distancing particularly at club events, which incorporated herein a bus journey to and from the match and a pre-match meal where some level of coaching was provided, as well as in the gym facility, and in ensuring safe travel by players and staff to and from the club. Indeed the club's own document and risk assessment, makes it clear that the club was aware that video meetings were to be preferred to face to face meetings and that they were acutely aware of the need to ensure that no opportunity was given for the spread of infection to occur. Spread it did and by its spread forced there to be two SPFL League matches that could not take place. Their conduct, of course, undermined the necessary protection and welfare of their own players.

Our powers of sanctions are wide and are contained within part J of the rules.

We take account of the whole circumstances of the case and of all the information provided to us where relevant. This season was highly unusual due to the Betfred Cup group stages not taking place in July but being scheduled for October and November, and the Scottish Cup from last season being played to a conclusion in the current season. All clubs were aware of that and that there was a concertina effect upon the season as a result. It made the rescheduling of matches more difficult if they have to be postponed. This was a season like no other and all clubs were aware of the necessity of the league to progress and to try to avoid any postponement of any matches whatsoever. We were indeed drawn to the fixture list which is congested even without postponements.

We are aware that in the league cup (Betfred Cup) the Board had adopted a policy that teams unable to fulfil fixtures for whatever reason would face a three nil loss being imposed, in that game, by the board. Failures to play games due to breaches of the rules and regulations are serious matters.

Unlike this club, both Celtic and Aberdeen had sufficient players to have fulfilled the fixtures required of them, had the Scottish Government not effectively postponed those matches. Both the Aberdeen and Celtic situations were strict liability matters, rather than the clubs themselves having been found to have a degree of culpability in the actions of their players outwith the club's control. We noted that St Mirren have no disciplinary record.

We noted that both Celtic and Aberdeen had fines of £30,000 imposed on them by the SPFL, part paid and part suspended, but we consider those to be very much base line figures rather than particularly high penalties.

It was submitted, on behalf of the club, that what we are dealing with here are "relatively minor" breaches in their nature. Whilst the club indicated that they were not trying to say that the matter was not "serious" they submitted that in the spectrum of breaches these were at the lower end. We find it hard to consider that repeated breaches that led to the postponement of football matches, against the background explained, could not be seen to be serious.

It was also submitted that the breach was an understandable breach and we simply cannot accept that. Against the background of the reams of public health information available, the fact that Covid restrictions and regulations, death tolls and infection spread are at the forefront of Scotland's news on a daily basis, means that we cannot consider that there will be any understandable breach in the circumstances narrated to us. The club patently failed to ensure social distancing between adults, who are either players or staff, and where they had already appointed both a Covid officer and a medical officer and has issued their own documentation to put in place rules that they then did not follow.

There is no ambiguity about two metre distancing. Every school child in Scotland should be aware of it. This is not a complex matter despite the large welter of NHS, SPFL and Government regulations and documentation available on the subject.

With reference to the inadequate mealtime distancing, whatever the table size, there was not social distancing ensured by the club and those travelling with the club.

We saw no evidence that the 2 metre distancing requirement was conveyed fully to the players, nor repeatedly enforced. Whilst this may not have been a deliberate flouting of the regulations this was a clear and repeated breach of those regulations.

Of course, following the protocols is not always a guarantee that transmission cannot occur but in this case it is admitted that it did occur and it had a consequence on a football match of indeed matches. The club's initial response was to cooperate with the IMT that was undertaken and we are advised that the club cooperated with that enquiry. The breaches had however already occurred, and matches had been postponed.

We were told that the club has, following upon this outbreak, taken steps to reduce further the risks identified but had they taken all steps necessary at the start of the season then either the outbreak would not have occurred, or if it had occurred then it would have occurred by transmission and infection outwith the club and would have left them effectively blameless against a set of charges which they now admit.

It was submitted by the club that the club had suffered a penalty by the time and expense involved in the investigation and the hearings but we do not consider that to be a penalty of any significance.

It was submitted that a sporting sanction was wholly inappropriate entirely disproportionate and arbitrary by the club, we disagree.

We consider that a playing sanction is proportionate in these circumstances because matches were lost (or postponed) due to the fact that the club was unable to fulfil its fixtures with Motherwell FC, and Hamilton Academical FC, as it had insufficient players fulfil those fixtures. This, as we have already said, is a season like no other where a tightened schedule means that any postponement threatens the sporting integrity of the tournament. A sporting penalty is not a “wholly inappropriate sanction” because there has been a sporting effect of the failures by the club, and so such a sanction is appropriate. Indeed, a similar approach was taken in the recent Autumn Nations Cup match involving Fiji who were unable to fulfil fixtures and their respective opponents were awarded 28-0 victories as a result.

The club submitted that there was an ‘accident of timing’ with reference to there being two matches postponed during one Covid outbreak. There is not an accident of timing, in our judgment, as to whether one, two or more games were postponed or lost as a result of this Covid outbreak.

It was submitted that there is nowhere else to go, in future potential breaches, if a sporting sanction is imposed but that it not correct because, as we have pointed out, J16 gives the Board and commissions a wide range of powers to impose a number of sanctions, either in accumulations or as alternatives depending on the circumstances of each breach.

St Mirren were not considering the effect upon other clubs that their failure to fulfil a fixture or fixtures would have when they allowed their players to breach the social distancing guidelines. It was submitted to us that it is not impossible to find dates to replay the matches. Whilst that might be the case there are other vagaries which may befall the season and mean that other matches must be postponed for reasons such as weather conditions etc.

In any event to allow the matches to be postponed and rescheduled (instead of effectively forfeited by a three nil loss with all points given to Motherwell and Hamilton respectively) would be to ignore the effect that would have, potentially, occurred by playing with a much depleted squad on the scheduled match days. Generally, the number required as a minimum for fielding a team is thirteen, when they would have been playing against a far larger squad on match day against Motherwell FC and again against Hamilton Academical FC.

We note of course that cup matches operate to a tight timescale but in this year of all years the league matches operate to a tight time scale due to fixture congestion. We consider these breaches, as admitted, to be important and significant breaches. All clubs were aware of the powers of the Board under J16 when entering into this season walking the tightrope of Covid infection.

Whether a particular sanction is to be imposed depends on the facts and circumstances in each individual case. We have considered the degree of culpability of the club in a season where the league can ill afford to see avoidable postponement of fixtures.

The effect on the players of the club must be considered. The club had a duty to protect their players and staff, yet in that duty they failed. Player welfare is of high importance.

We note the club’s relatively difficult financial circumstances, potentially as opposed certainly some other clubs, and are aware of the financial constraints on all clubs this season particularly where matches are without fans attending, and there is limited income from season tickets streaming of football games. We were provided with the club’s financial accounting papers, and we considered same.

Our sanction therefore in respect of this matter is that in terms of rule J16.7 the official match between St Mirren and Motherwell should be awarded to Motherwell FC with a score of three nil against St

Mirren. Exactly the same outcome is our decision in respect of the club's match against Hamilton Academical FC. We consider this to be entirely appropriate, proportionate and just having regard to all of the circumstances of this case. We note that other matches have been awarded, in other different circumstances as three nil wins for an opponent, when a breach of regulations has occurred in the past, albeit not a breach of Covid regulations.

We do not consider this to be unfair on the other teams in the league or indeed overly fair to Motherwell or to Hamilton, it simply happens that Motherwell, and also Hamilton, were the clubs involved here. Motherwell and Hamilton players were potentially also being jeopardised by the actions of St Mirren, and to reschedule the fixtures would have welfare implications for all players to play other fixtures.

Covid regulations and in particular social distancing are in place for a very good reason, it is of national importance that Covid is beaten and for the club to have failed to ensure appropriate systems were in place to make sure that no spreading of the infection occurred, is a very serious matter. It had sporting consequences and will have a sporting sanction.

The club is also fined. We referred to the fact that the Celtic and Aberdeen fines were a base line, we consider that although this is a season when finances are strained more than most, and that the club is not a particularly financially "well off" club, a fine is appropriate. However we consider that the financial penalty, which should be imposed at a total of £40,000 shall be wholly suspended until the 30th June 2021 and shall only be considered for use and imposition in the event that the club further breaches the Covid regulations prior to the 30th June 2021. Should any such financial penalty require to be enforced then the sum shall be paid over to the SPFL Trust, and not to the SPFL itself, for any future breach by this club.

We had consideration for the fact that there were effectively four breaches by the club. The breaches involved two bus trips (to and from one game), inadequately spacious facilities utilised by too many players at their then training ground at Ralston, inadequate social distancing at a team meeting/meal prior to the match at Dumfries, and the travelling together by players in cars of up to four persons to and from the training facility of the club.

We of course note the club has, subsequently, produced additional documents setting out safeguards and rules for their players and staff. However we are equally mindful of the fact that the public at large were aware of the need for social distancing, there were return to training and return to matches protocols from the SPFL, that the club had a Covid officer and a medical officer, that everyone should have been hypervigilant. Further that all of the rules and regulations involving social distancing should have either been known to the players and staff and enforced by the players and staff or should have been regularly repeated by management.

It is against the background of a shortened, compacted season, with huge pressure on fixture availability, and upon hypervigilance, that these breaches occurred.

It is against a background of the club having been placed in this privileged position, along with the other Premiership clubs, to have been allowed to play matches, train and become a "club" again in the face of a Covid pandemic, that these breaches occurred.

The IMT document sets out very clearly that after an investigation by the local health board, it was established that the club were responsible for allowing the transmission of this disease amongst their players and staff when that simply should not have been allowed to occur. We are mindful of the fact that there will be circumstances where, for example, partners of players will return home from their work (perhaps in the care system) and inadvertently pass on the virus to the players. This is not what we were faced with here. The club could have done nothing about such a scenario of home

transfer to its players, but the club most certainly could and should have enforced the tightest of regulations and the tightest of following of those regulations, and they did not do so.

It is submitted to us, by the club, that it was an “accident of timing” that two of St Mirren’s Premiership league matches were postponed (because of the applications that they made to the SPFL given their lack of players due to recovery and quarantining). Indeed we have dealt with a similar case involving Kilmarnock and they also missed two games though one of them was in the Betfred cup where the rules of that competition simply ensured that the club had a three-nil loss imposed upon it for that game. Whether it is unfortunate or not, that St Mirren were unable to fulfil two SPFL fixtures, is merely a direct consequence of them allowing their players to cross contaminate within the squad, thereby rendering them unable to perform their pre-arranged obligations in terms of football matches against Motherwell FC and Hamilton Academical FC. We consider that the club quite clearly breached the relevant rules and regulations, they have admitted such, and they fall to be sanctioned accordingly.

We note that their finances are very difficult this season because of the obvious effect of lack of gate receipts and match day sales. This is the same for every football club but for clubs like St Mirren and Kilmarnock, who run very tight budgets year on year, it is particularly difficult. It is with that in mind that whilst we find this to be a very serious matter, we determine that the fine imposed upon them should be wholly suspended. That suspension of funds will be lifted, and the £40,000 that we impose by way of fine, paid to the SPFL Trust, in the event of any further determined breach of the Covid regulations and rules prior to 1st June 2021.

In this season above all others, it is vital to ensure that matches are played on time. The fixture congestion of the league is clear and has been clear from an early stage to all clubs, including St Mirren, as outlined to them by Calum Beattie (SPFL Assistant Company Secretary) and others.

How it affects others in the SPFL is not of our concern, what is of our concern is that a sporting sanction is required to be imposed in respect of each failure by St Mirren to perform their sporting obligation of playing the scheduled football match, which arose solely as a result of their own admitted breach of the rules and regulations in terms of the complaint. Accordingly we consider that it is appropriate to impose, and we do, two three-nil results in the two matches, one in favour of Motherwell FC and one in favour of Hamilton Academical FC.

Furthermore, we consider that a reprimand of the club is entirely appropriate in the circumstances of this case. We reprimand because of their patent failures to ensure that the rules and regulations incorporated in Annex 11 were followed, and as a result there were very serious consequences for players, staff and the SPFL.

SANCTION IMPOSED

We determine that, in respect of the match due to have been played on 17th October 2020, there shall be imposed on that fixture the result of St Mirren FC 0 Motherwell FC 3. Accordingly, the result shall mean that 3 points shall be awarded to Motherwell FC and zero to St Mirren FC.

We determine that, in respect of the match due to have been played on 24th October 2020, there shall be imposed on that fixture the result of St Mirren FC 0 Hamilton Academical FC 3. Accordingly, the result shall mean that 3 points shall be awarded to Hamilton Academical FC and zero to St Mirren FC.

There shall be a fine imposed of £40,000 but that shall be wholly suspended until 30th June 2021. In this decision, the reference to a fine being suspended means suspended until the 30th June 2021. If the

Club, by any act and/or omission, breaches or fails to fulfil any provision of the SPFL Rules and/or Regulations relating to Covid containment for any Competition, any Rule or Regulation with which the Club must comply, then the amount of the suspended fine will immediately become due and payable on any such breach and/or failure to fulfil being determined by a Tribunal to have occurred; and that whether such determination shall occur prior to or after 30th June 2021. The obligation to pay the suspended fine shall be in addition to any sanction imposed for any such future act and/or omission leading to such breach and/or failure to fulfil. In the event that no such determination of breach and/or failure to fulfil is made in respect of any such act or omission on or prior to 30th June 2021, then there will be no liability on the Club to pay the suspended fine.

We issue the foregoing reprimand to the club.

We shall not deal with the issue of the expenses of this process and we leave that matter for the Board itself to consider.

3 December 2020