



APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES

DETERMINATION IN THE FOLLOWING MATTER:

Player/Official/Member/Association Member/Participant/Club	Scots FC v St George Football Association – AT 19/02
Decision Appealed	Appeal from the decision of the Appeal Committee of St George Football Association
Date of Decision	6 August 2019
The basis upon which the matter is before the Appeals Tribunal	Sections 10.1(d), 10.2(g) & 10.6(a)(d) of the Football NSW Grievance and Disciplinary Regulations, 2019
Ground(s) of Appeal	Section 10.3(a), (b), (d) & (e)(v) of the Football NSW Grievance and Disciplinary Regulations, 2019
Date of Hearing	6 February 2020
Date of Determination	10 February 2020
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair Graham Turnbull SC DCJ, Deputy Chair David Stanton, Member

I. INTRODUCTION

1. Under section 10.1 of the Football NSW Grievance and Disciplinary Regulations, 2019 (**FNSW Regulations**), the Appeals Tribunal (**AT**) is responsible for hearing appeals from the Executive of Football NSW (**Executive**), the Disciplinary Committee (**DC**), the General Purposes Tribunal (**GPT**) and the Member Appeals Committee (**MAC**).
2. The sole grounds of appeal prescribed by section 10.3 of the FNSW Regulations are as follows:
 - (a) a party was not afforded a reasonable opportunity to present its case;
 - (b) lack or excess of jurisdiction;
 - (c) the decision was affected by actual bias;
 - (d) the decision was one that was not reasonably open having regard to the evidence before the decision-maker;
 - (e) severity, but only where the decision imposed a sanction of at least:
 - (f) a Fixture Suspension of 6 or more Fixtures; or
 - (g) a Time Suspension of 3 or more months; or
 - (h) a fine of \$3,000 or more; or
 - (i) a loss of 6 Competition points; or
 - (j) expulsion from a competition; and
 - (k) leniency, but only in the case of an appeal brought by Football NSW or an appeal allowed by the Executive pursuant to section 10.2(g) (Appeal from a MAC).
3. Upon the hearing of an appeal, the AT may:
 - (a) dismiss, allow in whole or part, or vary (whether by way of reduction or increase) any decision including any sanction or penalty; and

- (b) subject to any applicable Minimum Suspension/Sanction and Maximum Suspension, impose any sanction, measure or make any order it thinks fit or a decision that either the DC, the GPT or the MAC could have imposed or made under these Regulations, or its regulations, as the case may be;
- (c) conduct a fresh hearing of the matter (hearing *de novo*); or
- (d) remit the matter to the DC, GPT or the MAC from which the appeal originated, or to the tribunal (or similar) that dealt with the matter at first instance, for rehearing and issue any directions or orders in relation to the rehearing of the matter that the AT deems appropriate.

(s 10.4(b) of the FNSW Regulations)

II. ADMISSIBILITY AND JURISDICTION

4. This appeal arises from a determination of the Appeal Committee (**AC**) of the St George Football Association (**SGFA**) issued on 6 August 2019 (**AC Determination**). It has been brought pursuant to section 10.2(g) of the FNSW Regulations.
5. Section 10.6(b) of the FNSW Regulations requires that such an appeal be brought within 7 working days of the issuing of the determination that is ultimately the subject of the appeal. In this case, the appeal was therefore required to be lodged by 15 August 2019. However, pursuant to section 10.6(c) of the FNSW Regulations, the Executive extended the time within which Scots FC was to lodge its appeal to 16 August 2019. The notice of appeal in this procedure was filed on that day.
6. An appeal only lies to the AT from a decision of a MAC such as the AC where the matter has proceeded in accordance with, and exhausted, a Member's own disciplinary/grievance rules and regulations (FNSW Regulations, section 10.6(a)). Having regard to Part 4B of the SGFA By-Laws (updated as at 29 January 2019) (**By-Laws**), the AT is satisfied that Scots FC has exhausted all avenues of appeal available under those By-Laws.
7. The AT is accordingly satisfied that the appeal is both admissible and that it has jurisdiction to hear the appeal.

8. Further, neither party raised any objection to admissibility of the appeal nor to the AT having the requisite jurisdiction to hear it.

III. BACKGROUND FACTS

9. Under section 13.6 of the FNSW Regulations, any Match Official Report or any other report provided by a Match Official will stand as the facts of the alleged event unless the party challenging the facts of the event establishes, on the balance of probabilities, that the facts as recorded are inaccurate or otherwise misrepresent the event.
10. As there appears to be some controversy as to the facts which gave rise to the incident and which forms the background to this appeal, the summary of the background facts that follow is derived primarily from the incident and send-off reports of the centre referee and incident reports of each assistant referee which are consistent in all material respects with that of the centre referee.
11. On 18 May 2019, Scots FC PL/R played an away fixture to Connells Point FC at Poulton Park.
12. In the 62nd minute of the match and during a stoppage in play, there was a verbal altercation between Connells Point FC player no. 29 and Scots FC player no. 45. The referee immediately stepped between the players and instructed them to stop talking to one another and to get on with the game.
13. Connells Point FC player no. 29 was then substituted, left the field of play and sat on the bench. Moments later, and during the same stoppage in play, Scots FC player no. 45 moved to substitute himself. Rather than walk towards his bench, Scots FC player no. 45 stood at the edge of the Connells Point FC technical area and challenged Connells Point FC player no. 29 to fight.
14. The referee ran over to the benches blowing his whistle in short, sharp bursts. He stood in front of Scots FC player no. 45 with the Connells FC bench behind him. He instructed Scots FC player no. 45 to go to his bench in default of which he would be cautioned or sent off. Whilst this was occurring, Scots FC player no. 32, who was on the field of play standing on the sideline in front of the technical area taunted Connells Point FC player no. 29. Scots FC player no. 45 then stepped around the referee towards Connells Point FC player no. 29 and threw a

forceful, right-handed, closed fist punch that connected with the jaw of the Connells Point FC player no. 29.

15. Connells Point FC player no. 29 put his hands up to resist the attack. Scots FC player no. 32 then stepped off the field of play and also threw a forceful, right-handed, closed fist punch that connected with the face of Connells Point FC player no. 29. Scots FC players numbered 45 and 32 continued throwing punches with the force of the attack pushing Connells Point FC player no. 29 to the ground and back against the fence behind the bench.
16. All players from both sides joined the confrontation and a mass brawl began. Four to five spectators came over the rope from about 20 metres away and also joined the brawl. The referee observed the unfolding events from about 7 metres away. A number of Scots FC players had fallen to the ground on top of Connells Point FC player no. 29 and in his incident report the referee expressed concern for that player's safety.
17. The brawl lasted for about 60 seconds but was very intense. The players were separated from one another and stood in discrete groups in either half of the field of play. Many spectators were still on the field. The assistant referee nearest to the brawl was very distressed and overcome by what had occurred. Whilst the centre referee was consulting with the assistant referees, he observed Scots FC player no. 35 verbally confront a spectator, shouting at him and challenging him to fight. He had to be restrained by his teammates.
18. Once the conflict had sufficiently dissipated, the referee cautioned Scots FC player no. 35 for confronting the spectator and then showed him the red card as it was his second caution of the game. He ignored the sanction and continued his attempt to confront the spectator with his teammates having to drag him away.
19. The referee then showed the red card to Scots FC player no. 45 and to Scots FC player no. 32 for violent conduct.
20. The referee terminated the match in the 65th minute. After the match was terminated a number of police also attended the ground.
21. The SGFA General Purposes Tribunal (**GPT**) dealt with each of the red card offences and none are the subject of this appeal.

22. Scots FC PL/R was charged with a breach of By-Law Part 3 section 8(b)(ii). That by-law, referred to in more detail below, contains an endorsement by the SGFA of a "Zero Tolerance Policy" in relation to violence on the football field.

IV. THE HEARING BEFORE THE GPT

23. On 30 May 2019, the SGFA GPT relevantly found that Scots FC PL/R bore primary responsibility for the match being abandoned and that it had breached the Zero Tolerance Policy manifested in By-Law Part 3 section 8(b)(ii). The GPT sanctioned the Scots FC PL/R and PL1 teams by the forfeiture of 6 competition points for the 2019 season and by the forfeiture of a further 12 competition points with that sanction suspended until 31 December 2020.

V. THE HEARING BEFORE THE AC

24. Scots FC appealed the determination of the GPT to the AC on the grounds of severity and an alleged failure by the GPT to afford procedural fairness. The central factual issue before the AC was the proximate cause of the abandonment of the match and relatedly who was primarily responsible for that proximate cause.
25. The AC delivered its determination on 6 August 2019 dismissing the appeal and upholding the finding and sanction imposed by the GPT (**AC Determination**). Having considered the evidence and, in particular, that of the centre referee who also appeared before it, the AC found that:
- (a) the melee was the proximate cause of the match abandonment;
 - (b) Scots FC was responsible for initiating the melee. *"This is because if Scots FC#45 had returned to the Scots FC technical area (when asked to do so by the Referee) and not initiated the violent attack on the CPFC player, then Scots FC#32 would not have joined the violent attack and the ensuing melee would never have likely formed"*;
 - (c) Scots FC was therefore responsible for causing the match abandonment;
 - (d) the match abandonment brought about by Scots FC was embarrassing and brought the game into disrepute. At all times Scots FC was responsible for the behaviour of its players. *"The violent attack initiated*

by Scots FC#45, then joined by Scots FC#32, and later another 3 Scots FC players is unequivocally unsportsmanlike behaviour. It is incontrovertible that the conduct of Scots FC PL/R and PL/1 through its players has breached the Zero Tolerance Policy."

- (e) A team that breaches the Zero Tolerance Policy can be punished by being required to forfeit 12 competition points, withdrawn from the competition for any period, and the application of any other penalty within the jurisdiction of the GPT. *"If the GPT applied a penalty requiring Scots FC PL/R and PL/1 to forfeit 12 competition points and a further suspended forfeiture of 12 competition points until 31 December 2020, the AC would have upheld that penalty as it would be reasonable considering the objective seriousness of the unsportsmanlike conduct engaged in by Scots FC players."*
- (f) the GPT exercised its discretion to determine that Scots FC PL/R and PL1 must forfeit 6 competition points and a further suspended forfeiture of 12 competition points until 31 December 2020. *"Despite the Penalty being on the lower end of possible punishments that could have been applied to Scots FC PL/R and PL/1 based on the objective seriousness of its breach of the Zero Tolerance Policy, it was open to the GPT to determine the Penalty. Accordingly, on this occasion, the AC does not think it appropriate to increase the Penalty and the Penalty is upheld."*

VI. THE GROUNDS OF APPEAL

26. By Notice of Appeal filed on 16 August 2019, Scots FC appeals the AC Determination on each of the grounds stipulated in section 10.3(a), (b), (d), (e)(v) and (f) of the FNSW Regulations. However, by email dated 6 February 2020 addressed to FNSW, Scots FC notified that it would not be pressing the leniency ground of appeal (section 10.3(f)) although it intended to rely upon its written submissions on that point to support the severity ground of appeal (section 10.3(e)).

VII. THE HEARING

27. The AT heard the appeal on the evening of 6 February 2020.

28. At the hearing, Scots FC was represented by Mr Daniel Thomas, of counsel, instructed by Mr Rocco Domine, solicitor. Also in attendance for Scots FC were club representatives Messrs Tour and Nastevski. The SGFA was represented by Mr John Mallios, solicitor and the Chair of the SGFA AC. He was accompanied by Mr Taylor, a director of the SGFA. Mr Michael Kantarovski, Legal and Regulatory Officer, FNSW was also in attendance.
29. The parties provided the AT with the following written submissions:
- (a) Scots FC, dated 16 August 2019;
 - (b) SGFA, dated 11 October 2019;
 - (c) Scots FC (supplementary submissions), dated 11 September 2019; and
 - (d) Scots FC (reply), dated 5 November 2019 .
30. The parties were each afforded the opportunity to supplement their written submissions orally during the course of the hearing and the AT heard from each of them.
31. The parties relied upon the following evidence which they agreed was before the GPT and the AC or was otherwise admitted without objection:
- (a) referee's incident report, dated 18 May 2019;
 - (b) assistant referee's incident report, dated 18 May 2019;
 - (c) assistant referee's incident report, dated 18 May 2019;
 - (d) referee's send-off reports relating to Scots FC players no. 32 and 45;
 - (e) Scots FC Incident Report, dated 20 May 2019;
 - (f) "Scots FC Player Code of Conduct & Expectations", undated;
 - (g) SGFA members players registration figures, 2019 season, undated;
 - (h) Letter from Connells Point FC to the SGFA Judiciary, dated 20 May 2019 attaching statements from L Kontellis, P Lahanas, A Coombs, J Krslovic, D Harriton, J Russo and R Cario;

- (i) SGFA GPT Committee Report, dated 23 May 2019;
 - (j) SGFA GPT Committee Report, dated 30 May 2019;
 - (k) SGFA AC Minutes and Reasons for Decision for Hearings, dated 26 June and 17 July 2019;
 - (l) written statement by Mendo Pejovski, Scots FC President, dated 8 August 2019; and
 - (m) SGFA – Premier League 1, competition table as at 15 August 2019.
32. The SGFA also sought to rely upon a written statement of P Andonopoulos, dated 27 May 2019 and a further statement of J Krslovic, undated and headed “Verbal statement to SGFA General Purposes Tribunal” referred in and annexed to the SGFA written submissions.
33. At a directions hearing conducted on 5 December 2019 an issue arose as to whether these and other documents then in dispute were in evidence before the GPT and/or the AC in circumstances where there is no contemporaneous record of the documents that were before the GPT and the AC and nor do their respective determinations list or otherwise fully identify the evidence or other documents upon which those bodies relied.
34. The AT indicated that as the appeal would not be conducted as a hearing *de novo* the parties would not ordinarily be entitled to rely on any evidence that was not before the judicial bodies below and that if agreement could not be reached in relation to whether, and if so which documents, were relied upon in the hearings before the GPT and the AC, in the absence of any contemporaneous evidence upon which a ruling could be made, the AT would likely not permit any such documents to be relied upon in the appeal.
35. The parties have been able to reach agreement in respect of identifying the documents which were in evidence before the AC leaving in dispute only the written statement of P Andonopoulos, dated 27 May 2019 and a further statement of J Krslovic, undated. No evidence was adduced by the SGFA of a contemporaneous or other nature which established, on the balance of probabilities that these statements were in evidence before the GPT or the AC. Mr Mallios, the AC Chair asserted that the subject statements had been provided

to Scots FC at or prior to the GPT hearing. Mr Thomas, on instructions, denied that assertion. In these circumstances and, in the absence of any contemporaneous record touching upon or concerning the issue, the AT cannot be satisfied on the balance of probabilities that the subject statements were in evidence before the AC and accordingly determined that it would not permit them to be relied upon in the hearing before the AT.

VIII. THE PARTIES' SUBMISSIONS

36. What follows is a summary of the parties' submissions. To the extent that the summary omits any contentions, the AT notes that it has considered the evidence as admitted and the arguments submitted by the parties.

IX. SUBMISSIONS OF SCOTS FC

37. Scots FC contended that it was not afforded a reasonable opportunity to present its case and the decision was one that was not reasonably open to the AC having regard to the evidence before it because:
- (a) the referee gave oral evidence to the AC that was contradictory to that contained in his written incident reports and send-off reports and, to the extent of any inconsistency, greater weight should be given to the version provided by the referee in his reports which were made more contemporaneously with the incident in question than the evidence given by him orally to the AC;
 - (b) the AC incorrectly gave significant probative value to the referee's oral evidence; and
 - (c) the AC hearing was conducted over two evenings, on 26 June 2019 and on 17 July 2019. The referee gave oral evidence to the AC at the latter hearing. Whilst Scots FC attended the hearing on 26 June 2019, it was not invited to attend the latter hearing and, accordingly, was denied the opportunity to challenge the evidence given by the referee before the AC as it claims to be entitled pursuant to Part 4B, clause 18(h) of the By-Laws. It was accordingly denied procedural fairness.
38. Scots FC submitted that the sanction imposed on it was significantly higher than that of its opponent and was therefore not in accordance with the proportionality

principle. It contended that there was substantial involvement from both teams, however, Scots FC received a more substantial sanction. Connells Point FC received a 6 point competition penalty suspended until 31 December 2019. It was submitted that significant weight must be given to the verbal altercation prior to the melee and the involvement of the spectators when determining the appropriate sanction. The sanction imposed by the GPT and upheld by the AC focussed primarily on the initial physical altercation and not the verbal exchanges prior to the melee or the involvement of the spectators. The sanction is said to be harsh, unfair and excessive.

X. SUBMISSIONS OF SGFA

39. The SGFA accepted that there are some inconsistencies between the referee's incident report and the oral evidence provided by him to the AC of the course of events leading to the abandonment of the match. It submitted that inconsistencies are not unusual because referees are often required to prepare multiple reports immediately after an incident while simultaneously attending to a number of other administrative matters at the conclusion of a game. These competing considerations can affect the description of facts in the reports.
40. The description of facts in a more controlled environment where the referee is able to solely focus on their recollection of events can often be more reliable; the time available to referees to complete incident reports and send-off reports is very short; and referees may feel more comfortable explaining their recollection orally rather than in writing and the additional time to think about an incident allows them to more reliably sequence the course of events or the conduct of particular individuals. When the referee appeared before the AC, his reasoning process for the abandonment of the match was unequivocal.
41. Scots FC was afforded procedural fairness by: being given the opportunity to appear before the GPT to make appropriate submissions; being permitted to appear before the AC to make submissions in support of the appeal; and by the AC electing to conduct the appeal by way of a rehearing thus permitting Scots FC to adduce new evidence and make fresh submissions not presented to the GPT.
42. The GPT and the AC do not use, and have never used an adversarial system to conduct hearings. Instead, the GPT and the AC use an inquisitorial system in which they take an active role in collecting evidence acquired for the

determination of a matter. Match officials are not usually permitted to be directly cross-examined. Scots FC was not adversely impacted or prejudiced by not having an opportunity to challenge or test the evidence given by the referee because the procedure used by the AC does not permit the cross examination of a match official, the course of events leading to the abandonment of the match alleged by Scots FC in its written and oral submissions were well understood by the AC, and it was obvious to the AC that there were some inconsistencies between the referee incident report and the evidence given by the referee when appearing before it.

43. The sanctions that the GPT and the AC can impose where a match has been abandoned and the team has engaged in unsportsmanlike behaviour or brings the game into disrepute is to be found in Part 3 section 7, Part 3 section 8 and Part 4B section 12 of the By-Laws. In oral submissions, Mr Mallios also contended that Part 4B section 14(vi) of the By-Laws clothes the GPT with a wide discretion to determine and set punishments and/or sanctions that it considers appropriate and that in doing so it is not otherwise bound by any punishment or sanction prescribed by the By-Laws.
44. The SGFA submitted that the sanction imposed was appropriate when regard is had to the objective seriousness of the conduct, the proximate cause of the abandonment of the match and the maximum penalties available under the By-Laws.

XI. THE APPLICABLE LAW

45. An appeal involves the consideration of whether the decision under consideration is affected by legal, factual or discretionary error (see, for example, *Allesch v Maunz* (2000) 203 CLR 172). The question as to whether there is any evidence of a particular fact is a question of law. Likewise, the question as to whether a particular inference can be drawn from facts found or agreed is also a question of law (see, for example, *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 355 per Mason CJ).
46. However, in considering an appeal regard must be had to the comparative advantages available to the tribunal at first instance of having experienced the whole course of the proceedings including having heard and observed all of the

witnesses and having considered the totality of all of the other evidence (see, for example, *Fox v Percy* (2003) 214 CLR 118).

47. A decision is not reasonably open to a tribunal having regard to the evidence before it (and is thus affected by error) if that evidence in its totality preponderates so strongly against the conclusion found by the tribunal that it can be said that the conclusion was not one that a reasonable tribunal member could reach (see, for example, *Calin v The Greater Union Organisation Pty Ltd* (1991) 173 CLR 33 and *Mainteck Services Pty Limited v Stein Heurtey SA* [2013] NSWSC 266).
48. Further, the AT will only intervene to set aside a determination on the ground that it is unreasonable if "*there was no information available to the tribunal on which reasonable and honest minds could possibly reach the conclusion* (see the decision of the Appeal Committee of the Football Federation of Australia in the *matter of Roy O'Donovan*, 25 January 2016 at [16] and the cases there referred to).
49. For the purposes of an appeal generally, it will be necessary to demonstrate legal error, not merely an erroneous ruling, and the error must be material to or likely to affect the outcome of the decision appealed from; that is, the decision must be one which is vitiated by error (see, for example, *Hamod v Suncorp Metway Insurance Ltd* [2006] NSWCA 243 at [11], *Yates Property Corp Pty Ltd (in liq) v Darling Harbour Authority* (1991) 24 NSWLR 156 at 177).

XII. CONSIDERATION AND DETERMINATION

50. At the conclusion of the hearing, the AT orally pronounced its determination with short reasons. These are the written reasons of the AT.
51. Part 3 of the By-Laws is entitled "Playing Rules and Match Procedures". Within Part 3 section 8 is entitled "Zero Tolerance". Relevantly, section 8(b)(ii) provides as follows: -

"Where a team and/or associated team official is found guilty of unsportsmanlike behaviour or of bringing the game into disrepute, regardless of whether the game has been abandoned or whether such behaviour is before, during or after the game, the team shall forfeit 12 (twelve) competition points, or be withdrawn from the competition for a period to be determined. This will be in addition to any penalties imposed under Part 3.7.(f)."

52. Part 3 section 7(f) of the By-Laws is of no relevant application as Scots FC was not sanctioned under that section.
53. The GPT and the AC found that the conduct by Scots FC PL/R in its fixture against Connells Point FC was unsportsmanlike behaviour and brought the game into disrepute and was thus in breach of the "Zero Tolerance Policy" manifested in Part 3 section 8(b)(ii) of the By-Laws.
54. The GPT and the AC imposed by way of sanction that Scots FC PL/R and PL1 must forfeit 6 competition points for the 2019 season and a further forfeiture of 12 competition points suspended until 31 December 2020.
55. As to those grounds of appeal relating to sanction, by written directions made on 28 August 2019 and repeated in a directions hearing conducted by telephone on 5 December 2019, the AT requested the parties to consider and address a question to the following effect: having regard to the provisions of Part 3 section 8 of the By-Laws, what is the jurisdictional basis for the GPT or the AC to impose a penalty other than that prescribed by Part 3 section 8(b)(ii) of the By-Laws? Neither party addressed this question in their written submissions despite being afforded an opportunity to prepare supplementary submissions directed to this point. The parties were, however, informed during the course of the directions hearing on 5 December 2019 to be prepared to make submissions on this point at the hearing.
56. During the course of the hearing the parties consented to the AT addressing this issue as a separate question. Scots FC agreed that in the event that this question was determined favourably to its interests it would not pursue any other grounds of appeal. The AT was content to do so because it considered that the answer to this question could be dispositive of the appeal.
57. Part 3 section 8(b)(ii) of the By-Laws prescribes a sanction of a forfeiture of 12 competition points or the withdrawal of a team from the competition for a period to be determined. This sanction is in addition to any that may be imposed under Part 3 section 7(f) of the By-Laws and those otherwise identified in Part 3 section 8(c) to (f).
58. Properly construed, Part 3 section 8(b)(ii) of the By-Laws requires that if a judicial body determines that a team has breached the provision and opts to

impose a sanction of the forfeiture of competition points, it must be a mandatory deduction of 12 points. So much is apparent from the use of the word "shall" which is mandatory or directive rather than, for example, the word "may", if it had been used, which is permissive or facultative and thus imports the exercise of a discretion (see, for example, *Grunwick Processing Laboratories Ltd v Advisory, Conciliation and Arbitration Service* [1978] AC 655 and *Ward v Williams* (1955) 92 CLR 496).

59. The only discretion inherent in Part 3 section 8(b)(ii) of the By-Laws is as to whether to impose the forfeiture of the designated competition points or the withdrawal of the team from the competition for a period. A sanction of the forfeiture of competition points is, of its nature, limited to being imposed in the season in which a breach is established. It cannot carry over into another season. An arguably more severe penalty is the withdrawal of a team from a competition for a period of time. The GPT and the AC did not sanction Scots FC by withdrawing them from the competition.
60. The SGFA referred in its written submissions to Part 4B section 12 of the By-Laws. That section concerns the jurisdiction of the GPT which includes having exclusive jurisdiction to hear matters relating to "abandoned games (for any reason)" which would presumably include a game abandoned as a consequence of conduct in breach Part 3 section 8(b)(ii) of the By-Laws. However, the section does not stipulate the sanctions which the GPT is permitted to consider or impose in such circumstances.
61. In oral submissions, the SGFA contended that Part 4B section 14(vi) of the By-Laws clothes the GPT with a wide discretion to determine and set punishments and/or sanctions that it considers appropriate and that in doing so, it is not otherwise bound by any punishment or sanction prescribed by the By-Laws. That By-Law is in the following terms:

"The GPT has the power to:

.....

- (vi) *Determine and set punishments and/or sanction is that it considers appropriate, even if such punishment and/or sanction is not in accordance with these guideline(sic)."*

62. Mr Mallios submitted that this provision permits the GPT, subject only to acting reasonably, to impose any punishment or sanction notwithstanding the terms of any By-Law to the contrary.
63. There are a number of difficulties with this contention. First, the provision refers to "these guidelines". A guideline is usually understood as being information which is intended to provide advice, assistance or instruction in a particular circumstance. It is thus not usually binding. The By-Laws are not, in the view of the AT, properly construed, "guidelines". They are, instead, provisions which, as Part 1 section 1 of the By-Laws make plain, are intended to govern the activities and conduct of all persons associated with the game of football under the jurisdiction of the SGFA. They are intended to and have a binding effect.
64. Secondly, even if the provision applies to the By-Laws, the AT is of the view that the discretion is in general terms and must yield to provisions of the By-Laws such as Part 3 section 8(b)(ii) which expressly provide binding mandatory sanctions for breach. That provision expressly and specifically regulates and creates a liability for teams engaging in the conduct proscribed by that provision. It is thus the *lex specialis* and would prevail over a more general provision (*lex generalis*) such as that under consideration.
65. In *CAS 2014/A/3665, 366 & 3667 Luis Suarez, FC Barcelona & Uruguayan Football Association v FIFA*, the Court of Arbitration for Sport found that where a code proscribes particular misconduct any relevant charge should be brought under that provision as the *lex specialis* and not under a provision which may also apply more generally. It relevantly reasoned that any provision which prohibits certain specific or defined conduct is intended to cover the field, or be exhaustive of the sanction applicable to that conduct.
66. Thirdly, if Part 4B section 14(vi) was intended to operate in the manner submitted by the SGFA it would mean, for example, that the GPT would have the power to ignore and give no effect to those parts of the By-Laws which impose mandatory minimum sanctions including not only Part 3 section 8(b)(ii) (as the AT has found) but also Schedule C which stipulates minimum sanctions for a range of on-field offences. That would have the undesirable consequence of introducing a potentially high degree of uncertainty for players, team officials and

other persons associated with the game of football in relation to the sanctions that would apply in the event of particular breaches.

67. As a matter of completeness, the AT notes that under Part 4B section 16 of the SGFA, the GPT has the power to impose the sanctions as outlined Section C. Schedule C of the By-Laws enables the GPT to sanction players for bringing the game into disrepute and provides minimum and maximum penalties. However, in this case, no player was specifically charged with bringing the game into disrepute. Rather, Scots FC PL/R was charged with having breached the Zero Tolerance Policy. Thus, the sanctions enumerated in Section C are of no present relevance.
68. There is no other provision in the By-Laws other than Part 3 section 8(b)(ii) which touches upon or concerns sanctions for breach of the "Zero Tolerance Policy."
69. As the sanction imposed by the GPT and by the AC was beyond the jurisdiction of those bodies, the appeal based upon section 10.3(b) of the FNSW Regulations, namely, that those bodies lacked jurisdiction or that they purported to exercise jurisdiction which they did not possess, must succeed in so far as the sanction imposed is concerned.
70. Having found that Scots FC PL/R had breached Part 3 section 8(b)(ii), the GPT and the AC should have imposed the mandatory sanction as prescribed by that provision being the forfeiture of 12 competition points in the 2019 season. Having regard to the terms of Part 3 section 8(e) of the By-Laws, the punishment applicable to Scots FC PL/R also applies to Scots FC PL1.
71. Having regard to this finding and the agreement of Scots FC (as recorded earlier in these reasons) the balance of the grounds of appeal fall away. One of those grounds was that the determination of the AC was not reasonably open to it because it "...*incorrectly gave significant probative value to the oral evidence given by the referee...*" at the AC hearing in circumstances where it was not invited to attend that hearing and test the evidence given by the referee. Scots FC submitted that "...*the statements made contemporaneous to the incident to be consistent to the actual version of events.*"

72. In deference to the submissions made by the parties on this point, the AT is of the view that the evidence provided by the referee and assistant referees in their respective incident reports and the referee in his send off reports are sufficient, without more, to have provided a foundation for the finding by the GPT and the AC that members of the Scots FC PL/R acted in an unsportsmanlike manner and brought the game into disrepute for the purposes of establishing a breach of Part 3 section 8(b)(ii) of the By-Laws and for attracting the mandatory sanction prescribed by that provision.
73. The conduct by Scots FC PLR was deplorable, unseemly and unwarranted. It reflected poorly on the players, the team, the Club and the image of football. It cannot and should not be tolerated at any level of the game.
74. If it had been required to determine this ground of appeal, the AT would have found no basis to justify it intervening to set aside the determination by the GPT and the AC that the conduct of Scots FC PL/R comprised a breach of Part 3 section 8(b)(ii) of the By-Laws.

XIII. CONCLUDING REMARKS – NEED FOR REFORMS

75. As is now evident from this determination, there is an unnecessary degree of complexity in the By-Laws relating to the implementation of the "Zero Tolerance Policy". It must be resolutely born in mind that at the Association level, this is a sport played and run by and for amateurs. Undue legalism should not disrupt or impede the comfortable understanding of what is required of tribunals charged with dealing with incidents that arise and that require the apportioning of responsibility and the imposition of sanctions.
76. In our view the provisions to which we were referred and which are the subject of this determination should be reviewed. Clarity is crucial.
77. If there is to be "Zero Tolerance Policy" and a mandatory sanction if an offence is established that can and should be evident from the applicable provision. If there is to be a discretionary penalty instead of or in addition to a mandatory sanction that should be explicitly stated in the applicable provision.
78. The By-Laws should serve to resolve argument, not generate it.

XIV. RELIEF

79. The appeal is allowed.
80. The determinations of the GPT dated 30 May 2019 and of the AC of 6 August 2019 that Scots FC PL/R breached Part 3 section 8(b)(ii) of the By-Laws are each affirmed.
81. The determinations of the GPT dated 30 May 2019 and of the AC of 6 August 2019 imposing upon Scots FC PL/R and Scots FC PL1 a sanction of a forfeiture of 6 competition points for the 2019 season and 12 competition points suspended until 31 December 2020 is set aside.
82. Pursuant to Part 3 section 8(b)(ii) of the By-Laws Scots FC PL/R and Scots FC PL1 shall each forfeit 12 competition points for the 2019 season.

A handwritten signature in dark ink, appearing to read 'A. P. Lo Surdo'.

A P Lo Surdo SC
Chair
Appeals Tribunal
Football NSW