



Arbitration CAS 2019/A/6288 Waterford FC v. Union des Associations Européennes de Football (UEFA), award of 5 August 2019 (operative part of 28 June 2019)

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

Football

Refusal to grant a licence to participate in a competition

Competence to grant a licence and to grant an exception to the three-year rule of article 12 (2) UEFA CL&FFP

Aim of the three-year rule

Strict interpretation of the exception to the three-year rule

No unequal treatment

1. Under the applicable regulations a national federation is alone competent to grant a licence to an affiliated club whereas the UEFA CFCB Investigatory Chamber is alone competent to grant a club's request for an exception to the three-year rule as defined in article 12 (2) of the UEFA Club Licensing and Financial Fair Play Regulations ("CL&FFP"). If granted, the exception to the three-year rule club enables the licence applicant (the club) to secure a UEFA licence from its federation absent satisfaction of the three-year criterion i.e. despite the fact that its membership in its federation i.e. a UEFA member association and its contractual relationship (if any) of a UEFA member association did not last – at the start of the licence season – for at least three consecutive years. In appealing an alleged refusal by UEFA to grant it a licence, a club conflates and confuses the distinctive roles of the national federation and UEFA.
2. The objectives of the three-year rule are to (i) act as a deterrent against financial misconduct, protect clubs' creditors, (ii) encourage new investments into existing clubs, (iii) preserve club's identity, and (iv) help safeguard the integrity of the competition. The three-year rule has also been established to avoid circumvention of the CL&FFP Regulations. In particular, clubs are not to be permitted to create a new company or change their legal structure so as to "clean up" their balance sheet while leaving their debts in another legal entity (which is likely to go bankrupt). If allowed, this kind of device would obviously harm the integrity of competition and would contradict the interest of the sport as well as putting at risk the interests of creditors. Furthermore, the application of the three-year rule and its exceptions must be combined with the fundamental principle of legality which aims at avoiding unequal treatment and arbitrary decisions.
3. The possibility to grant exceptions to the three-year rule must be strictly interpreted. It is well established law that such is the correct approach to any exception to a general rule. The three-year rule, being consistently applied, aims precisely at ensuring the integrity of the competitions. The exception process was created to prevent unfair situations, which may occur when applying a rule without any derogation. The grant of

the exception is under the CL&FFP Regulations a matter for the discretion of UEFA. It is for the club to show why the discretion should be exercised in its favour, not for UEFA to show why it should not.

- 4. There is no unequal treatment of a club where the circumstances in which an exception was previously granted to another club were different.**

I. PARTIES INVESTIGATORY

1. The Appellant in these proceedings is Waterford Football Club (“WFC”), a professional football club competing in the League of Ireland Premier Division and affiliated to the Football Association of Ireland (hereinafter “FAI”). WFC appeals a decision of the UEFA CFCB Investigatory Chamber (“The Chamber”), to refuse to grant an exception to the three-year rule to Power Grade Ltd (trading as Waterford FC) (“the Appealed Decision”).
2. The Respondent in these proceedings is the Union des Associations Européennes de Football (“UEFA”), the governing body of European football. UEFA is an association under Articles 60 *et seq.* of the Swiss Civil Code with its headquarters in Nyon, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties’ pleadings and exhibits. Additional facts and allegations found in the parties’ pleadings and exhibits may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. A club entitled “Waterford Football Club” was founded in 1930 and competed in the League of Ireland.
5. In May 1982, Waterford Football Club changed its name to Waterford United and continued to participate in the League of Ireland.
6. In 2003, the League of Ireland changed from a winter league to a summer league. There are two professional divisions, the SSE Airtricity League Premier Division (“Premier Division”) and SSE Airtricity League First Division (“First Division”). The top and second division which are the only professional leagues to which clubs are admitted on an ‘invitation’ basis.

7. On 21 October 2005, WUFC Operations Limited (“WUFC”) was incorporated with the Companies Registration Office of Ireland and became a member of the FAI and a yearly participant in the League of Ireland until the end of the 2016 season.
8. WUFC did not apply for a 2017 domestic licence.
9. On 14 December 2016, Power Grade Ltd was incorporated with the Companies Registration Office of Ireland.
10. On 6 January 2017, the business name “Waterford FC” was registered to Power Grade Ltd.
11. On 13 February 2017, WFC became a full member of the FAI when it obtained a domestic licence to participate in the First Division. At the same time WFC signed a participation agreement to play in the League of Ireland in 2017 and subsequent years.
12. In October 2017, WFC was crowned champion of the First Division and was promoted to the Premier Division.
13. On 24 October 2018, WUFC was dissolved.
14. On 26 October 2018, the Premier Division season concluded. WFC finished in fourth position which could have entitled it to participate in the first qualifying round of the UEFA Europa League 2019-2020 on sporting merit. St. Patrick’s Athletic (“St Patricks”) finished one place behind WFC i.e. in fifth position.
15. On 25 March 2019, five months later, the FAI applied by letter, (“The FAI letter”) “on behalf of Power Grade Ltd trading as Waterford FC” for the granting of an exception request for the “three-year rule” as defined in Article 12(2) of the *UEFA Club Licensing and Financial Fair Play Regulations* (“CL&FFP”) and filed an exception request form for non-application of the three-year rule designated for the “*transfer of football club[s] from one legal entity to another*”.
16. In the FAI letter the FAI, stated that:
 - i. There is no legal connection between the old and new entities which are separate legally under law;
 - ii. Both entities are also unconnected in terms of ownership and football management personnel;
 - iii. The FAI Board would not have accepted any legal connection with WUFC and those applying to operate the new entity WFC;
 - iv. WFC is not a reinvention of WUFC;
 - v. WFC adopted the original trading of the club as it desired to benefit from the historical affiliation with the city;

- vi. It is common for new entities to purchase/take over/adopt the trading of a name of the existing or previous entity to ensure continuity of stakeholders and fan-base but this is not evidence in any form of a reinvention of the same club;
 - vii. Brand names are purchased/taken over/adopted regularly in commercial business with no legal connection to the former owners;
 - viii. WUFC has not been purchased or taken over by WFC;
 - ix. WUFC has not transferred any of its liabilities or responsibilities to WFC;
 - x. The two companies are wholly separate legal entities; and
 - xi. WFC has no legal responsibility for any of the liabilities or to deal with any creditors of WUFC.
17. The FAI in the FAI letter also submitted that WFC embraced *“the spirit of the [CL&FFP] regulations”* in so far as *“[Notwithstanding there being no legal obligation to do so, the new entity [WFC] paid off football creditors of [WUFC]”* (emphasis added) and that *“[t]hese significant gestures have ensured goodwill towards the new club within the football family in Waterford City”*. (Additionally, WFC has furnished an Excel table alleging that it paid off all *“known creditors”* of WUFC (for an amount of around EUR 100000) from 19 December 2016 until 13 February 2017).
 18. The FAI letter concluded that WFC should be granted an exception to the *“three year rule”* for the reasons set out in paragraphs 16 and 17 above *“and in the interests of football in Waterford City and the League of Ireland in general”*, adding *“this case can be distinguished from other cases where clubs purposely avoid paying creditors by entering into the insolvency processes and re-inventing themselves to continue within football”*.
 19. On 12 April 2019, the Chamber met and took the decision not to grant the exception request for the non-applicability of the three-year rule to WFC (“the initial decision”).
 20. On 17 April 2019, the FAI confirmed that *“it [was] in receipt of a letter from St Patrick’s Athletic in relation to UEFA Club Licensing and is looking into the matter”*.
 21. On 17 April 2019, upon a FAI request, the UEFA administration communicated informally the initial decision to the FAI in order to facilitate the FAI’s club licensing process, in particular in so far as concerned the eligibility of WFC as an UEFA Licence applicant.
 22. On 18 April 2019, the FAI issued a statement that it *“can confirm it has received notification from UEFA’s Licensing Department that Waterford FC’s exception request has been rejected on the non-fulfilment of the three-year rule as defined in the UEFA Club Licensing and Financial Fair Play Regulations [...] and that “UEFA has informed the FAI that, following (that decision) WFC may not apply for an UEFA licence for the UEFA club competitions for the season 2019/20”*.
 23. On 19 April 2019, WFC issued the following statement (“the WFC statement”):

*Everyone at Waterford FC are deeply shocked and saddened at the news that we have been expelled from playing in the Europa League this season. We feel we have been **totally misled by the FAI** and were given assurances throughout this five-month process by them that the licence would be granted. We also had club visits by UEFA Delegates during this period of which no issues were raised.*

As a club, we entered into substantial commercial agreements and invested heavily again into the team and also budgeted for the qualification money due in November. This will now have a serious financial impact on the club going forward.

The circumstances to which this decision has been made and the events over the last week are unclear and dubious, bearing in mind representations made to us and assurances given.

We will be asking for a full investigation into the FAI handling of this matter.

*Have instructed my UK Lawyers to lodge an immediate appeal with UEFA and will **pursue any legal avenue we have with regards to compensation and/or any wrong-doing against a number of parties.***

Finally, I must mention the people who matter the most — The Supporters — who have supported this club through thick and thin and have been badly let down by the people in Ireland governing this process.

Lee Power,

Chairman/Owner

(Sole Arbitrators' emphasis).

24. On 24 April 2019, the FAI issued a statement that the “*Independent Club Licensing Committee of the Football Association of Ireland met on April 24, 2019 and awarded UEFA licences to four SSE Airtricity League clubs for the 2019-20 UEFA Club competition season [...] Dundalk FC, Cork City FC, Shamrock Rovers FC, St Patrick’s Athletic FC*”. Accordingly, WFC was not awarded a UEFA licence for 2019/20 (the “Licence Decision”).
25. On 26 April 2019, the UEFA administration received an email from WFC’s external counsel informing that it wished to appeal against the decision to refuse WFC’ a licence. WFC asked for a reconsideration of the matter, stating inter alia, that they “*assume(d) that their licence has been refused due to the disputed sums owed to their former manager Roddy Collins*” an issue with which they could “easily deal” and enclosing a draft of their appeal which, inter alia, sought to do so.
26. On 30 April 2019, following the observations submitted by WFC’s lawyer, the UEFA Administration, acting on behalf of the Chamber, requested WFC, inter alia, to (re)confirm the accuracy of the information provided by FAI in the FAI letter in support of the three-year rule exception request and annexes, and to provide some additional information, including (i) an assurance that all WUFC creditors had been paid off, (ii) any agreement between WUFC and WFC, (iii) any agreement between WFC/PowerGrade and the FAI/League of Ireland concerning any particular condition required for their affiliation to the FAI/participation to the

League of Ireland. It also shared with WFC information which it already had, including the feedback from the FAI concerning the complaints from Roddy Collins.

27. On 2 May 2019, in response WFC provided information with respect to its efforts to make payments to Roddy Collins, and confirmed that:
 - i. The information in the FAI letter was factually correct;
 - ii. There was no asset purchase or share purchase agreement between WUFC and WFC;
 - iii. The companies (i.e. WFC and WUFC) were not connected in any way and there were no persons involved in the ownership of WFC; who were involved in the ownership of WUFC;
 - iv. There was no conditional/ agreement with WFC and the FAI/ League of Ireland relating to their affiliation or any conditions (particularly relating to any financial liabilities) for WFC participating in the League of Ireland.
28. On 8 May 2019, the FAI submitted a UEFA Club Competitions 2019-20 entry form which registered St. Patrick's Athletic for the UEL 2019/20. The form confirmed that:

[o]n 3 June 2019 the above-mentioned club(s) will still fulfil all the admission criteria as defined in paragraph 4.01 of the Regulations of the UEFA Champions League 2019/20, the UEFA Europa League 2019/20 or the UEFA Youth League 2019/20”.
29. On 10 May 2019, the Chamber handed down the Decision under Appeal.
30. On 18 June 2019, the draw took place for the first qualifying round of the UEL 2019/20. St. Patrick's were drawn against FK Norrköping (SVVE). Their matches were scheduled to take place on 11 and 18 July 2019.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 16 May 2019, in accordance with Articles R47, R48 and R51 of the Code, WFC filed its Statement of Appeal to be considered as its Appeal Brief.
32. On 14 June 2019, the Sole Arbitrator was appointed as the Panel to decide this case.
33. On 20 June 2019, in accordance with Article R55 of the Code and the expedited procedural calendar agreed by the Parties, UEFA filed its Answer.
34. On 25 June 2019, the Parties signed the order of procedure confirming their agreement that the Sole Arbitrator may decide this matter based on the Parties' written submissions.

IV. SUBMISSIONS OF THE PARTIES

35. The following is a summary of the Parties' key submissions. The Sole Arbitrator has considered all the submissions referred to in this section and in the section on Merits below, whether or not they are expressly referred to.
36. WFC's key submissions were in summary:
1. The procedure adopted by UEFA was procedurally defective, the initial decision was not accompanied or followed by the written reasons in sufficient time to enable WFC properly to present their case.
 2. The interpretation of the rules as set out in the Appealed decision do not give any reason why the rules should be strictly interpreted in the case of WFC so as to deny WFC an exemption from the three year rule.
 3. There are precedents where exemption from the three-year rule has been granted in similar circumstances such as in the case of Sporting Fingal, which should have been followed.
37. WFC therefore requested one of the following remedies:
1. *The decision by UEFA to refuse the licence as set out above be set aside.*
 2. *The matter be remitted back to UEFA and they direct as a condition of the issue of the licence such conditions as are reasonably necessary.*
38. UEFA's key submissions were in summary:
- i. The primary prayer for relief is targeted against a non-existing decision, since at no stage did UEFA, or any of its bodies, take any decision to refuse a licence to the WFC.
 - ii. There is no indication in the record that WFC appealed against the FAI Decision to grant a UEFA licence to St. Patrick's and not to WFC.
 - iii. WFC ought to have included the FAI in these proceedings as an interested party but failed to do so.
 - iv. WFC ought to have included St. Patrick's in these proceedings as an interested party but failed to do so.
 - v. WFC had to file official entry documents as a precondition for entry into a UEFA competition pursuant to Article 4.01 of the UEL Regulations but failed to do so.
 - vi. The UEFA procedure was not defective. On the contrary WFC's procedural rights were fully respected.

- vii. The relevant rules were correctly applied by the Chamber.
- viii. There was no violation of the principle of equal treatment by UEFA; the cases of WFC and Sporting Fingal were materially different as regards possible exemption from the three-year rule.

39. UEFA requested CAS to issue an award on the merits:

- a) *rejecting the reliefs sought by the Appellant;*
- b) *confirming the Decision under Appeal; and*
- c) *ordering the Appellant to pay the arbitration costs in the matter;*

V. JURISDICTION

40. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

41. WFC relies on the Statutes of UEFA as conferring jurisdiction on the CAS (Article 4.01(f) of the UEL Regulations is also engaged). The jurisdiction of the CAS is not contested by UEFA and is confirmed by the parties' signature of the order of procedure.

42. The Sole Arbitrator is therefore satisfied that he has jurisdiction over the appeal.

VI. ADMISSIBILITY

43. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

44. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

45. As appears from the sequence of events set out above the appeal was filed by WFC timeously.
46. Without prejudice to UEFA's other points discussed below the Sole Arbitrator is therefore satisfied that the appeal is not out of time and to that extent admissible.

VII. APPLICABLE LAW

47. In accordance with Article R58 of the Code, the Sole Arbitrator shall decide the dispute according to the applicable regulations. Absent any party choice, Swiss law applies subsidiarily, as the law of the country in which the UEFA, which has issued the Appealed Decision is domiciled.
48. The regulations applicable to the dispute are UEFA's statutes, rules and regulations in particular:
 - the UEFA Club Licensing & Financial Fair Play Regulations, Edition 2018 (the "CL&FFP Regulations");
 - the Regulations of the UEFA Europa League 2018/21 Cycle (the "UEL Regulations");
 - the Procedural rules governing the UEFA Club Financial Control Body, Edition 2015 (the "Procedural Rules").
49. The material parts of all which regulations are set out below.
 - a) The CL&FFP Regulations
 - Article 5(1) of the CL&FFP Regulations sets out that **the licensor is the UEFA member association**.
 - Article 14 of the CL&FFP Regulations sets out that clubs which qualify for the UEFA club competitions on sporting merit must obtain a licence issued by their licensor.
 - A detailed set of criteria are then set out in Articles 17 et seq to be assessed by the licensor in the context of granting a licence.
 - Article 12 of the CL&FFP Regulations states that:
 1. *A licence applicant may only be a football club, i.e. a legal entity fully responsible for a football team participating in national and international competitions which either:*
 - a. *is a registered member of a UEFA member association and/or its affiliated league (hereinafter: registered member);*

- b. *or has a contractual relationship with a registered member (hereinafter: football company);*
2. *The membership and the contractual relationship (if any) must have lasted - at the start of the licence season - for at least three consecutive years.*
 3. *Any change to the legal form, legal group structure (including a merger with another entity or transfer of football activities to another entity) or identity (including headquarters, name or colours) of a licence applicant during this period to the detriment of the integrity of a competition or to facilitate the licence applicant's qualification for a competition on sporting merit or its receipt of a licence is deemed as an interruption of membership or contractual relationship (if any) within the meaning of this provision.*
- Article 4 of the CL&FFP Regulations provides, “*UEFA may grant an exception to the provisions set out in part II within the limits set out in Annex I*”.
 - In accordance with Annex I (A) (1) (d) of the CL&FFP Regulations, “*the UEFA administration or the UEFA Club Financial Control Body investigatory chamber may, in accordance with Article 4, grant exceptions on the [...] non-applicability of the three-year rule defined in Article 12*”.
 - Annex I (B)(1) of the CL&FFP Regulations provides “[...] *the UEFA Club Financial Control Body investigatory chamber decides on exception requests under A (1) (d)*”.
 - Annex I (B)(5) of the CL&FFP Regulations provides “[...] *the UEFA administration or the UEFA Club Financial Control Body investigatory chamber uses the necessary discretion to grant any exception within the limits of these regulations*”.
- b) The UEL Regulations
- Article 4.01 of the UEL Regulations provide that to be eligible to participate in the competition, clubs must:
 - a. have qualified for the competition on sporting merit;
 - b. **fill in the official entry documents** (i.e. all documents containing the information deemed necessary by the UEFA administration for ascertaining compliance with the admission criteria), **which must reach the UEFA administration by 3 June 2019** (for administrative purposes, the UEFA administration may request the entry documents at an earlier date to be communicated by circular letter; in such a case, the club's association must confirm to the UEFA administration in writing by 3 June 2019 that the club fulfils all admission criteria set out in Paragraph 4.01);
 - c. **have obtained a licence issued by the competent national body** in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included

in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline;

- d. ...;
- e. ...;
- f. confirm in writing that they themselves, as well as their players and officials, agree to recognise the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, as defined in the relevant provisions of the UEFA Statutes and agree that any proceedings before the CAS concerning admission to, participation in or exclusion from the competition will be held in an expedited manner in accordance with the CAS Code of Sports-related Arbitration and with the directions issued by the CAS, including for provisional or super-provisional measures, to the explicit exclusion of any state court;
- g. ...;
- h.

c) Provisions of the FAI Club Licensing Manual

- The FAI Club Licensing Manual for the 2019 season provides specific guidance with respect to licences for the 2019/2020 UEFA club competitions.
- Under 3.1.1, entitled “*Decision-Making Bodies*” it states:

The Licensor is obliged to establish two decision-making bodies, namely:

- *FA Club Licensing Committee; and*
- *FAI Club Licensing Appeals Body.*

- Under 3.1.2, entitled “*FAI Club Licensing Committee*” it states:

In relation to the powers, duties and operations of the FAI Club Licensing Committee, the following rules will apply:

Operation and Duties

The FAI Club Licensing Committee will operate as the first instance body that decides whether a League and/or UEFA licence should be issued to an applicant or not under this Manual. [...].

- Under 3.1.3, entitled “FAI Club Licensing Appeals Body” it states:

In relation to the powers, duties and operations of the FAI Club Licensing Appeals Body, the following rules will apply:

Operation and Duties

The FAI Club Licensing Appeals Body will only review decisions made by the FAI Club Licensing Committee and will not rehear the case or review fresh evidence.

The FAI Club Licensing Appeals Body decides on all appeals against decisions of the FAI Club Licensing Committee. [...].

- Under 5.3.3, entitled “Club Licensing Appeals Process” it states:

1. *The Licence applicant or licensee may appeal any decision of the Club Licensing Committee. The LM may also appeal a decision of the Club Licensing Committee.*
2. *An appeal against a Club Licensing Committee decision has no delaying effect.*
3. *Appeals against club licensing decisions must be sent to the FAI Club Licensing Department within five calendar days of when the first instance decision was notified to the licence applicant.*

(Sole Arbitrator’s emphasis).

VIII. MERITS

50. The Sole Arbitrator considers that WFC in pursuit of its aim to participate in the Europa League for the 2019/2020 football season (“the WFC aim”) has misdirected its fire.
51. Under the applicable regulations the FAI was alone competent to grant WFC a licence. The Chamber (the UEFA body), was alone competent to grant WFC’s request for an exception to the three-year rule. WFC in appealing an alleged refusal by UEFA **to grant WFC a licence** has conflated and confused the distinctive roles of the FAI and UEFA. (The WFC statement with its threat to seek compensation for its being misled by FAI is by itself an early indication of its uncertainty as to which entity should provide WFC with what remedy and on what basis, for WFC’s then prospective inability to play in the next season’s Europa League).
52. That WFC had exemption from the three-year rule granted by the Chamber would be a necessary, albeit not sufficient basis for grant of such licence by FAI. WFC, in order to achieve the WFC aim, would need to overturn both the FAI decision **and** the Appealed decision.
53. There is no evidence before the Sole Arbitrator that the FAI decision of 24 April 2019 has been appealed by WFC. The Respondent to such appeal would be the FAI and in principle St

Patrick's would have to be joined in any appeal since, if WFC succeeded, St Patrick's would be deprived of its licence.

54. However the Sole Arbitrator need not concern himself further with that matter since any such appeal against the FAI decision, whether, whenever, however taken would not be to CAS but to the FAI internal appeal body.
55. Even if the present appeal to CAS (which identifies correctly the date of the Appealed Decision which was indeed a decision was taken by the Chamber although not one to refuse WFC a licence) is generously construed as being in fact, if not in form, an appeal against the Chamber's refusal to grant UFC an exception to the 3 year rule, there appear to the Sole Arbitrator to be insuperable objections to its success.
56. The Sole Arbitrator notes that because the FAI for its own licensing purposes would necessarily be interested in the outcome of the appeal to CAS, FAI might well be entitled (or at any rate might at least be eligible) to be heard in that appeal (the same would apply *mutatis mutandis* to St Patrick's in so far as St Patricks might be at risk of loss of its UEFA licence if WFC succeeded in this appeal (see discussion in MAVROMATI/REEB, The Code of the Court of Arbitration for Sport Commentary Cases and Materials pp.294-297)). Neither entity has been joined, nor is there any indication in the record that either has even been notified of the Appealed Decision. The Sole Arbitrator, however, will not rest his decision on this point raised in the Answer given that WFC has not had the opportunity to address it.
57. UEFA also relies on WFC's apparent failure pursuant to Article 4.01 of the UEL Regulations, clubs to fulfil certain requirements for eligibility to participate in the competition, including filing the necessary official entry documents and proving that that it satisfies the criteria of Article 4.01 b-h of the UEL Regulations. But, absent a fuller investigation of this issue than the time frame agreed by the Parties has permitted him, the Sole Arbitrator again declines to rest his decision on such premise.
58. What is dispositive against WFC, in the Sole Arbitrator view, is the failure of WFC to prove that the CFCB IC has acted otherwise than lawfully, fairly, rationally or in compliance with UEFA's regulations.
59. In this context the grounds of appeal identified by WFC (which the Sole Arbitrator will consider *seriatim*) can be elaborated as follows:
 - The procedure adopted by UEFA was procedurally defective as once a decision was initially made to refuse the licence the written reasons for the decision were not provided to WFC and as a result WFC was not able to properly to present its case ("the Unfairness complaint")
 - The interpretation of the rules a set out in the decision do not give reasons as to why the rule should be strictly interpreted in the case of WFC ("the Interpretation complaint).

- There are precedents where exemption from the three-year rule has been granted in similar circumstances i.e. in the case of Sporting Fingal, and which should have been followed in the case of WFC (the “Unequal Treatment Complaint”).

A. The Unfairness Complaint

60. WFC’s complaint that the procedure adopted by UEFA was “procedurally defective” appears to rely, not only any alleged breach of express provisions of the applicable regulations but rather on a denial of a fair opportunity to put its case for an exception from the three year rule to be made in its favour.
61. It is in the Sole Arbitrator’s view necessary to assess this complaint in its proper context and with proper perspective, which can be sourced in the Background Facts.
62. WFC was or ought to have been aware since 26 October 2018 (the end of the previous Premier League Season) that it would need (as is not in dispute) to qualify for an exception under Article 12 of the CL&FFP Regulations in order for it to be able to successfully secure a UEFA Licence from the FAI for Europa League 2019/20.
63. However, for reasons which are unexplained, UEFA did not receive the application for the exception request until 25 March 2019 five months after that October date and only 6 days before the final deadline for making the same. In so far as the timetable became unduly constricted WFC was author of its own misfortune.
64. As appears from the Background Facts
 - (i) WFC learned of the initial decision of the Chamber (of 12 April 2019) through the FAI on 18th April 2019.
 - (ii) Before the written grounds were communicated, WFC sought via its lawyer on 26 April 2019 to have the matter reconsidered based on new materials that it wished to file.
 - (iii) On 30 April 2010 the Chamber shared with WFC materials in its possession and asked WFC for certain additional materials.
 - (iv) On 2 May 2019 WFC supplied those materials.
 - (v) On 10 May 2019 the Chamber revisited the application giving WFC in effect a second bite at the cherry and providing 34 paragraphs of reasons to explain the Appealed Decision.
65. The Sole Arbitrator detects no unfairness in that sequence of events. WFC had access to the applicable regulations and knew (or should have known) the test they had to meet. Additionally

the letter of 30 April 2019 the Chamber sufficiently identified to WFC the kind of materials relevant to that test in which the Chamber might be interested.

66. WFC complains that the reasons given make no mention of any liability owed to Roddy Collins, a former Manager of WUFC (which issue it had sought to dispose of in an e mail to UEFA of 2 May 2019) as being the basis for the final rejection of its application. It is unclear as to why WFC perceived that particular issue as being the obstacle to its application (it was anyhow in their own words a mere assumption see WFC letter of 26 April 2019), and there is certainly no evidence before the Sole Arbitrator that UEFA misled WFC into believing that it was.
67. More generally no particulars are given to support the bare assertion in the Appeal Brief para 8 that *“as late as March 2019 (WFC) was led by the conduct of the FEI and UEFA that their application for a licence was proceeding satisfactorily”*. In any event the WFC statement itself purported to inculcate only FAI and not UEFA.

B. The Interpretation Complaint

68. WFC complains that the interpretation of the rules as set out in the Appealed Decision do not explain why they should be strictly interpreted in its case.
69. In the Sole Arbitrator’s view it is necessary to assess this complaint in context of the Appealed decision and its Reasons.
70. It is common ground that the WFC’s membership of the FAI started on 13 February 2017 and had lasted for barely more than two years by the end of May 2019, i.e. less than 3 years.
71. It is also common ground, as is clear from the application filed by the FAI on 25 March 2019 on behalf of WFC stating
 - (i) there is *“no legal connection”* between WUFC and WFC
 - (ii) the *“WUFC had not transferred its liabilities or responsibilities to WFC”*
 - (iii) *“WFC had no responsibility for any of the liabilities or to deal with any creditors of WUFC”*that WFC did not stand in the shoes of WUFC but was a separate entity.
72. UEFA term this in its Answer *“an indisputable violation of Article 12 (2) of the CL&FFP Regulations”*. The Sole Arbitrator prefers less pejoratively, to state that, absent, as is agreed, satisfaction of the 3-year criterion, WFC required an exception to be made in its favour as a precondition of eligibility for a licence see Annex 1 B. 5 of the CL&FFP Regulations.
73. The Appealed Decision spells out the objectives of the three year rule as follows to;
 - “i) act as a deterrent against financial misconduct, protect clubs’ creditors,*

- ii) *encourage new investments into existing clubs,*
- iii) *preserve club's identity, and*
- iv) *help safeguard the integrity of the competition (Para 19)*

And to avoid the circumvention of the CL&FFP Regulations as has been acknowledged by CAS:

“The panel recognises that this so-called three years rule has been adopted to avoid, as UEFA put it, “circumvention of the UEFA licensing system”. In particular, clubs are not to be permitted to create a new company or change their legal structure so as to “clean up” their balance sheet while leaving their debts in another legal entity (which is likely to go bankrupt). If allowed, this kind of device would obviously harm the integrity of competition and would contradict the interest of the sport as well as putting at risk the interests of creditors” (CAS 2011/A/2476, Fotbal Club Timisoara SA v. UEFA, 24 August 2011, § 3.15)” (Para 20).

- 74. No complaint has been made by WFC of that analysis which, however, the Sole Arbitrator accepts, is only the starting point of his consideration.
- 75. The Appealed Decision then states (again it seems uncontroversially) *“The application of the three-year rule and its exceptions must be combined with the fundamental principle of legality”* (para 21) and *“The legality principle aims at avoiding unequal treatment and arbitrary decisions”* (para 22).
- 76. From that premise the Appealed Decision *states “the possibility to grant exceptions to the three year rule must be strictly interpreted”* (ditto). The Sole Arbitrator agrees. It is well established law that such is the correct approach to any exception to a general rule.
- 77. Repeating the need for strict interpretation the Appealed Decision states *“The three year rule, being consistently applied, aims precisely at ensuring the integrity of the competitions. The exception process was created to prevent unfair situations, which may occur when applying a rule without any derogation. For instance an exception to the three year rule could be granted - after a careful scrutiny of the situation - to a club which changed its legal form only to be compliant with national regulations and then had its membership interrupted pursuant to Article 12(3) of the CL&FFP Regulations)”* (para 32).
- 78. In the Sole Arbitrator's view
 - (i) The grant of an exception to the three year rule was under the Regulations a matter for the discretion of UEFA (Annex 1 (B) (5) of the CL&FFP Regulations).
 - (ii) It was for WFC to show why the discretion should be exercised theirs favour, not for the Chamber to show why it should not.
 - (iii) WFC have not put forward any compelling reasons to trigger grant of an exception to the Rule.
 - (iv) WFC have not shown why it would be unfair to apply to them the three year rule.

- (v) WFC are not in the position of the club changing its legal form in the circumstances instanced in the Appealed Decision (para 32) or in an analogous or materially similar position.
- (vi) Moreover as the Appealed Decision concluded on the material before the Chamber “*it was a deliberate choice to initiate and launch a new legal structure (WFC), thereby accepting the inherent benefits and drawbacks of such a new structure*” (para 34).
- (vii) To borrow UEFA’s pithy point “*The acceptance of the exception request would trigger an unequal treatment amongst the clubs and would create an unacceptable degree of legal uncertainty*”.
- (viii) In short, subject only to the Equal Treatment Complaint discussed below, WFC was not treated in any stricter manner than any other clubs, but rather in the same way.

79. There is, therefore in the Sole Arbitrator’s view, no hint of any misdirection in the reasons given by the Chamber for the Appealed Direction.

C. The Equal Treatment Complaint

80. WFC submit that a decision issued in February 2010 with respect to another Irish club, namely Sporting Fingal (“the Fingal decision”), was an analogous case where an exception was granted in “similar circumstances”.

81. In the Sole Arbitrator’s view UEFA have compellingly rebutted this contention for the following reasons.

- (i) As a threshold point the Fingal decision was made
 - (a) under previous regulations, ie the *UEFA Club Licensing Regulations Edition 2008*. Since then, the three-year rule process evolved, and there have been four new iterations of the regulations (in 2010, 2012, 2015 and 2018) in which substantial changes occurred and new provisions were added: Article 12 (3) and Annex 1 (B) (6) letters h, i and j;
 - (b) by a different body to the Chamber i.e. the UEFA administration, The Chamber only acquired authority over exception requests under the CLL&FFP Regulations (2018);

thereby diluting the potency qua precedent of any decision under a different regime.

- (ii) The factual circumstances of Sporting Fingal were different to those of the WFC. In Sporting Fingal’s case creditors were indisputably protected; to accede to its application created no risky precedent. By contrast while WFC paid off “known” (sic) creditors of the WUFC on a “goodwill” basis, it did so on its own averment voluntarily rather than

on the basis of legal obligation: to accede WFC's application would create a risky precedent enabling clubs to adopt this informal course of action in the future.

82. Moreover it appears to the Sole Arbitrator, on the material before him, that WFCs position is more comparable to that of Derry City to whom in February 2012 an exception to the three year rule was refused In that case, the company that controlled the football club (WellIvan Enterprises Limited) went into administration and a new legal entity (Derry City Limited) took over the name, club colours, stadium, etc. without taking over all the liabilities of the previous entity, whose football creditors were paid off, apparently by friends and supporters of the club.

IX. CONCLUSION

83. For the reasons set out in paragraphs 57 and 61 to 84 above, WFC's appeal must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Waterford Football Club against the decision rendered on 10 May 2019 by the Investigatory Chamber of the UEFA Club Financial Control Body is rejected.
2. The decision rendered on 10 May 2019 by the Investigatory Chamber of the UEFA Club Financial Control Body is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.