

**MOTOR SPORTS COUNCIL NATIONAL COURT
SITTING TUESDAY 4TH OCTOBER 2016**

Guy Spollon (Chairman)
Chris Mount
Kelvin Nicholls

CASE No J2016/25 Davis and Collings

This Appeal proceeds as an eligibility Appeal. It is appropriate in this case that both Appellants cases proceed jointly because the facts are common to both Appeals and identically affect each of them. Furthermore, both Appellants request that their respective cases be commonly presented and adjudicated upon by the Court.

The essential facts in this matter are as follows:

1. The Appellants were competitors in the Senior Rotax Class of the SuperOne series at the Fulbeck Kart Short Circuit on 9th/10th July 2016.
2. During Race 21 there was an alleged incident on the entry to the 2nd chicane. At this time the Appellants were apparently in 5th and 6th places. Neither Appellant was in any way responsible for this incident. Ahead of the Appellants, two karts went for the same line into the corner and one of them went off track and collided with the barrier before then spinning back onto the track and into the path of the Appellants. Neither of the Appellants it seems were able to avoid a collision and Ben Davis followed by Josh Collings collided with the spinning kart that had bounced back in front of them.
3. As a result of the above the front fairings of both Appellants' karts became misaligned.
4. At the end of the race the misaligned fairings of both Appellants' karts were observed and noted at the entrance to Parc Ferme.
5. While in Parc Ferme both Appellants straightened their respective fairings. It appears that the officials having watched the realignment did then inform the Appellants that they should not have done so.
6. Both Appellants were thereafter penalised 10 seconds for incorrectly positioned front fairings and referred to the Stewards, having been excluded from the meeting for tampering with the front fairings after the chequered flag.
7. Despite protestations by and on behalf of both Appellants the MSA Steward indicated that neither Appellant could appeal and both were excluded from the meeting.

The National Court has considered this matter at length and has been particularly assisted by the written submissions of both Mr J Champkin on behalf of the Appellants and Mr Carl Troman on behalf of the Technical Commissioner and Scrutineer.

The following points should be made:

1. The specific areas of the Regulations that are predominantly relevant in this matter are those promulgated by the Motor Sports Council for immediate adoption on 1st March 2016 and as further promulgated effective 1st June 2016 in respect of the mandatory use of the new CIK front fairing.
2. The Motor Sports Council mandated the use of the CIK fairing for all Senior and Junior non-gearbox karts on the basis amongst others of greatly reduced instances of contact or loading.
3. Under C2.3.4 “At kart races a competitor with the front fairing not affixed precisely in accordance with U17.5.5 when he arrives in Parc Ferme will be penalised with a 10 second penalty in the results of the event. This will be imposed automatically by the Clerk of the Course upon receipt of the statement received from the Judge of Fact and is not eligible for appeal”
4. A non-compliant fairing is in the view of this Court an eligibility matter. It follows that there is a right of appeal. In the circumstances of both these Appellants, however, there is no issue that at the time they arrived in Parc Ferme the Appellants’ front fairing were non-compliant. It must be noted that:
 - (a) The purpose of an Eligibility Appeal is merely to consider whether the component or vehicle is compliant or otherwise within or outside the Regulations. It is not to consider how any ineligibility may have arisen.
 - (b) Eligibility Appeals are not heard by the Stewards of the Meeting but are referred directly for consideration by the National Court.
 - (c) It is hardly surprising in view of (b) above that the Steward was not prepared to consider any eligibility issues.
 - (d) In any event there could not be any issue over penalty for the misaligned fairings as there is the mandatory time penalty of 10 seconds.
5. Both Appellants freely admit that they reattached/realigned the front fairings of their karts in Parc Ferme. They did not seek the prior express permission of the appointed scrutineer nor indeed any official. Accordingly, they must inevitably fall foul of the Regulations. Under U17.5.5 as implemented on 1st June 2016:

- (a) The CIK homologated detachable front fairing mounting kit (17.1.6) is mandatory and
- (b) The kit must at all times be fitted and maintained in the correct position.

The section then provides:

“it is not permitted to reposition a front fairing except by stopping in the Repairs Area (where such a facility is provided) and this may not be done after passing the chequered flag.”

The penalty in the table at Appendix 1 to the SuperOne Championship Regulations dated 15th March 2016 refers to a mandatory penalty of race exclusion for “attempting to tamper with or re attach the front fairing”. Also the mandatory penalty of meeting exclusion for “intentionally reattaching the front fairing after chequered flag” appears in the table of Mandatory Karting Penalties issued as part of the MSA Guidelines to MSA Officials Judicial Procedures document dated 26th April 2016 which is publicly available on the MSA website.

- 6. It follows from 1-5 above that both Appellants’ Appeals must fail.

Recommendations

The National Court is concerned about the increasing number of “strict liability offences” and “mandatory penalties” which it feels can and do sometimes lead to unjust decisions being made. The National Court therefore recommends:

- 1. The report of the C2.3.4. Judge of Fact stationed at the entrance to Parc Ferme is in fact a report to the Clerk of the Course under and for the purposes of General Regulations C3.1.1 and is to be treated accordingly, that is to say that while the penalty if convicted may be mandatory, the judicial officials must act judicially and thereby exercise discretion as to “conviction”. The Court is conscious that such a simplistic approach if not properly regulated would almost certainly open the floodgates. Accordingly, it may be desirable for those seeking to challenge “conviction” to make that plain before leaving Parc Ferme and be required to provide a suitable bond only refundable in the event of their challenge being upheld.
- 2. Furthermore, it would only be in the clearest circumstances that a successful challenge to “conviction” would be entertained, by way of example only, in the event of an unavoidable collision dislodging a fairing and the report of an observer confirming the same.
- 3. At every race meeting there may be the need to be:
 - (a) A clerk whose sole responsibility would be to deal with the issues of misaligned kart fairings.

(b) A simple docket system whereby those competitors with an allegedly defective fairing are called upon to acknowledge/challenge the same before leaving Parc Ferme.

4. There should be clarification as to the precise nature of the offence of tampering/reattaching a fairing after the chequered flag, which should not automatically result in the competitor's exclusion from a meeting.

GUY SPOLLON
CHAIRMAN