

## **RUGBY FOOTBALL UNION**

### **DISCIPLINARY HEARING**

**At:** M6 Junction 2 Holiday Inn, Coventry.

**On:** Monday 17<sup>th</sup> November 2008.

### **JUDGMENT**

**Player:** Tom Gosling

**Club:** Spalding RFC

**Panel:** John Loughton (Chairman) and Geoff Payne.

**Secretary:** Liam McTiernan

**Attending:** Tom Gosling (the Player)  
Geoff Nicholls (Chairman, Spalding RFC)  
Kevin Wand (Committee Member, Spalding RFC)

**Observing:** Paul Bolton (RFU Press Officer)

**To Consider:** The application of Rugby Football Union Disciplinary Regulation 2.5.6, as it relates to Tom Gosling, Spalding RFC, whom has been subjected to association football disciplinary proceedings and is currently the subject of a football banning order and all its concomitant restrictions.

#### **Background**

1. Disciplinary Regulation 2.5.6 - "recognition of other sporting bodies' sanctions" - states: "*The RFU may recognise the Disciplinary Rules and sanctions of any other sporting body and any person suspended or banned by any other sporting body may*

*be suspended or banned concurrently by the RFU. Before imposing any such concurrent suspension or ban, however, the RFU must grant the person the opportunity to offer an explanation at a Disciplinary Hearing”.*

2. This case came to the attention of the Rugby Football Union’s Discipline Department via a news story in the *Spalding Today* online newspaper. Having investigated the substance of the press report, the Disciplinary Officer felt there was a case for the Player to answer under Discipline Regulation 2.5.6. The Disciplinary Officer was fortified in that approach, firstly by the disciplinary record of Mr. Gosling whilst under the jurisdiction of the Lincolnshire County Football Association; and secondly, by the determination of South East Suffolk Magistrates Court to impose a football banning order, after pleading guilty to racially aggravated harassment.

#### Preliminary Matters

3. The player and his representatives had no objection to the constitution of the panel.

4. In the absence of any further reference in the Disciplinary Regulations and clarification or description of protocols to be applied, the Panel felt that it should consider the Player’s explanation measured against the following criteria:

(i) The nature, context and seriousness of the offending behaviour in the other code, including any aggravating features.

(ii) The manner in which the disciplinary code of the other sport had dealt with the Player, in particular in relation to the operation of rules of natural justice and fairness.

(iii) An examination of the manner in which the RFU might have dealt with the case on broadly similar facts, pursuant to its own Disciplinary Regulations.

(iv) An assessment of the character and antecedents of the applicant Player.

(v) An assessment of the risk of re-offending or of other potential harm to the game of Rugby Union as a result of allowing the applicant Player to play.

(vi) Any other relevant fact or circumstance which the Panel felt should be taken into account.

5. The Panel outlined the procedure to be followed to Spalding RFC. The panel would invite submissions from Spalding RFC and Mr. Gosling before asking questions of their own, finally offering the last word to Mr. Gosling and his representatives. Mr. Gosling and Spalding RFC were content to proceed on that basis.

#### The Player's Case

6. Mr. Nicholls addressed the Panel on the following points:

(a) Mr. Gosling is 22 years old. He had formerly played Colts Rugby when 17 or 18 years old, but had since decided to concentrate on association football. Following the issuing of the football banning order, he played in two rugby matches in the 2007/08 season for Spalding Development XV. He asked to join the Club formally during the 2008/09 close season, and was invited to do so following a warning about his future conduct.

(b) Mr. Gosling has played two matches this season, on 4<sup>th</sup> October and 11<sup>th</sup> October 2008, having been formally registered on 19<sup>th</sup> September. He has not played since, owing to a broken foot he has sustained. The Club were initially unaware of Disciplinary Regulation 2.5.6, but have since discussed the matter and feel he should be given an opportunity to mend his ways, provided he conducts himself properly.

(c) On 24<sup>th</sup> November 2007, whilst playing for Wisbech Town F.C., Mr. Gosling had an altercation with a black player of Felixstowe and Walton United F.C. Halfway through the second half, Mr. Gosling was substituted as tempers flared, but the referee's report reflected no record of the incident.

(d) A few weeks later, in December 2007, Mr. Gosling was dismissed from the field of play for physically assaulting a referee and subsequently banned for 182 days. By way of explanation, Mr. Gosling offered that, while challenging for a fifty-fifty ball,

he caught the player late and brought him down. Other players reacted to what they perceived to be foul play, and there was a fracas. On being summoned to the referee, Mr. Gosling realised he was being dismissed from the field of play for a dangerous tackle. He pleaded with the referee to reconsider and, in so doing, put his arm around the shoulders of the referee. The referee interpreted this as a physical assault and reported it as such to the Lincolnshire County Football Association.

(e) In February 2008, in relation to the Wisbech Town match with Felixstowe and Walton United, police arrived at Mr. Gosling's address and informed him that an allegation of racially aggravated harassment had been reported to them by Mr. Daniel Ebanks, the black player that Mr. Gosling had been involved in an altercation with. Mr. Gosling appeared at Ipswich Magistrates Court to answer the charge, to find that Mr. Ebanks was able to produce thirteen witnesses to his allegation. Mr. Gosling was not able to afford an appropriate defence and felt he had no other option but to plead guilty to the charge as presented. He was subsequently banned from all football grounds for three years and forced to surrender his passport at a police station every time the England football team play abroad. He subsequently received a ban of 42 days from the Lincolnshire County Football Association for the offence, to run consecutively with his existing ban of 182 days for his offence of physically assaulting a match official. This 42 day ban expired on 2<sup>nd</sup> October 2008, making Mr. Gosling free to play from 3<sup>rd</sup> October 2008. Spalding RFC now believes the player is not banned by any sporting authority. The two-year Ridgeons League ban alleged by the *Spalding Today* cannot be substantiated, as there is no reference to it in his disciplinary record with the Lincolnshire County Football Association.

(f) Mr. Wand submitted that he had played with Mr. Gosling during his first two forays into Rugby Union with Spalding Development XV. There were no problems with Mr. Gosling's conduct on either occasion. Mr. Wand believes Mr. Gosling possesses a number of physical attributes which make him an attractive prospect to the Club.

(g) Mr. Gosling accepted that his previous record was not good, but denies racial harassment and would like the opportunity to bring something positive to the game of rugby football.

### Cross-Examination by the Panel

7. The Panel took the opportunity to test the resolve of Mr. Gosling to mend his ways and become a positive force in the game of rugby:

(a) The Panel asked the representatives of Spalding RFC if the Club was a good environment for a player with Mr. Gosling's predilections for ill-discipline. This was in reference to the Club's recent game with Market Rasen RFC 2<sup>nd</sup> XV. The *Spalding Today* ran a feature on the game and reported two players from Spalding RFC being sent to the touchline, one having received a red card and the other a yellow. Mr. Nicholls answered this by describing the incident as not representative of the conduct of the Club as a whole – the red card issued in that game was their first for three years.

(b) Mr. Nicholls holds a high opinion of Mr. Gosling's talents and believes he could potentially go on to play 1<sup>st</sup> XV rugby.

(c) The Panel asked Mr. Gosling how he would cope with the physical aspect of Rugby Union and control himself in such a rarefied atmosphere where he may be a 'marked man' due to his fiery temperament. Mr. Gosling felt he has changed as a result of his experiences, and that the spirit of the game helps him to maintain control. The experienced players around him let him know the high standards that are expected, and the self-policing nature of the game marks the boundaries of acceptability far more clearly than in association football.

(d) The Panel asked Mr. Gosling how he would cope with a bad refereeing decision. He feels that the experience set by others shows him how to deal with unfavourable decisions.

### Final Submissions from Spalding RFC

8. Mr. Gosling recognises that he is on his last chance, and is acutely aware of the consequences if he transgresses the spirit of the game of Rugby Union. In Spalding RFC, he has a welcoming environment conducive to learning the ethos and culture of

the game. In Mr. Wand and Mr. Nicholls, he has two sponsors whom are well-respected in the game and have dedicated much of their sporting lives to upholding the moral footing of the game. He realises if he lets them down there will be little sympathy for him in the local community which he has already done so much to offend by virtue of his past indiscretions. Mr. Gosling maintains that his ambition to succeed in the sport will instill in him a sense of honest endeavour. He still attends training despite his injury, and gives to the Club and his team-mates that way. He is open to other ways he could potentially serve the game. All he asks for is one last chance.

### Decision

9. The Panel retired to reflect on Mr. Gosling's previous disciplinary record. It made sobering reading. A worse disciplinary record can scarcely be imagined. In five seasons of playing senior football, Mr. Gosling was issued with no fewer than 34 yellow cards. He has served no fewer than 16 separate suspensions for a range of offences including, but not limited to, racial abuse of an opponent; physical assault of match officials; improper, insulting or threatening behaviour towards match officials; and violent conduct. He has served a total of 72 weeks suspension in five years of senior football and been ordered to pay £540.00 in fines. Mr. Gosling's failure to learn from his experiences have sadly resulted in him earning a criminal record and being banned from entering a football ground for three years. He also has to surrender his passport whenever the England football team play abroad. It is a meaningful sanction, reflecting the seriousness of the charge faced by Mr. Gosling and the strength of the available evidence. These facts weighed heavily on the minds of the Panel when considering whether Mr. Gosling should be accepted into the game of Rugby Union.

10. The irresistible factor in this case is the expiry of the suspension imposed by the Lincolnshire County Football Association, effectively suspending Mr. Gosling up until and including 2<sup>nd</sup> October 2008. As Mr. Gosling is no longer banned by any sporting body, his suspensions having been served in full, there is little room under Disciplinary Regulation 2.5.6 to refuse his application.

11. The banning order issued by Ipswich Magistrates Court applies under a different jurisdiction to that which applies in this case, that of a sporting body. Discipline Regulation 2.5.6 makes no provision for the recognition of a decision made by a criminal court, and the Panel cannot reject the application on those grounds. In any event, the Panel prefer to draw a distinction between a football ground and a rugby ground in this case, the football banning order having very specific terms of reference.

12. The Panel are bound, to some extent, by the dates of the suspension imposed by the Lincolnshire County Football Association. Had a ban been in effect at the time of the application, the Panel would have little difficulty refusing the application of Mr. Gosling and recognising and enforcing the ban imposed by the sporting body in question. However, the ban having expired, the Panel do not determine that Mr. Gosling should be forced to serve a further suspension. Pursuant to this determination, Mr. Gosling is free to play Rugby Union immediately.

#### Costs

13. The Panel make no awards of costs to either Spalding RFC or the Rugby Football Union. Such expenses as may have arisen shall lie where they fall.

#### Comment

14. The Panel would like to use this forum to record its great concern about Mr. Gosling's previous record in association football. He is a young man and it does him little credit.

15. On the other side of the coin, Mr. Gosling is a young man of obvious sporting talent and in Spalding RFC there is a Club that is prepared to support him on and off the field to further his sporting aspirations. Rugby is a game that endures long after the eighty minutes of play has elapsed. It is about endeavour, honesty, teamwork and loyalty – about giving, rather than taking; about respect for what is right, rather than the rule of the jungle. Mr. Gosling has much he can offer the game of rugby football, but it must be on rugby's terms. The Panel is content to let Mr. Gosling play Rugby Union, but warns him that particular notice will be taken of his behaviour, especially

on the field of play and particularly with respect to his sporting behaviour and attitude to match officials. The Panel urges Mr. Gosling not to let down those whom have sponsored his entrance to the game and want him to succeed.

16. Mr. Gosling's past record in sport is relevant, and the Panel finds that within Discipline Regulation 2.5.6 there is discretion to transfer his previous disciplinary record in football to rugby and have it brought into consideration should Mr. Gosling be subject to further disciplinary sanction. In the same way as the Panel have the discretion to adopt a current ban, the discretion also exists under our reading of this regulation to adopt the dates of any lapsed suspension and bring them to bear at the appropriate time.

**Signed:** John Loughton, Chairman.

**Date:** 19<sup>th</sup> November 2008.