

**RUGBY FOOTBALL UNION**  
**RFU COMPETITIONS APPEAL**  
**FILTON HOLIDAY INN, BRISTOL**  
**26 March 2009**

**Club:** Wessex RFC  
**Match:** Wessex RFC v Totnes RFC  
**Date:** 1 March 2009

**To consider:**

To consider the decision of the full Committee of the Devon Rugby Football Union ('DRFU') on 18 March 2009 to uphold the order of the DRFU Competitions Sub-Committee that Wessex RFC ('Wessex') should have played a Devon Junior Cup tie against Totnes RFC on Sunday 1 March 2009.

**Panel:** Christopher Quinlan (Chairman), Paul Murphy and John Doubleday ("the Panel")

**In attendance:**

John Vale, RFU Competitions sub-committee

Bruce Reece-Russel - *Disciplinary Manager*

Devon RFU: Terry Friend

Wessex RFC: Tracy Turner

Simon Farmer

Phil Langford

**Introduction and Preliminary Point**

1. No objection was raised to the composition of the Panel.
2. Mr Friend raised a single preliminary point. He applied for an adjournment of the hearing so he could have the opportunity of considering whether he needed to seek the assistance of a suitably qualified medical expert to address the content of a statement

from Dr Mike England, Medical Director RFU Community Rugby. The statement was sought and obtained by the RFU Disciplinary Manager and he circulated it to the Panel and parties by email timed and dated 12.46 26 March (lunchtime on the day of the hearing). That statement was undated but it appears it was emailed to Mr Reece-Russel at 22.11 on 25 March.

3. Mr Turner opposed the application. When asked specifically whether in advancing his appeal he sought to rely upon it, he said that he did not. We interpolate that he repeated that position during the course of closing submissions he made at the end of the full appeal.
4. Since neither party wished to reply upon the statement, we rejected the application and proceeded to hear the appeal.

### **Facts**

5. The material facts can be stated shortly. At the DRFU Annual General Meeting the 1 March 2009 was fixed as the date by which the third round of the Devon Junior Cup must be played. That is made clear in the Competition rules. All clubs entering that competition do so on a voluntary basis and knew the date by which the third round must be played. Wessex elected to enter the competition; their first game was to be at the third round stage. The second round was completed on 18 January; the third round must be played by or on 1 March. When the fixture schedule was published, Wessex had free weekends (i.e. no *planned* first team fixtures) on 7 and 28 February; either would have been suitable for staging the third round cup game, against Totnes RFC ('Totnes').
6. The hard winter caused cancellation of Wessex's league fixtures against Torrington (scheduled for 24 January) and Tamar Saracens on 31 January. League fixtures take precedence over cup matches and so the Saturdays which hitherto had been 'free' were then allocated to stage to the necessarily rearranged league matches.
7. Wessex were faced with the prospect of playing a league fixture on Saturday 28 February (against Tamar Saracens) followed by the cup match the very next day,

Sunday 1 March. By letter dated 18 February addressed to one 'G Simpson' (Geoff Simpson DRFU Competitions Secretary) Wessex in effect sought a postponement. On 25 February the DRFU was informed by Totnes that it (Totnes) had been told by Wessex that 'their players did not want to play two games in two days and due to player shortage' they would not be playing the said fixture. Geoff Simpson sought clarification from Wessex and on 26 February was told by Phil Langford (by emailed timed at 18.26) that whilst the club did not wish to withdraw from the cup, it was 'refusing to play two games in two days'. The reason was said to be one of player welfare: in short, Mr Langford said it was unreasonable to expect the players to play 'back to back games'.

8. In an email the following day, 27 February (timed at 11.17), Mr Simpson replied, informing Wessex that '...as Wessex cannot field a team this Sunday, March 1, Totnes RFC will proceed into the next round. Wessex RFC did not honour the fixture, it was not played and the game was awarded to Totnes as a 'walkover'. The semi-final featuring Totnes was played on 22 March.
9. The club appealed to the full County Committee. The appeal was heard on 18 March 2009.

### **Decision Appealed Against**

10. On 18 March 2009 the full County Committee of the DRFU heard the appeal from the decision of its Competitions Sub-Committee. The written decision makes clear that notwithstanding the terms of the email of 27 February (see paragraph 8 hereof) the club's appeal related to the 'original decision [of the Competitions Sub-Committee] instructing the club to play a cup tie on 1 March'.
11. The full County Committee rejected the appeal. We repeat its reasons (as adumbrated in the written decision) in full:

*'Taking all the submissions received into account the Committee concludes that the decision of the Competitions Sub-Committee to require the cup-tie between Totnes and Wessex (along with other ties) to be played on 1 March in order to maintain the*

*programme as published at the start of the season was reasonable. It agrees that the requirement to play two games over a weekend should be avoided so far as possible but it accepts that to prevent Cup organisation from falling into disarray this arrangement cannot be ruled out altogether – at least until the RFU issues a specific edict to that effect which clearly applies throughout the game . The Committee therefore declines to rule that the cup tie between Totnes and Wessex should be replayed, upholds the decision of the Competitions Sub-Committee that Wessex has effectively disqualified itself from the Devon Junior Cup for the current season and dismisses the Club’s appeal.’*

12. It was that decision against which Wessex appealed.

### **Submissions on Appeal**

#### Wessex

13. By an undated (but in time) Notice of Appeal emailed to the Disciplinary Manager at 15.41 on 23 March 2009 Wessex gave notice of and set out their grounds of appeal. The Grounds are appeal were:

*‘The original appeal by Wessex to Devon was as follows:*

*Wessex had been instructed by Devon to play Totnes on Sunday 1<sup>st</sup> March 2009, following a re-arranged league match against Tamar Saracens on Saturday 28<sup>th</sup> February 2009.*

*Wessex RFU felt they had a duty of care to their players. That it was unreasonable to ask amateur players to play two games in 26 hours, when there is an arrangement with the Premiership that no player should play more than one game in five days.*

*Regulations referred to by Devon RFU :*

1) *RFU regulation 7.1.4 , which states that replacements may play on the same day – this was intended for the days when league matches required 6 replacements and Clubs struggled to put out a second team. What Devon failed to mention is that the regulation shows that the 15 players selected may NOT play again.*

2) *Cup regulation 5.1 , on deadlines – did not take into consideration 5.4 , which states that matches should only be played after the deadline if weather conditions had*

*previously prevented the tie from being played. The dates that Wessex had cancelled due to weather conditions were 6<sup>th</sup> December , 13<sup>th</sup> December , 24<sup>th</sup> January, 31<sup>st</sup> January and 7<sup>th</sup> February...*

*Wessex submit that the Rules and Regulations that exist support their original appeal. That the RFU have recognised two games in 26 hours is unacceptable. Wessex takes exception to the comments made by Devon that they are the only club to have complained. Throughout the years numerous clubs have withdrawn from County Cup competitions because either they could not raise a side or they found back to back games unacceptable.*

*If there is a duty of care, the question has to be asked – Is this the responsibility of the Wessex committee or the responsibility of the Devon committee or the responsibility of the Rugby Football Union? Wessex believe that it is their responsibility and therefore must be the responsibility of every Club committee throughout the game.'*

14. Mr Turner elucidated those concerns before the Panel. The appeal was advanced purely on the basis of player safety. He said he possessed an email from Mr Martyn Thomas, Chairman of the RFU Management Board which (he said) supported his contention that there is a protocol forbidding any Premiership player playing in more than one game within any five day period. We asked to see it. We did and in our judgment it did not support that proposition. In summary (and it is dated 20 March 2009, timed at 16.44 and in response to a request which was not available for us to see) it stated that an 'EPS [Elite Player Squad] player will not be selected in a match 22 in more than one match on any 5 day period).

15. Mr Turner suggested that in his context there was no difference between amateur and professional players. To require professional or amateurs to play two games within twenty-six hours was (to use Mr Turner's word) 'ridiculous'. He said the club would have played the game midweek or 'under the lights at Paignton'. They had not asked for a weekend to be 'blocked out' in February so as to enable the cup game to be played.

DRFU

16. We had the benefit of reading the full Committee's written decision. Mr Friend expanded upon that, informing us that the DRFU would have 'gratefully' accepted the 'under light's alternative had it been 'mooted'.

#### RFU

17. The RFU was not party to the appeal. However, that is a convenient head under which to identify and set out evidence from Dr England. In the statement to which reference is made earlier in this decision he recommended:

#### *'Recommendations*

*In the amateur adult game, with the lack of evidence on this issue, it is therefore difficult to make recommendations that are significantly different from those applied to the professional game, while taking into consideration the constraints of the game played at the amateur level. For adult 15 a side league and cup fixtures my recommendations would be:*

- 1. That there is normally a minimum of six days between fixtures.*
- 2. In exceptional circumstances and at the discretion of the Constituent Body a mid week game may be added between two weekend fixtures but:*
  - a. There should be no less than three full days between each of the three fixtures*
  - b. And there should be not less than six days between the third and the next fixture after that.*
- 3. A team may play two fixtures within these time periods only where it can demonstrate to the Constituent Body that none of the players selected in the squad has individually exceeded these guidelines playing for any other team in the two weeks preceding the fixture in question. For these purposes a player should be considered to have played, if they have completed more than 50% of a game.*

*In light of this case and the recent Moseley Case it would seem timely that the RFU Player Safety Sub-committee is asked to develop appropriate guidance across the game.'*

18. On the same topic, we also had before us a letter from Dr Simon Kemp to the Disciplinary Manager dated 23 March 2009. Therein he states

*'My recommendation based on the available evidence, and my understanding of the injury risk is:*

- 4. That one game a week is the norm for the adult professional and semi-professional game.
  - a. That there is a six or seven day break gap between fixtures
    - i. A five day break may be permissible in occasional circumstances***
- 5. That in exceptional circumstances a mid week game may be added between two weekend fixtures but that there should be no less than four days between the three fixtures and that an appropriate period for rest/recovery (not less than six/seven days) be scheduled before the next fixture*
- 6. That the addition of the mid week fixture be seen as truly exceptional*
- 7. That consideration be given to tasking the RFU player safety committee with creating a more consistent policy for the whole game.'*

### **Decision**

19. The demands on players and issues of player safety self-evidently are serious, pressing and legitimate concerns. They are receiving active consideration by the RFU; indeed a member of the Panel, Paul Murphy is the Chairman of the Players' Safety Committee which reports to the Management Board. In deciding this appeal, we did not find it necessary to resolve any issue in relation to the same; accordingly, we did not. This decision does not express any view, directly or by implication on or in respect of those issues. The decision is fact sensitive.

20. It was unnecessary because we found the following. As soon as the league fixture due to be played on 31 January 2009 (Tamar) was cancelled, it was apparent to Wessex that they had a problem playing the cup match by 1 March. They accepted that before us. That being so, we found that Wessex failed in the following respects

- a. We were far from satisfied that Wessex acted with sufficient expedition or effort in finding a solution to the problem before 18 February letter. For example there was a period of four weeks in which the game could have been played or at least real and demonstrable efforts made to attempt to stage it. We were not satisfied that those efforts were made.
- b. The 18 February letter was (in our view) inadequate and too late. It expresses concerns about player safety, which (if we may say so) we understand and do not in any way minimise. However, it goes on to speak of a belief that ‘there is available time in the fixture list towards the end of the season and the possibility of evening fixtures’. It did not (for example) suggest any firm alternative – such as ‘midweek under lights’ nor any specific date or venue.
- c. As for the fixture on the 1 March it seems to us that the following were options
  - i. The club has (we were told) 124 registered players. We were told in reality they have a ‘squad’ of about thirty-five.
  - ii. The second XV had a fixture on 28 February. That was honoured when it might have been cancelled so as to make available sufficient players who had not played on 28 February (so as to address the club’s concerns on that regard).
  - iii. Participation in the cup is voluntary. The club could have withdrawn.
- d. It might very well be that with the benefit of more cooperation and efforts made at an earlier stage a resolution could have been found. However, the onus for that fall upon Wessex. The Club failed, in our judgment, to demonstrate that the responsibility for that failure lay with DRFU.

21. In our judgment Wessex failed to satisfy us on the balance of probabilities that the decision reached by DRFU was wrong. We were satisfied that it was a decision they were entitled to come to, was not perverse and the outcome not unfair. Accordingly, and for the reasons given we rejected the appeal.

### **Costs**

22. Wessex will pay the costs of the appeal in the sum of £100.

A handwritten signature in black ink, appearing to read 'Christopher Quinlan', written in a cursive style.

Christopher Quinlan

Chairman

30 March 2009