# RUGBY FOOTBALL UNION DISCIPLINARY HEARING

At: Holiday Inn, Brighouse, West Yorkshire

On: Monday, 20<sup>th</sup> April 2009

## **JUDGMENT**

Club: Consett RFC

**To consider:** Playing an underage player in adult rugby

**Panel:** Antony Davies (Chairman), Clif Barker and Peter Rhodes

**Secretariat :** Bruce Reece-Russel, RFU Disciplinary Manager

**Attending:** Consett RFC :

John Paul Heatherington, Hon. Treasurer – Executive Committee

Melvyn Spratt, Hon. Secretary – Executive Committee David Herdman, Chairman – Executive Committee

Mike Smith, Chairman, North Organising Committee

### **Preliminary Matters**

- 1. The Club did not object to the composition of the Panel and raised no preliminary issue.
- 2. It was noted that the RFU North Organising Committee had resolved to deduct Consett RFC 10 League points next season for playing Matthew Varley whilst unregistered and underage. That decision is the subject of an appeal by Consett RFC. This Panel grants that appeal and rescinds the NOC decision on the following basis:
- (i) The Panel will proceed to hear the matter brought under RFU Rule 5.12 (the issue of age) and impose an appropriate sanction for that matter only; and
- (ii) The aspect of Matthew Varley playing whilst unregistered will be remitted to the NOC for reconsideration in the light of this Panel's decision under (i) above.

#### **Charge and Plea**

- 3. The charge sheet contained one offence of conduct prejudicial to the interests of the Union and/or the Game contrary to Rule 5.12 of the Rules of the Rugby Football Union 2008/2009, the particulars being that on the 25<sup>th</sup> and 28<sup>th</sup> March 2009, Matthew Varley (d.o.b. 05.04.1992) was allowed to play in two adult League matches against Percy Park RFC when under the age of 17 years, contrary to RFU Schools and Youth Regulation 2.2 Schools and Youth Directory 2008/2009.
- 4. Mr. Heatherington admitted the offence on behalf of the Club.

## **The Regulatory Regime**

5. Game Regulation 13.8 (page 225 of the 2008/2009 RFU Handbook) states:

"Young Players

Any Club playing a player below the age of 18 in the adult game must adhere to the RFU's policy and procedure for the welfare of young people in Rugby Union and Schools and Youth Regulations 2.2 and 2.3."

- 6. The relevant part of the Schools and Youth Regulations state :
  - "2.2 Players may only play adult rugby or train with other adults when they have reached their 18<sup>th</sup> birthday unless they comply with one of the following exceptions:
    - (a) Players who are aged 17 may play and train with adults provided they have been assessed as capable of playing with adults. This exception does not apply to playing in the front row where there is an absolute prohibition on players under 18 playing in adult rugby; or
    - (b) Players who are aged 16 who are England Academy players and who may play adult rugby and train if the RFU Head of Elite Player Development has given his specific written consent. Such consent should be given on each occasion of playing or training;
    - (c) Players of all sexes and of any age may train or play together in non-contact variations of rugby providing the organiser has assessed the session as safe for all players.

- 2.3 Permission to play must be obtained from either the player's parent, guardian or headteacher before any person under the age of 18 plays adult rugby or plays with players who are not in the same annual age banding. When assessing whether a player under 18 is capable of playing adult rugby, those responsible for making the decision must take account of the guidelines at paragraphs 1.1 1.6 below".
- 7. The guidelines contained on pages 410 to 411 of the Handbook are set out below:
  - "1. Playing out of age grade
  - 1.1 The decision to allow a young person to play out of age grade lies with the person in the best position to assess all the relevant circumstances.
  - 1.2 For guidance in making a decision, the following aspects should be considered:
    - (a) The physical development of the individual and his playing colleagues.
    - (b) The skill level and experience of the individual.
    - (c) The individual's playing position in the team.
    - (d) The competitive standard of the particular match and playing conditions.
  - 1.3 The ultimate consideration must be for the welfare and safety of the player and those with whom he will be playing.
  - 1.4 Permission to play out of age grade must be obtained from the young person's parent or guardian or headteacher.
  - 1.5 There must be clear communication with all those involved in and affected by the decision.
  - 1.6 Clear and complete records should be kept of decisions taken and the bases for them."
- 8. The following facts were not in dispute:
- (i) Matthew Varley was 16 and therefore underage when he played two League games on 25<sup>th</sup> and 28<sup>th</sup> March 2009. He was not 17 until 5<sup>th</sup> April 2009.
- (ii) Rod Varley, father of Matthew Varley, had given his express permission for his son to play for Consett 1<sup>st</sup> XV in the two games against Percy Park.
- (iii) There was no evidence of any formal assessment of Matthew Varley's capability

of playing with adults, nor evidence of clear communication between those involved . Further, there was no clear and complete record of the decision taken and the basis for the decision.

(iv) Matthew Varley had not suffered injury in either game.

## **Evidence from Consett RFC**

- 9. Mr. Heatherington explained the background and history of the Club. It was formed in 1923 when Consett was a successful and vibrant town, due to the steel and coal industries. It had produced a number of professional and international players. The economic downturn had affected the area very badly over the years and more than 5,000 people had been made redundant. Notwithstanding this, the Club remained far-sighted, it had 189 Junior players registered and ran three Senior teams. The average age of its 1<sup>st</sup> team was only 22. It contributed to the RFU RDO system and was actively involved in the community, and particularly in local schools.
- 10. Our attention was drawn to a letter from Matthew Bryan, the Rugby Development Officer for Durham, confirming his positive dealings with the Club, and its commitment to all round rugby development within the community. The Club had an excellent reputation with the local authority, working with youngsters from challenging areas and providing them with an environment in which they could flourish and develop. The Club had excellent relationships with all the local schools and had the highest school participation rates in the County. He indicated that the Club would achieve Whole Club Seal of Approval by the end of the calendar year. That, he thought, would ensure the Club had more robust child protection policies in place.
- 11. Mr. Heatherington explained to us that the situation the Club found itself in with regard to Mr. Varley had arisen because of an administrative error within the Club, and in part as a result of a measure of confusion relating to the status for the registration of players on the Rugby First system. During the Club's initial system training, it was made aware that registered youth player registrations would carry through and there would be no need for separate Senior registration. This ambiguity has now been clarified and the Club accepts the process. The Club Head Coach had intimated his intention to play Matthew Varley in the League games against Percy Park scheduled for

25<sup>th</sup> and 28<sup>th</sup> March 2009. The midweek game had been arranged at the request of the County to assist in the fixture backlog. The Coach had enquired as to whether Matthew Varley was registered. Following conversations between the Club Secretary, League Secretary, County Registrar and Durham RFU Development Office, it was confirmed to the Coach that Matthew Varley was indeed registered and eligible to play.

- 12. Mr. Heatherington then drew our attention to anomalies within the Rugby First registration system. The system had allowed the Club to register as a senior player a child born in 2001.
- 13. We were asked to bear in mind the following mitigating factors:
  - There had been no intention to deceive on the part of the Club. The checking of match cards had clearly worked and it would always have come to light that Matthew Varley was underage. The Club had put his proper full name on the match card. If there was any intent to deceive, they could have played Matthew under the assumed name of another registered adult.
  - Matthew plays either fly half or full back. He was not injured in either of the two games.
  - Matthew was selected, not because the Club was short of players, but because he was good enough to be picked on merit.
  - Matthew had trained and played two games only. He had not played since 28<sup>th</sup>
     March, even though he was now eligible.
  - Matthew was only 8 and 11 days respectively off his 17<sup>th</sup> birthday when he
    played. His natural physical development would not have been significantly
    enhanced in that time, hence there was a limited risk of impairment of his
    health, safety and welfare.
  - The Club had derived no benefit from playing Matthew in that it lost both games heavily, so no other Club had lost out.
  - The Club did not have a cavalier attitude, quite the opposite. There was no systemic failure. The Club had learned a valuable lesson and was better placed to ensure there would be no repetition in the future. It acknowledged that there had been a gap in responsibilities for checking age, and that gap had now been closed.

14. The Hon. Secretary of Consett RFC, Melvyn Spratt, then explained to us the difficulties that he had had in the use of the Rugby First System. He had been told by the Registrar that Colts could play if registered as adults. It had been an inadvertent error on his part. Matthew Varley had been playing for the Club's Under 18's to his knowledge and so he had assumed that he was 17. He blamed himself entirely for the error and had been distraught when it came to light. The consequences flowing from his error were so dreadful that he had now resolved to give up his position as Secretary at the end of this season, after some 49 years. He confirmed that Matthew's date of birth had been included quite openly on correspondence and it had simply not been realised that he was not yet 17.

#### **Decision**

- 15. In coming to our decision, we have taken account of all that has been said on behalf of the Club. We have to say that we have considerable sympathy with the Club and fully accept their explanation that there was no intent to deceive. We do not think it appropriate to apportion blame to any particular person or group within the Club. It is a collective failing. We accept it arises from inadvertence and have to consider the nature and extent of that inadvertence and the systems, checks and balances in place at the Club at the relevant time.
- 16. We have seen a letter from Mr. Varley Snr. in which he states that he gave his permission for Matthew to play without being aware of any age constraints. He states also that Matthew was unaware of those age constraints. He states that he is not familiar with the Rugby First Rules, but instead took pride in the fact that his son, whom he had taught to play the game, was about to play adult rugby for the Club. Quite frankly, we find it inconceivable that Mr. Varley did not know of the age regulations. We believe it is rather a case of him deliberately or recklessly omitting to consider, address and apply them, borne out of paternal pride at his son's achievement.
- 17. We have also considered carefully the contents of an e-mail sent by Melvyn Spratt, the Secretary of the Club, which is timed at 00:03 25<sup>th</sup> March 2009 and was sent to the following:

David Herdman (Chairman)

Andy Dickinson (Head Coach)
Paul Dixon (Welfare Officer)
Rod Varley (Matthew Varley's father)
John Paul Heatherington (Hon. Treasurer).

We reproduce the e-mail below:

"Hi All

Ben Robson is reg. As a senior player only problem is his birthday and playing in the front row RFU NO. 901135 (DOB 28/09/1991) If this is so he cannot prop? Reg. 2.2 Players who are 17 may play adult rugby but must have been assessed as capable of playing with adults. This exception does not apply to playing in the front row where there is an absolute prohibition on players under the age of 18 playing adult rugby. The information on Matthew Varley is RFU NO. 439762 (DOB 05/04/1992) Please get back to me if there is a problem Also no player can be signed and registered after the 1<sup>st</sup> of March 09 Regards Mel Spratt Tel: 01207 507183 Mob:07752255946".

- 18. This e-mail appears to confirm that all the above (who held all the positions key to this matter at the relevant time) did consider, or were in a position to consider, the position of registration and age for both Ben Robson and Matthew Varley prior to Matthew Varley playing adult rugby. Indeed, so far as Ben Robson is concerned, the problem with his birthday is specifically referred to and his consequent inability to play in the front row. Matthew Varley's date of birth is clearly set out.
- 19. Whilst we accept all that has been said on behalf of the Club, breach of the policy on under 18's is extremely serious and could have far reaching consequences. The Regulations are in place for a specific purpose, designed to ensure the health, safety and welfare of players within the game and an effective and proper consideration of their abilities and potential risk to them. It is indeed fortunate that Matthew Varley was not injured.
- 20. The Regulations have one further purpose. That is to ensure that in the event of serious or catastrophic injury, there will be insurance cover and compensation to assist

with any care and treatment, particularly in the event of permanent disability. We do not believe that the RFU insurance in place to cover such eventualities would be available where a Club breaches the Regulations in this manner. In fairness to the Club and its representatives who have appeared before us, we do not think they appreciated this point and it appeared to come as a huge shock to them when they realised the potential consequences, both for the Club and themselves personally, in the event of litigation.

21. Whilst the mitigation in this case is significant, nonetheless and given the consequences, the sanction must be sufficiently significant to send a message to the wider game and ensure there is no repetition within this Club.

### **Sanction**

- 22. The Club is reprimanded.
- 23. The Club will be subject to a League point deduction of 8 points. 4 points will be deducted at the start of the 2009/2010 season. The deduction of the remaining 4 points will remain suspended until 31<sup>st</sup> May 2012. They will be imposed in the event that the Club is found guilty of a similar offence within the period of suspension. If it does not, they will not be imposed at all.

#### Costs

23. The Club will pay the costs of £100.00.

### **Appeal**

24. The Club is reminded of its rights of appeal as set out in Disciplinary Regulations.

### Antony Davies

Antony Davies, Chairman 13<sup>th</sup> May 2009