RUGBY FOOTBALL UNION

COMPETITION APPEAL HEARING

Venue: Holiday Inn, Leeds/Brighouse Date: 25th January 2010

JUDGMENT

School: Lymm High School

Panel: Clif Barker (Chairman), Barry O'Driscoll and David MacInnes

Secretary to the Panel: Liam McTiernan

In attendance:

(i) Angela Walsh (AW), Headteacher, Lymm High School;

(ii) Len Davies (LD), Master in charge of Rugby, Lymm High School; and

(iii) Tony Simpson, RFU Press Officer (Observer).

To consider: An appeal by Lymm High School (LHS) against the decision of the Referral Group (RG) of the England Rugby Football Schools' Union (ERFSU), made on 14th January 2010, to disqualify them from taking any further part in this season's Daily Mail RBS Under 18s Cup Competition (Competition) on the ground that LHS had played an ineligible player, Sam Caslick (Sam), in the Round 6 game on 16th December 2009 against Queen Elizabeth Grammar School, Wakefield (QEGS), to whom the RG awarded the game. The playing of Sam was in breach of Regulation 4.3 of the Daily Mail RBS Schools' Competition Regulations 2009/2010 (the Regulations).

Nature of the Appeal: LHS have admitted the breach throughout and their appeal is against sanction only on the ground that, in all the circumstances, it is too severe. Although not present or represented, ERFSU have submitted written evidence, in which they oppose the appeal. Furthermore, written representations have been invited and received from QEGS, as an interested party.

Decision: The appeal by LHS is dismissed and the decision of the RG of the ERFSU stands.

Preliminary matters

- **1.** The Chairman apologised to AW and LD for the delay in starting the hearing, which had been due to some administrative problems.
- **2.** The Chairman explained that, although they shared the same surname, he was not related to, nor did he know, Trevor Barker, the Director of Sport at QEGS.

- **3.** AW and LD confirmed that they had no objection to the composition of the Panel.
- **4.** AW and LD also confirmed that the only ground on which LHS were appealing was the severity of the sanction imposed by the RG.
- **5.** AW and LD also confirmed that they understood that, for the purposes of this appeal, the burden was on LHS to establish on a balance of probabilities that the RG's decision on sanction was wrong.
- **6.** The Chairman explained the procedure which he proposed to adopt, to which AW and LD were in agreement.
- **7.** AW and LD confirmed that they did not wish to raise any other preliminary points, save that they wished the Panel to consider another bundle of documents in support of their appeal. Some of those documents had already been served by LHS and, having established that the new and additional documents only related to the issues which had already been raised by LHS, the Panel agreed to receive and consider them.

Evidence as to fact

The Panel considered:

1. Documents submitted on behalf of LHS, namely

- (i) Letter from AW dated 18th January 2010;
- (ii) Letter from LD dated 12th January 2010;
- (iii) A series of e-mails exchanged between LHS and Sam's father, Don Caslick:
- (iv) Letter from R Whittle dated 14th January 2010;
- (v) Letter from LD dated 18th January 2010;
- (vi) Letter from Don Caslick dated 19th January 2010; and
- (vii) Bundle of documents produced by LHS at the hearing.

2. Documents submitted on behalf of ERFSU:

- (i) The RG's Summary of Action and Recommendation re: LHS;
- (ii) Letter from R Whittle dated 14th January 2010 (the same letter as in (iv) above);
- (iii) Written response to the appeal from ERFSU; and
- (iv) The Regulations.

3. Documents submitted on behalf of QEGS:

- (i) Letter, and enclosures, from Trevor Barker, Director of Sport, dated 25th January 2010.
- 4. The oral evidence and submissions by AW and LD.

The Relevant Regulations

- **1.2** "All matches must be played in accordance with the.......ERFSU Rules and Regulations......"
- **4.** <u>"Eligibility of Players</u>. Note: Any team found breaching Regulation 4 risks disqualification from the competition."
- **4.3** "Players taking part in Competitions must be on the roll and in attendance at the participating School/College on 30th September 2009."
- **16.2** "Subject to a right of appeal by any School/College (see Regulation 18) and in accordance with Regulation 17, the Referral Group shall have power to discipline any School/College for breach of any of these Regulations. Ignorance of these Regulations will not be deemed an excuse in the event of breach."
- **17.2** "With the exception of breaches of Regulation 4 (Eligibility of Players) for which the Referral Group can disqualify a team for a first offence, sanctions open to the Referral Group/Independent Panel will include:
 - Reprimand an individual or School/College
 - A fine up to £100 and/or an Award of reasonable Costs as scheduled by either the Referral Group and/or a complainant
 - Order a replay
 - Order that the result is that a School/College has lost the match
 - Exclusion from the Competition for a team or that educational establishment for a specific period of time."

19.1 and 19.1.1 "Each School or College entering its team(s) in any ERFSU Competition agrees that by commencing its programme of matches in any ERFSU Competition it has entered into a legally binding obligation with the ERFSU and as a separate covenant with each other team in the ERFSU Competition and with any sponsor of the ERFSU Competition in which the team plays: To comply in every particular with these Regulations;"

The Facts

The relevant facts are not in dispute. Sam lives in Australia with his parents. His mother was born in England and she still has relatives in the north west of England. Sam plays rugby in Australia and expressed an interest in coming to this country for 12 months in order to continue his education at a quality rugby playing school and also to enable him to train with the Warrington Wolves rugby league team. Consequently, starting in April 2009, his father, Don Caslick, opened up e-mail correspondence with LHS and it was eventually agreed that Sam would come over to this country for the start of the LHS term on 1st September 2009 and stay in the area with relatives. LHS, therefore, entered him on their roll and prepared a timetable for him.

However, things did not quite work out as planned. In that respect, Sam sustained a shoulder injury playing rugby in Australia and, as his parents wanted him to receive treatment in Australia and complete his recovery there, he did not arrive for the start of the term but only took up his place at the school on 16th November 2009. In these circumstances, although he was on the roll, he was not "in attendance" at LHS on 30th September 2009 for the purposes of 4.3 of the Regulations.

Meanwhile, LHS had been progressing through the early rounds of the knockout Competition and, on 16th December 2009, they played QEGS at LHS in Round 6. Sam was selected as a substitute for that game. It was a close encounter and, about 10 minutes into the 2nd half with the score at 0-0, Sam was brought on as a substitute. He scored 2 tries, one of which was converted, and LHS won the game by 12 points to 0, thus progressing to Round 7.

There is no conclusive evidence before the Panel as to who actually made the formal complaint to the ERFSU that LHS had played an ineligible player in the game. LHS have never been told and QEGS maintain that it was not from them but from representatives of the Cheshire County RFU. However, based on information which was provided to the press by LD, a report of the game appeared in the Daily Mail and, in that report, it naturally mentioned that Sam had scored 2 tries.

In any event, the matter found itself in the hands of the ERFSU, who, in accordance with the Regulations, referred it to their RG, who, having considered written representations from LHS, record their views as follows in The Summary of Action and Recommendation:

"Whilst it was appropriate to consider the relevance and impact of the proffered mitigating circumstances it was agreed that Reg 4.3 had been breached. Referral to the Daily Mail match report supported the view that the player concerned, quote "super sub", had a significant influence on the result; scoring two tries.

Mitigating circumstances and apologies are always noted. Honesty is not questioned however, the incident was a prima facie breach of regulations."

This view was approved by the ERFSU and a letter, dated 14th January 2010, was then sent to LHS in the following terms on behalf of the ERFSU by Robert Whittle, an ERFSU Vice President:

"As you are aware the allegation made by the Organising Committee (OC) that Lymm High School contravened DM Regulation 4.3 has been passed on to the Referral Group (RG: DM Reg 2.3) for further consideration.

All of the appropriate paperwork has been passed on to the members of the RG for consideration and their views canvassed. This has led to debate amongst the RG with the following conclusions.

Whilst your playing of Samual (sic) Caslick may well have been a genuine oversight the RG, if to be seen to be consistent, is acting within its rights to disqualify Lymm High School from this season's Daily Mail RBS Competition. For you to be allowed to continue, even at this late juncture and with a possible run of successful results, would almost inevitable (sic) lead to accusations of *foul* play at a later stage.

Thus the RG concludes that Lymm High School be disqualified from further participation in the 2009/2010 Daily Mail RBS U18 Cup Competition.

In accordance with Daily Mail RBS Competition Regulation 18 Lymm High School do have the right to appeal the decision of the ERFSU RG within 72 hours of receipt of this letter."

Thereafter, LHS lodged this appeal by letter dated 18th January 2010.

Oral Submissions made on behalf of LHS by AW and LD

- **1.** They accept that ignorance of the Regulations does not provide them with an excuse.
- **2**. The wording of 17. 2 of the Regulations ie that the RG "can disqualify a team for a first offence" of a breach of the player eligibility Regulations does not mean that they "must" disqualify. What "can" means is "may" and, thus, the RG have a discretion whether or not to do so. Furthermore, disqualification should only be used in the most extreme cases.
- **3**. Had it not been for his injury, Sam would have arrived at LHS at the beginning of September and would, therefore, have been in attendance on the due date. That had always been the intention of Sam and LHS. Noone, therefore, should be penalised simply because of a genuine injury, in particular all the other players in the squad.
- **4.** It is clear from Robert Whittle's letter of 14th January 2010 that the ERFSU accept that playing Sam "may well have been a genuine oversight". This is in fact the case and it was simply as a result of a mistake, which LD readily admits. There was no dishonesty and no deliberate intention to gain an advantage by knowingly playing an ineligible player. Furthermore, the fact that LD volunteered the information about Sam playing in the game for the purposes of the Daily Mail newspaper report emphasises that there was no attempt at any cover up.
- **5.** LD has an outstanding rugby pedigree and has been involved in schools rugby at many levels since he took up a post at LHS in 1977. He has coached at all age groups in Cheshire and was coach to the Cheshire Senior XV for 11 years. He has enjoyed success as a selector and Chairman of Selectors for the North 18 Group, is the Cheshire representative on the County's Rugby Development Partnership Group and is also a member of the England Under 18s Schools Executive Committee. He accepts full responsibility for his oversight, which he finds embarrassing in his position.
- **6.** When the Regulations were published before the beginning of term, LD read them and was fully aware of the ones relating to player eligibility. He believed at that stage that all his players were within the eligibility regulations and, in particular, Sam, because the arrangement was that Sam would be both on the roll and in attendance well before the deadline. However, when Sam actually arrived and LD was

considering playing him in the Competition, it never occurred to him to look at the Regulations again to ensure that Sam's late arrival didn't affect his eligibility for selection. It was only when LHS received the complaint from ERFSU that he re-read the Regulations and then realised that LHS were at fault and in breach of the Regulations.

- 7. There have been cases in the past where RFU Appeal Panels have not disqualified Schools from the Competition, despite the fact that there has been a breach of the player eligibility aspects of the Regulations and examples are submitted.
- **8.** Cheshire Schools, fully aware of the situation with Sam, have given their permission for Sam to play for LHS in this season's Cheshire Schools' Cup.
- **9.** At the hearing, AW and LD did not wish to suggest what they believed would have been an appropriate sanction but they would be content with any other sanction apart from disqualification. However, in LD's letter of 18th January 2010, he does suggest that, as there is still time for a replay, that would be appropriate in the circumstances.
- **10.** AW and LD accept that Sam's two tries had a significant impact on the game. However, they do not accept that QEGS could feel justifiably aggrieved now that they know that they lost because a player who should not have been allowed to play for LHS scored all but 2 of the points against them, having been brought on from the bench when the game was evenly poised at 0-0.
- **11.** As set out in LD's letter of 18th January 2010, it has now come to his notice that Trevor Barker, the Master in charge of Rugby at QEGS, may also have been in breach of Regulations 11.3 and 11.4 because he did not ensure that LD signed the QEGS's team sheet. Thus, should QEGS benefit from LHS's administrative error by being awarded the tie when they have made an administrative error of their own?
- **12.** LHS deny that there is any truth in the contention in QEGS's letter that Sam is now contracted to a rugby league club and will, therefore, not play for LHS in the future.
- 13. In all the circumstances, therefore, LHS contend that they should not have been disqualified from the Competition and the tie awarded to QEGS and that the appeal against sanction should now be allowed and the disqualification be replaced by a sanction which would enable them to remain in the Competition.

Written Reprentations made on behalf of QEGS

- **1.** They believe that LHS's playing of an ineligible player was raised by representatives of the Cheshire County RFU, which indicates that there is a view within the County that a significant breach of the Regulations took place.
- **2.** With regard to LHS's contention that QEGS have also breached the Regulations by not signing the LHS team sheet, made in LD's letter of 18th January 2010, this is not what happens in practice because the losing side never submits the team sheet. This

complaint in any event is now well outside the appropriate time limits and appears to have been made on the basis that "tarnishing us diminishes their breach of the regulations."

- **3.** LHS's breach is a "breach of a very clear and widely understood rule."
- **4.** Sam was introduced at a key time in the game and then scored 2 tries. As his rugby background was clearly known to LD, "one wonders why a player of this calibre was not in the starting line-up, but was introduced when the match was in the balance." QEGS have been disadvantaged by the playing of this ineligible player, as, without his intervention, QEGS could have won the game or, alternatively drawn 0-0, in which case, they would have progressed to the next round as the away side is deemed to have won in the event of a draw.
- **5.** If we were ordered to replay the game, we would have to fit it in "what is already a tight schedule."
- **6.** QEGS believe that Sam is now contracted to a rugby league side and that, apart from this game, has played virtually no rugby at LHS nor will he do so in the future. QEGS is also in a hotbed of rugby league but they have always refused to "exploit" links with rugby league locally, which would have been advantageous to them in this Competition, because they have pride in their rugby union "heritage, our appreciation for the tournament and our upholding of the spirit in which it is played."

Written Submissions made by the ERFSU

The ERFSU opposes the appeal for the reasons set out in the RG's Summary of Action and Recommendation and in Robert Whittle's letter of 14th January 2010. They contend that their decision "was a just determination of the case."

The Panel's Decision

- 1. It is always preferable for the results of games to be decided on the playing field itself and not subsequently adjudicated upon by Panel members. Moreover, in cases of this type, it is inevitable that one school will be extremely disappointed with the outcome. However, the Panel finds unanimously that the decision made by the RG of the ERFSU was a decision which they were perfectly entitled to make and the Panel are not satisfied that that decision was wrong.
- **2.** We agree that the wording of Regulation 17.2 does not mean that a school must be disqualified if it breaches the player eligibility Regulations. In that respect, the use of the word "can" does not mean "must" but means "may". We accept, therefore, that the RG had a discretion as to whether not it should impose a disqualification or any other form of sanction. In any event, it is clear to the Panel that the RG never thought otherwise.

- **3.** We also accept that there may have been other cases, in which an Appeal Panel has not endorsed disqualification for a breach of the player eligibility aspect of the Regulations. We are aware of the cases to which LHS has referred. However, each case will inevitably depend on its own facts and, to our knowledge, none of the cases referred to actually relate to a breach of this particular Regulation. We have, however, had regard to the decisions in those cases.
- **4**. We also accept, as the RG appears to have accepted, that this was not an intentional and deliberate flouting of the Regulations but may well have been the result of an oversight. However, it is not a pre-requisite of disqualification that the breach has to be intentional or deliberate or dishonest.
- **5.** Regulation 4.3 is absolutely clear and unambiguous. Furthermore, the extent and the wording of the Regulations, whilst recognising that there may be other breaches, clearly, in our opinion, emphasise the importance of complying with the player eligibility aspects of them. In that respect, in particular, the note to Regulation 4 points out that any team breaching Regulation 4 "risks disqualification from the competition." This emphasis is not surprising because it is essential to preserve the integrity and fairness of the Competition on the field of play and, thus, the playing of ineligible players, whether intentionally or otherwise, leaves the most sour taste in the mouths of the opposition.
- **6.** There can be no doubt that Sam's intervention in the game appears to have had a significant bearing on the result and, although the players at LHS will no doubt feel disappointed that they can take no further part in the Competition, the players at QEGS would be justified in feeling more aggrieved if, as they now know, they were beaten by a team which played an ineligible player and whose personal contribution appears to have been most influential in the result.
- **7.** The Panel considered ordering a replay and there would probably have been just about time to arrange this, despite the tight schedule. However, this is a serious breach of a Regulation, which is absolutely clear in its terms and importance and, in our opinion, the impression should not be created that schools need not have the Regulations permanently at the forefront of their minds because, if it subsequently transpires that they are in breach, they will be entitled to a second bite of the cherry.
- **8.** There may well have been a breach by QEGS of the Regulation relating to the signing and submission of team sheets. However, this is a minor and technical breach, compared to the breach by LHS, and is now out of time. LHS in any event do not suggest that we have jurisdiction to deal with the breach and impose an appropriate sanction on QEGS. However, they raise it simply to point out that anyone can make a mistake.
- **9.** We have noted the concerns expressed by Sam's father in his letter and we appreciate them. However, no blame whatsoever can be attached to Sam in this matter. We understand as well how LD feels because he accepts full responsibility for his error and finds it somewhat embarrassing. He has made a massive and valued contribution to rugby union already and we express the hope that he will now put this matter behind him and further his many achievements.

10. For the above reasons, therefore, we are not satisfied that wrong in all the circumstances of this case and, accordingly, appeal.	
Costs	
The appeal fee of £100, already paid by LHS, will be retained by the RFU	
Clif Barker Chairman	Date: 31 st January 2010