

**RUGBY FOOTBALL UNION**

**DISCIPLINARY HEARING**

**Venue: Holiday Inn, Coventry**

**Date: Tuesday, 18<sup>th</sup> May 2010**

**IN THE MATTER OF:**

**Ampthill and District RUFC (“Ampthill”)**

**Panel:** Antony Davies (Chairman), Mike Curling and John Brennan (“the Panel”)

**Secretary:** Bruce Reece-Russel (RFU Disciplinary Department)

**In attendance:** Rugby Football Union :

Ms. Jane Mulcahy (Counsel)  
Paul Kaminski (Chairman, Midlands Leagues Organising Committee (“MLOC”))  
Paul Astbury (RFU Competitions Sub-Committee)

Ampthill

David Williams (President)  
John Creswell (Vice Chairman)  
Mark Lavery (Director of Rugby)  
William Charnley (Solicitor representing Mr. Lavery)  
David Wheeler (Solicitor and Club Member)

**Attending as Observers:** Geoff Payne (Ex Officio, MLOC and Ex RFU Council)  
Steven Miles (Hon. Secretary, East Midlands)

**Preliminary Matters**

1. There was no objection to the composition of the Panel.
2. All parties confirmed they had received, and had the opportunity of considering, the bundle of documents for use in connection with the hearing.
3. Ampthill faced the following charges:

### **Charge 1 Statement of Offence**

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 2009-2010.

### **Particulars of Offence**

On or before 19<sup>th</sup> April 2010, Ampthill RFC Officer and/or Officers of the Club deliberately attempted to mislead an RFU Competition Appeal Panel by fabricating false information.

### **Charge 2 Statement of Offence**

Breach contrary to GR 16.3 of Game Regulations Rugby Football Union 2009-2010.

### **Particulars of Offence**

On Saturday, 1<sup>st</sup> May 2010, Ampthill RFC failed to play its strongest team in their match against Luctonians, thereby losing 53-0.

4. Ampthill denied both charges.

### **Charge 1**

### **Background**

5. On 30<sup>th</sup> January 2010, Kettering RFC travelled to Ampthill to play a scheduled League match. Kettering considered the pitch to be unsafe. Ampthill considered the pitch safe and playable. Kettering declined to play shortly before the scheduled kick off. This appeared to cause a significant degree of ill feeling between the Clubs. The match was rearranged by the League Secretary for the following Saturday, 6<sup>th</sup> February, which under RFU Regulations was deemed the “next available Saturday”. At 8.30 a.m. on Saturday, 6<sup>th</sup> February, Ampthill inspected the pitch and declared it unfit to play due to “the state of the 22 at the bottom of the hill”. The second pitch was examined “which with no grass and heavy mud was in much worse condition”.

6. When notified of the cancellation, Kettering were astounded and did not accept that the pitch could be unplayable as alleged and two of its members arrived at Ampthill to inspect at about 11.30 a.m. Kettering maintained that the pitch was in excellent condition, with no signs of water or any previous water that could have disappeared since 8.30 a.m. They took photographs to show the condition of the pitch. (These photographs were in the Panel's bundle.) Kettering maintained "all pitch markings are in excellent condition and the pitch does not contain any boggy areas or ruts". Kettering contacted the League Secretary. At 1.00 p.m., the Match Referee reported to the League Secretary that "the ground is 100% perfect and looked like it had recently been rolled and marked out". Kettering made a formal complaint to National 3 Midlands League Secretary concerning the cancellation by Ampthill.

7. On 8<sup>th</sup> February 2010, Ampthill was notified of the allegation that it had breached League Regulations. On 11<sup>th</sup> February 2010, Phillip Lane, first XV Captain of Ampthill, wrote to MLOC stating :

*"Although the majority of the first team pitch was OK, I was concerned about the state of the 22 at the bottom of the hill. I suggested to Mark that scrummaging would be a problem and that would risk injury to the packs. We then took a look at the second pitch which with no grass and heavy mud was in much worse condition. I suggested to Mark that we should not play as the pitch condition was worse than the previous week, he agreed".*

8. On 12<sup>th</sup> February 2010, Mark Lavery, Director of Rugby, Ampthill, wrote to MLOC, stating :

*I concurred with Phillip's concern that the south east section (22 area) of the primary pitch presented an unacceptable risk for scrummaging due to under foot conditions and that the secondary pitch was in worse condition. .... it is true to say that the timing of my decision may have been influenced by a desire to see no repetition of the previous week's disappointment for the 250 members, guests, supporters and paying spectators when the visitors refused to take the field at kick off time, citing player safety concerns, despite the Referee declaring the pitch fit. However the decision to postpone the match was taken solely through concern for player safety".*

9. On 14<sup>th</sup> February 2010, Warren Kay, Hon. Secretary, Ampthill, wrote to MLOC accepting that Ampthill did not follow the correct procedures and that he personally was culpable for not having sought appropriate advice. Ampthill apologised for contravening League Regulations.

10. On 5<sup>th</sup> March 2010, the Decision of MLOC was sent to Warren Kay by e-mail. MLOC found that on the balance of probabilities, Kettering was correct that the pitch was playable. MLOC further found “there was sufficient evidence to believe it probable that Ampthill postponed the game because of a shortage of players, rather than because of the condition of the pitch”. A total of 10 Competition points were ordered to be deducted from Ampthill’s League record for the current season. At that stage, the effect of the points deduction was to move Ampthill from first place in the League, which would merit an automatic promotion place, to second, which would merit only a play off place against the second place Club in the corresponding Level League in the North. On 18<sup>th</sup> March 2010, Ampthill requested an appeal hearing and submitted grounds of appeal. That appeal was listed to be heard at London Bloomsbury Holiday Inn by an RFU Appeal Panel chaired by Jeremy Summers on 19<sup>th</sup> April 2010.

11. Ampthill was to be represented at the appeal hearing by Mr. Alexander Pelling, a practising Barrister and Club member. Mr. Pelling prepared a Skeleton Argument on behalf of Ampthill which referred to “fresh evidence” which was not before the MLOC. This evidence included a statement of a Mr. Muncaster, which made the critical point that Mr. Muncaster “forked” the affected section of Ampthill’s pitch at around 9.15 a.m. on 6<sup>th</sup> February 2010. It was said that this accounted for the condition of the pitch found later by Kettering. The second piece of fresh evidence was to be the statement of Mark Lavery, Ampthill’s Director of Rugby. Only a very brief statement had been put before the MLOC, but the new statement was more detailed. The third piece of evidence was a Weather Station report for Ampthill on 5<sup>th</sup> to 6<sup>th</sup> February 2010 which was said to show that half an inch of rain fell on Ampthill over those two days.

12. Mr. Summers, in his preparation for the hearing, sought independently to verify the Weather Station information on rainfall. He became concerned at an apparent discrepancy between the rainfall statistics on the Ampthill Weather Station website and figures produced to the Panel by Mr. Kay. As a preliminary matter at the appeal

hearing, Mr. Kay was asked to explain the discrepancy. He could not. Ampthill applied for, and were granted, an adjournment in order to verify the information. Mr. Summers saw fit to advise the circumstances of the adjournment to the RFU Disciplinary Officer. Ampthill were subsequently unable to verify the Weather Station information. Mr. Kay, was said to have resigned and the Club withdrew the appeal. On considering the papers, the RFU Disciplinary Officer found evidence of an attempt to mislead the Appeal Panel. He ordered that the present charge (charge 1) be laid against the Club.

### **The RFU Case**

13. Ms. Mulcahy took the Panel through the documentation by reference to a chronology leading to the hearing on Monday, 19<sup>th</sup> April 2010. On Friday, 16<sup>th</sup> April 2010, Warren Kay, Ampthill Secretary, sent to David Williams, Ampthill President, screen snapshots of the daily summary from Ampthill Weather Station, which he stated showed 0.2 inches of rain fell overnight Thursday and 0.3 inches overnight Friday. Paul Kaminski checked Mr. Kay's information against the Station site archive and noted a significant difference of 0.2 of an inch over the two days recorded. He notified those concerns to Mr. Summers. On the net it was clear that on 6<sup>th</sup> February it was 0.1 inch/2.5mm., whereas Mr. Kay said it was 0.3 inch/7.5 mm. This had to be wrong because on the Weather Station 0.3 inches always equals 7.6 mm. Mr. Kay had made a rounding error. This suggested the information had been "doctored".

14. Ampthill had been represented at the appeal on 19<sup>th</sup> April by Mr. Pelling and present were Mr. Williams, Mr. Wheeler, Mr. Lavery and Mr. Kay. Following the hearing, a letter was sent signed by Mr. Colin Burke, Chairman, and Mr. Bill Warfield, Hon. Treasurer of Ampthill. That letter confirmed that the printouts from the Ampthill Weather Station had been discovered and produced by Mr. Kay. The evidence had been put forward late in the appeal process. The documents had been briefly reviewed by Mr. Wheeler, Veterans Manager and Solicitor, and Mr. Pelling, Club member and Barrister. Neither of them checked the information against the website as they did not perceive any need to do so. Ampthill offered its unreserved apology to the Panel for putting before it evidence that Ampthill acknowledged was inaccurate and likely to mislead the Panel.

15. Ms. Mulcahy submitted that had the appeal on 19<sup>th</sup> April 2010 gone ahead, then

evidence would have been given by Mr. Lavery, Mr. Muncaster and Mr. Lane in accordance with signed witness statements which contained a statement of truth. The culmination of that evidence was intended to show that the pitch was not fit to play, when clearly it was. Mr. Kay had “doctored” statistics on an independent Weather Station site to support the verbal and written evidence to be given by three Officers of the Club. The only conclusion which could be drawn from the totality of the documentation was that Ampthill decided to call off their game against Kettering on 6<sup>th</sup> February 2010 partly because they felt aggrieved because Kettering had refused to play them the week before on what they considered spurious grounds, and partly because many of their players had arranged to go to Twickenham to watch England v Wales. It was clear that the pitch was perfectly playable on 6<sup>th</sup> February and that statements that it was not playable when it was inspected at 8.30 a.m. were false. Statements from Club Officials suggested that they assessed the pitch as unfit because it was waterlogged at 8.30 a.m. on 6<sup>th</sup> February. Mark Lavery asserted in his statement dated 14<sup>th</sup> April 2010 (made in preparation of the appeal hearing) that (para. 8)

*“Unfortunately overnight there was significant rainfall and when the pitch was inspected at 8.30 a.m. by myself and Ampthill’s first XV Captain, Phillip Lane, it was apparent that both first and second team pitches were unplayable”.*

Barry Muncaster asserted in his statement dated 11<sup>th</sup> April (also made in preparation for the appeal hearing) that

*“I saw water lying on the top corner of the pitch (on the left as you look from the Clubhouse). The water extended between 15 to 20 metres from the goal line towards halfway. Mark and Phil took the decision to call the game off. I agreed with that decision, although I had no direct input into it”.*

16. The document produced by Mr. Kay to corroborate the assertion by Mr. Lavery that there had been significant rainfall overnight had been altered to provide false evidence to the Appeal Panel. In fact the correct documentation from the website showed that it did rain overnight but that the rainfall was not significant (and only one third of the amount shown in the fabricated document).

17. In those circumstances, Ms. Mulcahy submitted that the attempt to mislead the Appeal Panel with false information was not undertaken by Mr. Kay acting alone. There was evidence to suggest that Officers of the Club colluded to provide false evidence to the Appeal Panel. Even if that were not the case, then a senior Club Official was prepared on behalf of the Club to mislead the Appeal Panel.

18. Paul Kaminski gave evidence to the Panel and explained his enquiries into the veracity of the Weather Station information. He found a discrepancy he could not explain and contacted Mr. Summers. The last recorded shower on Friday, 5<sup>th</sup> February, was at 7.16 a.m. (0.2 inch/5.1 mm.). It next rained at 7.16 a.m. on Saturday, 6<sup>th</sup> – 24 hours later – 0.1 inch/2.5mm. No other competitive game was called off in the Midlands that day because of a waterlogged pitch. He believed from the information obtained from the League Secretary that the Ampthill pitch drained well. He conceded, when questioned by Ampthill representatives, that he had not attended on the day so could not confirm whether there was water on the pitch or not. He did however maintain that it was very unlikely given the rainfall statistics and the information volunteered by Mr. Williams of Ampthill that the pitches at Ampthill had a sandy base and drained well.

### **The Ampthill Case**

19. Mr. Mark Lavery gave evidence for the Club. He referred to his witness statement prepared for the appeal hearing on 19<sup>th</sup> April, and confirmed that its contents were true. The Club had not been proud of the scenes the week before when Kettering had refused to play. They believed that Kettering had breached Game Regulations, but did not make a formal complaint. He accepted that Kettering's behaviour the previous week had played a part in his decision making process the following week. Mr. Lavery explained his role and duties within the Club. He confirmed that he and three players attended the International on 6<sup>th</sup> February. The players included their player/Coach, Mr. Emms, but they were still left with thirty three available players with first team experience and believed had they played they would still have beaten Kettering.

20. Mr. Lavery was questioned about the rainfall, which he said was significant on the Friday evening. He did not have a great deal of confidence in the information supplied by Ampthill Weather Station, which was run by an amateur and the station was

not part of the Met Office network. It was 1600 metres away from the Club pitch and at a different altitude. He invited the Panel to reject the evidence from this Weather Station. He attends at 8.30 a.m. every Saturday morning for a pitch inspection and makes the decision at that time because his coaches come from South Wales and North West England. He accepted that during the course of a day the pitch conditions can be transformed. He agreed that Kettering were only an hour away, but maintained he had made his decision at 8.30 when he had inspected and at that time it was the correct decision. When asked about the photographs that Kettering had taken later in the morning, he agreed that the pitch did look fit to play on, but it had not been in that state when he had inspected at 8.30. He had attended the appeal hearing on 19<sup>th</sup> April, but had been late. The Appeal Sub-Committee which had been tasked to investigate whether the MLOC decision had been fair and advise on an appeal had previously directed Mr. Kay not to submit any Weather Station evidence. He was concerned when he attended the appeal that it appeared such evidence was being put before the Appeal Panel. After the adjournment, he had asked Mr. Kay to replicate the information submitted, which he had been unable to do. Mr. Kay had resigned without accepting that he had done anything wrong.

21. Under questioning from the Panel, he confirmed that there were no Minutes of any Appeal Sub-Committee meetings. He explained where the water was standing on the pitch and described it as being alongside his training shoes as he walked. He did not look at the weather forecast. He did not make enquiries as to whether any other venue was fit and playable. By 11.30 a.m. when the photographs were taken, he had already told the team that the game was off and it would have been impossible to call them again saying it was back on because they would have committed to do other things. He had serious concerns as to whether Kettering would want to play after their behaviour the previous week and could not risk that being repeated. He clarified that the Club does not employ a groundsman to look after the pitch so there was no-one to take specific advice from. Finally, he confirmed that had the hearing proceeded on 19<sup>th</sup> April, he would have given evidence in accordance with his written witness statement.

22. Mr. David Williams, the Club President, then gave evidence for the Club. He has been associated with it for some 46 years and has seen the pitches under water in the past. He had become aware of difficulties with the Weather Station information as there

were apparent conflicts between various recordings. He did not feel the evidence would stand up to any detailed examination and he had asked Warren Kay not to put it in. As he and Mr. Kay drove together to the appeal hearing, Mr. Kay did not mention that he had submitted the weather data. He assumed Mr. Kay had put in the rainfall information to bolster the Club's case that the pitch was unfit. He also understood Mr. Muncaster's evidence about forking the pitch had been submitted to support the contention that that had resulted in the standing water having disappeared by 11.30 a.m. He was not aware of any formal resolution of the Appeal Sub-Committee that Mr. Kay would not put in the Weather Station evidence. He personally had asked Mr. Kay not to do so.

23. Mr. Williams was asked by Ms. Mulcahy about the contents of e-mails between Mr. Williams and Amptill Weather Station. He confirmed that he was trying to see whether there was evidence to prove that the pitch was wet. He agreed that in his letter to the Weather Station he had used the words "we stated" that the pitch was wet. He did not accept this implied that he knew it was not wet. He also confirmed that the reply from the Weather Station stated that the rainfall data did not in fact help the Club's case that the pitch was indeed wet.

24. Mr. Creswell and Mr. Charnley addressed the Panel on behalf of the Club. Mr. Creswell confirmed that the Club's motivation for appealing was to clear its name following the allegations from Kettering. By the time of the appeal hearing it had already won the League, even with the points deduction. Mr. Kay had acted on his own without authority. When he had been challenged he had chosen to resign rather than respond. The Panel was being asked to deal with allegations of dishonesty, which were very serious and needed strong evidence. No-one from the Club was aware that the misleading Weather Station information was being submitted, and in doing so Mr. Kay had been acting on his own. The Club had withdrawn the appeal when it was realised that the data was not accurate and could not be verified.

25. Mr. Charnley submitted that there clearly had been a pitch inspection resulting in the calling off of the game. Mr. Lavery's evidence of seeing water on the pitch making it dangerous for scrummaging was accurate. There was no evidence of any collusion and the evidence of Mr. Lavery, Mr. Muncaster and Mr. Lane was sufficiently strong not to need corroboration. There was some evidence of rain. Mr. Kay had been acting

outside a clear direction not to put the information in. There was only an inference of collusion between Mr. Lavery, Mr. Kay and Mr. Muncaster.

### **Decision on Charge 1**

26. The Panel finds charge 1 proved on the balance of probabilities for the following reasons :

- (i) It was not seriously contested that Mr. Kay had doctored the Weather Station evidence.
- (ii) In view of the totality and weight of the evidence we have heard, we believe it is inconceivable that the pitch was waterlogged at 8.30 a.m. as was described. We believe the state of the pitch at 11.30 as depicted in the photographs was the state at 8.30. The relevant amount of rainfall which could have affected its state was 0.6mm. No other game in the vicinity was called off that day.
- (iii) Neither Mr. Lavery's nor Mr. Lane's initial statements mention the pitch being waterlogged. Mr. Lavery's evidence was incredible in a number of respects. He clearly breached the Regulations in force relating to the calling off of games. He ignored the weather forecast. He had no explanation for the non-involvement of Kettering in the decision.
- (iv) The Weather Station information supports the case that very little rain fell in the 48 hours prior to 8.30 a.m. on Saturday 6<sup>th</sup> February, and certainly not enough to waterlog the pitch in the manner described. If the pitch had been waterlogged, it is inconceivable that it could have been cleared by forking so it appeared dry by 11.30 a.m. In order to establish that their witness statements are true, Ampthill need to establish that sufficient rain had fallen on the pitch. That is plainly impossible given the evidence as to rainfall in the locality in the week before the game. Accordingly, we do not believe there was any standing water. It follows that we do not accept the witness evidence of Mr. Lavery, Mr. Muncaster and Mr. Lane as being true.
- (v) The motivation for calling off the game lies in Ampthill being clearly

aggravated and annoyed with Kettering's behaviour in the week before. Furthermore, we note the player/Coach of Ampthill (a former Premiership player and no doubt much valued by them) and two others were attending the International.

- (vi) Mr. Lane was not called at the first hearing, nor has he attended or given evidence at this hearing. Mr. Muncaster, we are told, was available to give evidence by telephone, but he has not done so. There is no statement at all from Mr. Kay which might have assisted us in accepting the Club's contention that he was acting outwith the concept of corporate responsibility.
- (vii) Mr. Muncaster's witness statement has been prepared with the intention of explaining how a waterlogged pitch at 8.30 can become dry as, depicted in the photographs, some three hours later. This assertion stretches the bounds of credulity. We cannot see how forking the surface with an ordinary garden fork, as described by Mr. Muncaster, would accelerate the process of drainage if the pitch was already saturated, unless the forks penetrated unsaturated ground. Accordingly, we do not believe that the forking described would have made such a significant difference to the rate of drainage. Our question as to why in any event it was deemed necessary to fork the pitch at all when the game had already been called off has not been satisfactorily answered. Mr. Muncaster's evidence we find has been manufactured to provide an explanation for the disappearance of standing water described by Mr. Lavery at 8.30 and clearly absent in the photographs taken at 11.30.
- (viii) It follows from this that we do not accept that the statements of Mr. Lavery, Mr. Muncaster and Mr. Lane were true, notwithstanding that two of them contain statements of truth. Accordingly, Ampthill were not going to present the true picture to the Appeal Panel. Their witness statements were untrue and evidence produced by Mr. Kay as to the rainfall was doctored.
- (ix) It is clear that Mr. Lavery and Mr. Lane must have been acting in concert because they attended the same meeting at 8.30 a.m. Mr. Lavery and Mr. Kay are close friends. We have no evidence from Mr. Kay, but we note that Mr. Burke and Mr. Warfield, Chairman and Treasurer of Ampthill

respectively, offered an unreserved apology to Mr. Summers' Panel on behalf of the Committee of Ampthill for putting before it evidence that Ampthill acknowledged was inaccurate and likely to mislead the Panel. We are satisfied that Officers of the Club did act in concert, with the deliberate intention of misleading the Panel, and no credible or cogent evidence has been submitted by the Club to the effect that they are not bound by the concept of corporate responsibility and that Mr. Kay was acting outside his ostensible authority.

## **Charge 2**

27. Game Regulation 16.3 requires every Club to play its strongest possible first XV in all matches in any League competition. It does not matter that the match is of no importance to the Club concerned. The purpose of the Regulation is to ensure that the other Clubs in a League have the right to expect that the League Table will not be distorted by a Club playing an unnecessarily weakened team.

28. By 1<sup>st</sup> May 2010, Ampthill was in an unassailable first place in the League. Second was Hinkley on 88 points. Luctonians had 84 points with one game to play, this being an away fixture against Ampthill. A win in this fixture would leave Luctonians level on 88 points, level on the number of wins, but ahead on points difference. An extra bonus point for scoring four tries or more would give Luctonians a clear lead with 89 points. The result of the Ampthill v Luctonians match was therefore vital to the interests of both Luctonians and Hinkley.

29. As League Champions, Ampthill competed in a short knockout competition consisting of a semi-final against Morley (the winner of the equivalent League in the North) followed by a final at Twickenham, versus the winner of the equivalent semi-final between London and South East and South West. Ampthill's semi-final was played on 24<sup>th</sup> April and they were due to play in the final at Twickenham against Jersey on 8<sup>th</sup> May. In between was the rearranged game from 20<sup>th</sup> February 2010 against Luctonians.

30. Prior to 1<sup>st</sup> May, Ampthill had recorded twenty two wins and three losses. They were unbeaten at home, with a home points difference of 422. Prior to 1<sup>st</sup> May,

Luctonians had seventeen wins, one draw and eight losses. Away they had won eight and lost five. Away from home they had scored 395 points and conceded 136. At the reciprocal match played on 31<sup>st</sup> October 2009, Luctonians lost 10-27 to Ampthill. Taking into account the records of both Clubs, MLOC felt it reasonable to presume that this would be a good match but with home Club Ampthill as clear favourites to win, though Luctonians had more to play for. That of itself was anticipated to have resulted in a closer result. The match produced a margin of victory to Luctonians (0-53) that would have surprised any neutral observer. Hinkley had every right to question the strength of Ampthill's team on the day.

31. Mr. Kaminski produced a table showing the teams selected by the Club throughout the season. He took the Panel through the comparison and submitted that Ampthill had without doubt played a weakened team on 1<sup>st</sup> May, even allowing for player injuries from the hard game the week before. Nine of the fifteen starting players on 1<sup>st</sup> May had previously made only thirteen starting appearances between them. The Ampthill team which had played in the semi-final against Morley on 24<sup>th</sup> April was identical to that selected for 8<sup>th</sup> May. MLOC believed Ampthill's intent in doing so was to ensure they could play their strongest XV on the 8<sup>th</sup> May and that this had the effect of unfairly distorting the League Table to the possible detriment of Hinkley.

### **The Club's Case**

32. Mr. Lavery gave evidence by way of written statement upon which he expanded. The Club had understood that League fixtures took priority over Cup competitions. They had been due to play Luctonians on 24<sup>th</sup> April but received an instruction from MLOC to move that fixture to 1<sup>st</sup> May so they could accommodate the Cup game Morley on 24<sup>th</sup> April. They inferred from this that the Champions Cup was to take priority over the League game. The Club already had a number of players carrying serious injuries prior to the game on 24<sup>th</sup> April. It was a very hard game against Morley and they had picked up an inordinate number of injuries. Physically this was the toughest fixture of the season.

33. Compounding the Club's difficulty was the fact that the weekend of 1<sup>st</sup> May was not a scheduled League weekend but was a Bank Holiday weekend which deprived them

of four regular first team players, including the player/Coach. One player received eight stitches from the Morley Doctor and a number of other players had reported either new or recurring injuries. The result of this meant that they were missing twelve players from the Champions Cup semi-final squad. During the course of the week prior to the 1<sup>st</sup> May, one player requested that he go onto the subs bench for the 1<sup>st</sup> May game and the other asked not to be selected because he did not want to get injured prior to the Champions Cup final. As all Ampthill players were amateurs and were not contracted, Mr. Lavery felt whilst he had influence he had no power or jurisdiction to make them play. He felt the Club was in a difficult position. It had a duty of care to look after the health and safety of its players and having employed a physiotherapist saw no point in ignoring the advice that that professional gave. He believed there were other instances of Clubs doing as Ampthill in the League and that it was common practice. He sympathised with Hinkley's predicament. He felt the Club had picked the strongest possible first XV from the pool of players available. In support of the contentions concerning player injury, he produced seven physiotherapy assessment sheets.

### **Decision on Charge 2**

34. We find the case proved for the following reasons :

- (i) Proof that a single uninjured first XV regular was rested constitutes of itself a breach of the obligation to play the strongest possible team. Ampthill confirmed that Mr. Rees requested to go on the subs bench and Mr. Raven asked not to be selected because he didn't want to get injured before the Cup final.
- (ii) Mr. Lavery accepted those requests without, it appears, question and that very little, if anything, was done to encourage or persuade the players to play.
- (iii) Save for the injury attended to by the Morley Doctor, the remainder of the injuries were self proving in evidential terms. We can well imagine the game against Morley was hard fought, but we are staggered by the numbers of such self proving injuries and the extent of the misfortune suffered by Ampthill players in the semi final. As to the physiotherapy assessment documentation, we found this singularly unhelpful in that

much of it was undated or did not establish to our satisfaction an injury which would have prevented the player playing on 1<sup>st</sup> May 2010. Indeed, one assessment was dated 24<sup>th</sup> May, some three weeks afterwards.

- (iv) Even taking into account that Ampthill had little to play for in the game whilst Luctonians had everything, the scale of the defeat was remarkable. Not one of the eight forwards who started the game against Luctonians started in either the Cup semi-final or final. The entire pack had thirty starts between them in the previous twenty five games. On the other hand, fourteen of the starting team in the final started in the semi-final. Those who were injured in the semi-final all seemed to make remarkable recoveries in the fortnight leading up to the final. It is our view that such recoveries by all players is too much of a coincidence.
- (v) The fact that all such claimed injuries had improved sufficiently to enable the players to be fit for the final two weeks later is such a remarkable coincidence that we have no difficulty in drawing the clear inference that others besides Mr. Rees and Mr. Raven were malingering in order to avoid the risk of injury lest they miss the final. Ampthill did not properly address this situation but instead simply allowed it to happen.

### **Mitigation**

35. The Club has some four hundred Mini/Youth players and 200 adult members. It is financially prudent. It adheres to RFU best practice and supports RFU initiatives. It is in its second year of Seal of Approval. It has one paid employee. The rest of the Officers are volunteers. It has been hindered by only having two pitches but is on the point of acquiring more, which will enable it to continue its community work.

36. The Club runs four Senior teams, plus Colts and all Junior age groups. It also runs a Girls' Under 15 and Under 18. It has a hundred volunteers and good local links with schools and other organisations locally. A copy of its balance sheet was produced for consideration. As with many community Clubs any financial penalty would hit it hard.

## Sanction

37. Ampthill is a community Club which has much to commend it. Its volunteers are the lifeblood of the game. The Club promotes much that is good about rugby in the community. It is sad to see it and its volunteers in such circumstances. It is also an ambitious Club whose desire for promotion and success has led to certain of its members taking ill advised courses of action. Those actions undermine the integrity of the game. The entire regulatory administrative and disciplinary process depends upon the veracity of the Clubs and its Officers. We have found evidence to suggest that Officers of the Club colluded to provide false evidence to the Appeal Panel. Even if that were not the case, then a senior Club Official was prepared on behalf of the Club to mislead the Appeal Panel. These are very serious matters which potentially undermine the integrity of the game and, as they have been proved to our satisfaction on the balance of probabilities, merit severe sanction.

**38. In respect of the offence of deliberately attempting to mislead the Appeal Panel, the appropriate penalty is that Ampthill will forfeit promotion and will play at Level 5 in season 2010-2011. No other sanction appears as appropriate to us. The purpose of this sanction is to ensure that those found guilty of wrongdoing will not be allowed to profit from such wrongdoing.**

**39. In relation to the breach of the Game Regulations, we order that the Ampthill v Luctonians game played on 1<sup>st</sup> May 2010 be declared a perverse result. This will result in all Ampthill's results being expunged to produce an equitable table with Ampthill being placed at the bottom. We did consider whether we should have ordered Ampthill to be relegated to the League below. We concluded that it would not be in the interests of the Clubs in that League to have to play a Club which had been promoted from it the previous season and, but for this Judgment, would have played two Leagues above the next. It is for this reason that we have declared that Ampthill will play at Level 5 next season.**

## Costs

40. The Club is ordered to pay costs of £100.00.

## **Right of Appeal**

41. The Club is reminded of its rights to appeal against this Judgment. Such rights are set out in Disciplinary Regulation 11.

*Antony Davies*

Chairman

2<sup>nd</sup> June 2010

Note: Whilst it is our view that in all the circumstances, it is desirable that Hinkley should be promoted in place of Ampthill, that is not a result which we feel we can direct or achieve. Matters consequent upon this Judgment must be addressed by RFU Competitions in accordance with the current Regulations.