BEFORE AN RFU APPEALS PANEL

Between

Brendan Venter

<u>V</u>

The RFU

At: The Holiday Inn, Bloomsbury.

On: Wednesday 26th May 2010

In the case of: Dr Brendan Venter, Director of Rugby, Saracens.

Match: Leicester Tigers v Saracens.

Venue: Welford Road.

Date of match: 8th May 2010.

Attending

Panel: Jim Sturman QC (Chairman), Gareth Rees QC, John Brennan.

Secretariat: Bruce Reece-Russel.

Parties: Dr Brendan Venter.

Adam Lewis QC – Leading Counsel for Dr Venter.

James Segan – Junior Counsel for Dr Venter.

Alex Milner Smith – Instructing Solicitor, Lewis Silkin LLP.

Edward Griffiths – CEO Saracens.

Andrew Green QC - Counsel for the RFU.

Karena Vleck - RFU Company Secretary and Legal Officer

Judgement of the Appeal Panel

- 1. On 18/5/10 Dr Venter was found guilty by an RFU Disciplinary Panel (HHJ Blackett (Chair), Jeremy Summers and Buster White) of a single charge under RFU Rule 5.12 of conduct prejudicial to the interests of the Union in relation to making provocative and inappropriate gestures and comments to spectators during a match between Leicester and Saracens on 8th May 2010. He was found not guilty of a second charge under the same Rule that related to pushing a lady supporter in the course of the same match.
- 2. Dr Venter had pleaded Not Guilty to both charges and had given evidence. Mr Venter was represented by Adam Lewis QC, the RFU by Andrew Green QC.
- 3. Dr Venter was in breach of a suspended sentence for an offence contrary to Rule 5.12 committed earlier in the same season. On 19/01/2010 he had appeared before a Disciplinary Panel and was sentenced to a 4 week match day coaching ban, suspended until 31/12/2010. The current offence was therefore allegedly committed during the period of the suspended sentence.
- **4.** After considering the mitigation the panel sentenced Mr Venter to a ten week suspension from involvement with his club on match days, that suspension to be consecutive to the earlier 4 week suspension, making a total of 14 weeks. The ban prevented Dr Venter from having any match day contact (direct or indirect) with his team, or any direct or indirect contact with match officials on match days. The suspension prevented him from attending "Twickenham Stadium or its environs, in any capacity on 29th May 2010, the day of the Guinness Premiership Final".
- <u>5.</u> An indication of an intention to appeal was provided shortly after the hearing, both through normal channels and via some remarks attributed to some Saracens officials.

- 6. The judgement of the panel at first instance sets out the facts, those found not to be proved as well as those proved. For the purposes of this judgement we see no need to repeat each and every aspect of that judgement herein. A link to the judgement can be found at http://www.rfu.com/TheGame/Discipline/Judgements2009-2010/JudgementsClub/GuninnessPremiership/Saracens.aspx for convenience.
- 7. On 26/5/10 an Appeals Panel convened at The Holiday Inn Bloomsbury to hear Dr Venter's appeal. The Panel consisted of Jim Sturman QC (Chair), Gareth Rees QC and John Brennan. At the appeal the parties were represented by the same counsel as at first instance with the addition of James Segan as junior counsel for Dr Venter.
- 8. The notice of appeal (dated 25/5/10) stated that the finding of "liability" should be overturned. The basis of the appeal was encapsulated at paragraph 33 of the "notice of Appeal" as "The Panel's own findings as to what did and did not occur on 8th May 2010 indicate that, properly analysed, Dr Venter did not make any "provocative/inappropriate gestures and comments to spectators" that were serious enough to engage, let alone "prejudice", the interests of Rugby Union or the RFU. The Panel was on the balance of probabilities wrong."
- 9. The Appeal did not proceed as a "de novo hearing" (as the Rules allow) because no application was made for the appeal to be dealt with on that basis. Accordingly the appeal proceeded as a review of the papers, the facts we had to consider are therefore those as found by the panel at first instance and for ease of reference I have already inserted a link to that judgement herein.
- 10. In so far as the Appeal against the finding of guilt is concerned, under the relevant Rules the burden is on Mr Lewis QC to show that the decision was "wrong" or "was one the Panel could not have reasonably reached".

- 11. Mr Lewis argued that the wording of Regulation 1.5.1 of the rules gives an appellate body a wider discretion than would normally apply in a "review" of a first instance decision. He submitted that the wording of the rule allowed us a broad discretion, enabling us to allow the appeal if we disagreed with the factual findings of the panel at first instance. We disagree with that proposition, it is abundantly clear that the rules envisage a situation where an appeal panel can substitute its view of the evidence after a de novo hearing. Where the appeal does not proceed as a new hearing we are confined to a review of the findings, and can only allow the appeal if we are persuaded by Mr Lewis QC that the reasons in the original assessment could not have been reasonably reached. We consider that a fair and full reading of all of the facts set out in the judgement of His Honour Judge Blackett demonstrates that the finding of guilt was certainly a conclusion open to the Panel on the facts they found proved.
- 12. In the course of argument Mr Lewis QC at one point seemed to be suggesting that the Panel may have been "unintentionally" prejudiced against Dr Venter. We found that proposition to be one wholly without merit. In the event that criticism had any sensible foundation we would have expected there to be an application for a de novo hearing. In support of this submission Mr Lewis QC emphasised the fact that Dr Venter is from a "different culture" and speaks English as "a second language". We consider that any implicit suggestion that the panel was biased against Dr Venter because of differences in cultural background as being totally baseless. Further, Dr Venter's own address to us during the sanction stage of the appeal clearly demonstrated that he spoke English fluently, with passion and some eloquence.
- 13. At the beginning of the hearing Mr Lewis submitted that Dr Venter should be allowed to give evidence before submissions began. For the RFU Mr Green QC argued that should not be allowed as the case was not proceeding as a de novo hearing. Under the Rules the Appeal Panel has a discretion to modify the standard procedures for appeals (see Regulation 11.7.1) but we were of the unanimous view that there was no basis upon which we could allow Dr Venter to give evidence at the

stage where "conviction" was being challenged where the appeal had not been sought on a "de novo" hearing basis. In order to ensure that Dr Venter felt he was receiving a fair and impartial hearing it was made clear to him that we would allow him to give evidence if the conviction appeal failed and before we ruled (if necessary) on the sanction appeal.

- 14. At the original hearing it is significant to observe that the panel found in Dr Venter's favour and dismissed an allegation of assaulting a spectator at the close of the case for the RFU and without even calling upon Dr Venter to give evidence. In the light of that finding we were, to say the least, surprised to see it seriously maintained that there was even "unintentional" prejudice. No allegation of "bias" was ever pursued before us, and in our unanimous opinion there could have been no sensible basis on which to attack the integrity of the panel that heard the case at first instance, it is apparent that they carefully and professionally approached their task and gave a fair and impartial hearing to Dr Venter. The mere fact that a punishment is eventually passed down that the representatives of Dr Venter consider to be "disproportionate" is absolutely no basis, without more, to sensibly contend that a hearing was flawed and not impartial.
- 15. Mr Lewis failed to discharge the burden on him. Despite the lengthy written submissions and oral argument presented on the night we were not persuaded that there was any basis on which we could interfere with the factual findings of the original panel. Once we concluded that the factual findings were unassailable then there can be no tenable argument that the conduct found to be proved was not a breach of the relevant Regulation. In particular we note Dr Venter's own admitted behaviour in deliberately antagonising Leicester supporters.
- 16. Having dealt with the issue of the finding of guilt we turned to the issue of the appropriate sentence. Before passing to that stage of the proceedings we felt (unanimously) that it was only fair to give Dr Venter an opportunity to address us personally. He did so at some length and with considerable passion. Despite the submissions of his own counsel that Dr Venter was at a disadvantage during the original hearing as he was speaking in his "second language" we had no doubt whatsoever that

Dr Venter was able to forcibly put over his point of view. He did so with conviction and without ever crossing the line into arrogance or any other inappropriate manner of conduct. We were impressed by what appeared to be a genuine desire to learn from his disciplinary difficulties and to move forward without further brushes with the sporting authorities.

- 17. Having considered the submissions of Mr Lewis QC, the evidence of Dr Venter and the submissions of Mr Green QC we concluded that the total length of the suspension was a little too long. We reduced the total length of the ban so that it will expire on 27th July, giving Dr Venter and his team the opportunity to start next season with a clean slate.
- **18.**Before leaving the matter we feel it would assist to make some general observations about the conduct of all of those involved on that day at Leicester.
- 19. Rugby as a game has long been proud of the fact that fans can sit together with no need for segregation. As a sport, despite the intense physical nature of the contest on the pitch, crowd trouble is virtually unknown despite the fact that rival fans sit next to each other, often after consuming substantial quantities of refreshment. "Banter" is often lively and rarely, if ever, crosses the line into the offensive. When it does there always seems to be a peacemaker to hand to ensure things remain good natured. Very serious arguments about matters occurring on the pitch that may run throughout a game are settled with no more than a handshake at the end of the match. Fans of opposing teams travel to and from games with no tension between them.
- **20.** The game of Rugby, quite rightly, cherishes the spirit in which rival fans enjoy the game. Stewarding of a Rugby match does not pose the challenges that are often associated with high level soccer games both in the UK and abroad. It is a serious matter when a coach behaves in a manner that could be seen as endangering that spirit.

- **21.** The reverse of the coin is however that a small section of fans increasingly feel free to vociferously barrack and abuse professional sportsmen in all sports, including rugby. The "banter" from the stands may sometimes amuse but it can also touch a raw spot and may offend. An attitude seems to have been developing that the fans are free to shout and tease (often using ripe language) but the coach or player has to take it unflinching, and without riposte. We emphasise that a player or official at the "receiving end" of a crowd's remarks must turn the other cheek, but where there is a reaction by the participant care must be taken to ensure that officialdom does not over-react to what is no more than the participant responding in kind to the actions of the crowd. Whilst impeccable standards are (quite rightly) expected of participants we would ask that fans pause to consider the impact of "banter" that is punctuated with abusive language and gestures on participants. Behaviour that would be unacceptable in the street is not acceptable just because it is directed at the opposition at a sporting contest.
- **22.** In making these remarks we do not suggest for one second that any of the persons who complained on the day in question behaved inappropriately, but we accept the evidence of Dr Venter that there were others in the crowd who did.
- 23. To become a successful professional sportsman or woman drive as well as skill and talent are required. Many successful Rugby players are supremely confident, sometimes that confidence borders on arrogance, in a few cases players who have marked out great careers are universally regarded by their peers and the media who deal with them regularly as downright arrogant. It is the experience of this panel that arrogance may well be a mask for shyness, or a person seen by one person as "arrogant" may be regarded as the exact opposite by those who know him well. It is plain that some of the fans in the stand behind Dr Venter felt that his behaviour on this particular day was inappropriate and boorish, Dr Venter himself conceded that his behaviour in blowing kisses to the crowd was ill judged. Certainly that behaviour can fairly be

termed arrogant, in some circumstances it could be provocative, Dr Venter really should have known better.

24. It is impossible to leave the case without a few parting words about the war of words in the media over the past week. The disciplinary process of the RFU is conducted in private, hearings are scheduled as quickly as possible, and after a case is concluded judgements are made available for the participants involved and also for public scrutiny. It is normally easy to select a "soundbite" from any judgement if the reader is determined to do so, but the notion that somehow the fact that Dr Venter was punished more severely for eating a biscuit is risible. It is however sound common sense, whether a miscreant is in the headmaster's study at Prep School, in the Boardroom of a PLC, in the foreman's office, or before the referee on the pitch, to demonstrate a little humility in the hope of a lighter punishment. It needs to be emphasised that the consumption of a biscuit AFTER the decision had already been made in relation to the penalty to be imposed had no impact on the length of the ban imposed.

25. In all the circumstances the decision of this Appeal Panel is: -

Brendan Venter is suspended from any participation with his club on match days for 10 weeks. This period is comprised of a 6 week suspension for the current offence, that punishment being consecutive to the activation of the 4 week suspension arising out of the January matter. The total suspension therefore runs from 18th May to 27th July. The terms of the suspension are that he must have:

No direct or indirect contact with his team on match days; and

No direct or indirect contact with any match officials on match days.

For the avoidance of doubt, this suspension also prevents him from attending the Twickenham Stadium or its environs, in any capacity on 29th May 2010, the day of the Guinness Premiership final.

Dr Venter is ordered to pay £500 cost in the appeal.

Jim Sturman QC

Gareth Rees QC

John Brennan

2/6/2010