

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

At : Holiday Inn, Coventry

On : Monday, 1st July 2013

JUDGMENT

In respect of: **RICHARD COCKERILL** (Director of Rugby, Leicester Tigers RFC) (“Mr. Cockerill”) and an allegation of misconduct during the Aviva Premiership Final match (“the match”) between Leicester Tigers RFC and Northampton Saints RFC played at Twickenham Stadium on 25th May 2013

Panel: Antony Davies (Chairman), HHJ Sean Enright and Daniel White (“the Panel”)

Secretary: Rebecca Morgan (RFU Judicial Secretary)

Attending: Mr. Cockerill
Ray Tully (Counsel for Mr. Cockerill)
Peter Wheeler (Honorary Secretary, Leicester Tigers RFC)
Paul Burke (Coaching Team, Leicester Tigers RFC)

Andrew Green QC (Counsel representing the RFU)
Gerard McEvilly (RFU Head of Discipline)
Polly Handford (Deputy Head, RFU Legal and Governance)

Ed Morrison (Head of Professional Referee Development)
Stuart Terheege (Fourth Official)

Paul Bolton (RFU Regional Press Officer)

Decision

1. Mr. Cockerill was found guilty following an examination of the evidence of conduct prejudicial to the interests of the Union and/or the game in that in the Aviva Premiership Final match above, he

- (i) Used obscene, inappropriate and unprofessional language to the Fourth Official; and**
- (ii) Used inappropriate and unprofessional behaviour towards the same Match Official;**

The Panel directed that Mr. Cockerill should be suspended from any involvement in coaching on match days and in particular:

- (iii) He may not have any direct or indirect contact with any Match Official or any member of the coaching or playing teams;**
- (iv) The suspension is effective for, and includes all, periods before the game, during the game and after the game on match days;**
- (v) The period of suspension commences on and includes the Aviva Premiership game against Worcester on 7th September 2013 and terminates on, but includes, the Aviva Premiership game against Harlequins on 2nd November 2013. Mr. Cockerill may resume coaching as normal on 3rd November 2013.**

- (vi) **This represents a suspension of 9 matches, which includes 7 Premiership matches and two European matches;**
- (vi) **Costs of £500.00 are awarded against Mr. Cockerill.**

Introduction

2. There was no objection to the Panel. Mr. Cockerill formally denied all the allegations made against him.

The RFU Case

3. Mr. Green reminded the Panel that the match in question was the showcase match of the Aviva English Clubs Premiership. There were 80,000 spectators in the ground and millions watched the game live on television. Mr. Cockerill had made two attempts to search out the Fourth Official and to remonstrate with him regarding a tackle carried out by Courtney Lawes on Toby Flood in which Toby Flood appeared to be seriously injured. On the first occasion there was nothing untoward, but the second occasion was different in that his alleged behaviour was regarded by the RFU as obscene, inappropriate and unprofessional and taken together was capable of being construed as intimidation, accompanied by swearing and obscene abuse as well as various threats to instruct his players at half time to “smash” the opposing players in the second half. Essentially, what Mr. Cockerill was saying was that if the Match Officials did not change the way they controlled the game, he would intimate to the Leicester Tigers players at half time that they should employ illegitimate violence as a tactic in the second half. Mr. Green contended that it was unfair to treat Match Officials in this way. They required to be treated with respect, and that should have been self-evident to Mr. Cockerill. It had been viewed by the public with distaste and discomfort, particularly as a result of seeing a Match Official treated in this way and had generated a huge response in the press and by e-mail to the RFU. It had been seen by young players and fans in their millions, for whom Mr. Cockerill was an iconic role model whose actions may seem to some (erroneously) appealingly aggressive, acceptable and “cool”.

4. Mr. Green referred us to the DVD footage. This lasted 3 minutes 5 seconds and was a compilation of various incidents, commencing with comments by an opposing Coach about Mr. Cockerill’s behaviour and ending with Mr. Cockerill being led back to his seat in the stand by Mr. Morrison. In between, Mr. Cockerill is seen coming down from the stand to speak to Mr. Terheege. The verbal discussion is short and he returns to the stand. He then comes down a second time and there is a further discussion which results in Mr. Morrison’s intervention.

5. The Panel heard evidence from Mr. Stuart Terheege, who was the Fourth Official appointed to the game. Mr. Terheege confirmed his written statement. He said that the Match Referee, Wayne Barnes, had to warn a member of Leicester’s medical staff in relation to his interactions with Match Officials approximately 14 minutes into the game with a warning of expulsion from the playing enclosure in the event of further issues occurring. Approximately 18 minutes into the game, Mr. Terheege addressed the Leicester technical area personnel asking them to refrain from shouting out or distracting the Match Officials. He did likewise with the Northampton technical area 5 minutes later.

6. Approximately 23 minutes into the game, Mr. Cockerill approached him asking who the number 4 was. He informed him that he was the Fourth Official. He asked whether the TMO protocol was in force and was informed that it was and that the on-field Officials had made a decision on the incident (the Lawes tackle upon Flood) and had decided not to refer it to the TMO. Mr. Cockerill was clearly very unhappy about this decision and frustrated with the situation. Mr. Terheege advised Mr. Cockerill that he had answered his question and the matter was concluded. Mr. Cockerill returned to his seat.

7. Approximately 1 minute later, Mr. Cockerill approached Mr. Terheege again. He said he did not recall precisely what he was saying but he was talking at him in a much forthright manner and was using extensive foul and inappropriate language. The exchange was littered with him using the words “f***” and “f*****g”. This reaction was still in response to the Courtney Lawes incident. Mr. Cockerill stated that if it was foul play it must be a yellow card and that they were targeting the Leicester key play maker. He then said words to the effect of “if he’s leaving on a

spinal board then it's a red card". He said words to the effect that he would be telling his players at half time to "smash the c***s because they aren't getting any protection" and that he would tell Wayne Barnes this when he left the field at half time.

8. Mr. Terheege described himself as an experienced Match Official, not easily intimidated, and clarified that he had not felt threatened or intimidated by the second visit. He did regard the comments made to him by Mr. Cockerill, and in particular the comments he made about instructing his team to "smash the c***s" to be highly unprofessional, ill-disciplined and inappropriate. In his 25 years of officiating at World Cup, Six Nations, International, European, Super 15 and all domestic competitions, he had never been subjected to conduct of this sustained manner by a senior official or employee of a team or Club. He had previously heard similar comments on a number of occasions, but what made this different and "uncomfortable" was the threat of an exhortation to violence.

9. Under questioning, Mr. Terheege accepted that there was no explicit criticism of the Match Officials. He also clarified the TMO protocol. The Referee can refer incidents to the TMO. The Assistant Referees can ask the Referee to refer and the TMO can investigate of his own volition. The Fourth Official has no input into the TMO and there is no protocol for the Fourth Official challenging a non-referral during the game. This protocol has been in force from the start of the season in the Premiership.

10. The Panel then considered a timeline of events prepared by Mr. Terheege dated 29th May 2012 and a statement from Mr. McEvilly to which was appended a series of e-mail complaints received by the RFU from members of the public. These described the incident involving Mr. Cockerill as damaging to the reputation of the game in that Mr. Cockerill's behaviour was shown on the big screen to a worldwide TV audience and was sustained. Mr. McEvilly made it clear that the decision to bring the charge against Mr. Cockerill was not influenced by any pressure from the media or members of the public but on its individual merits. The statement also contained a number of press cuttings in which Mr. Cockerill's behaviour and that of Mr. Dylan Hartley of Northampton was a significant focus of media attention.

The Defence Case

11. Mr. Cockerill gave evidence. He explained the background and reasons for his concern over the protection of his players. He referred to previous incidents in previous games where violence had been perpetrated on his players by Northampton and social media traffic in the lead up to the game in which certain named players were said to be "targeted". Such was his level of concern that he had spoken to Mr. Morrison during the week preceding the game. He had mentioned the issue of discipline, though not forcefully as he knew there was to be a TMO appointed.

12. The tackle on Toby Flood caused him immediate concern and confirmed all his pre-game concerns. He went down from the stand to the touchline to find out who the Fourth Official was. Mr. Terheege identified himself. He asked if the protocol was in force and got a response, following which he returned to the stand. Whilst he was there, he looked at replays on the large stadium screens and became aware that the Doctor had called for a spinal board. This caused him to go back down to the touchline and speak again with Mr. Terheege. He accepted that out of concern for the safety of the player, he had used the swearwords complained of and had remonstrated with Mr. Terheege to the effect that if his player was having to leave the field, the opponent should have been given a red card or yellow card. He believed his player to have been knocked unconscious and admitted that he had said to Mr. Terheege that if the Match Officials were not going to protect his players, then he would tell his players to "smash the c***s".

13. Mr. Cockerill told the Panel that he had never in fact intended to say this to his players. It was not a serious threat and was simply said for emphasis. With hindsight, he regretted the extent of the language he had used. He said he was passionate about his Club, whose team is the most disciplined in the Competition. He felt the point had to be made to the Fourth Official by a person with sufficient gravitas. He also felt that his behaviour as depicted on television in front of millions was appropriate, save only for the extent of the language used.

14. Under questioning, Mr. Cockerill did not accept that his behaviour was actually prejudicial – only potentially so. He said that if he deemed it necessary he would give his input into situations to the Match Officials. His intention when he went down to the touchline on the second occasion was to express his disappointment. He accepted that his question about the TMO had been answered and that on the second visit he could not influence that decision. However, he conceded that he could potentially influence further refereeing decisions. He said that his use of the words “f***” and “f*****g” were justified in the circumstances and that his use of such words did not make his actions aggressive. He denied wagging his finger at Mr. Terheege and stated that he was pointing to the pitch. He denied that the words “smash the c***s” was a threat to Match Officials. He had every right to defend his players and in future he would make the same point again but perhaps without using the same language.

15. Mr. Tully then drew the Panel’s attention to a report by Sue Whitewood, of the Sign Language and Lip Reading Service filed on behalf of Mr. Cockerill. Only one paragraph of her report was relied on and Mr. Tully conceded it did not undermine the evidence of Mr. Terheege.

16. The Panel took final submissions from Mr. Green and Mr. Tully as to the evidence and standards and burdens of proof.

Decision on Primary Liability

17. In the course of his opening submissions, Mr. Green QC made reference on two separate occasions to Mr. Cockerill’s previous disciplinary record. The current Regulations state that previous disciplinary matters are relevant considerations with regard to sentence. There is no basis upon which the Panel is entitled, pursuant to the Regulations, to consider such matters as being relevant to whether the accused was guilty of the alleged charge. Whilst the references were not challenged at the time, we put them entirely to one side in considering Mr. Cockerill’s guilt or innocence of the offence alleged. We were dismayed that his previous character was introduced and disapproved of that course of action.

18. The test to be applied to Mr. Cockerill’s alleged behaviour was an objective test. Much of the evidence was not in dispute. Mr. Cockerill had admitted using the words “f***”, “f*****g” and “smash the c***s”. Such language was obscene, inappropriate and unprofessional. Although Mr. Cockerill said he did not mean to intimate to his players that they should use unlawful violence, Mr. Terheege described that threat as the turning point after which he had felt uncomfortable with the tone of the conversation. We find that it was an insidious and petulant act intended to threaten Match Officials into altering the way they officiated. It was designed to suit his own ends and influence the future conduct of the game.

19. The Panel also found that Mr. Cockerill’s behaviour objectively viewed was clearly aggressive to players, the coaching staff, spectators and the television viewing public. Such behaviour was inappropriate and unprofessional.

20. The Panel then considered whether such behaviour as it found was to be regarded as prejudicial to the interests of the game. We found unanimously that it was, taking account (inter alia) of the following:

- Where Mr. Cockerill was at the time he carried it out.
- The vicinity of the Coaches, playing staff and Match Officials.
- The nature of the game and extent of the spectating and television viewing audience.

21. Whilst the Panel accepted Mr. Cockerill was under considerable pressure and that his actions were borne out of a genuine concern for his players, the game expected a much higher standard of behaviour from a Director of Rugby in these circumstances.

Sanction

22. The sanction for offences of conduct prejudicial to the interests of the game and/or Union is at large. The Panel took submissions from Mr. Green as to the RFU's assessment of the seriousness of Mr. Cockerill's conduct. Mr. Green presented a second witness statement of Mr. McEvilly which related only to sanction. Appended to that statement was a copy of a previous judgment against Mr. Cockerill for two counts of Match Official abuse during the half time interval of the LV Cup match Leicester v Newport on 14th November 2009. He had received a four week suspension and a fine of £2,000.00.

23. The Panel considered the similarities and differences between that case and the evidence it had heard. Though that was a case of verbal abuse of Match Officials, the same swear words were common to both. In the previous case, Mr. Cockerill had admitted the offences, accepting in so doing that he had behaved in an offensive manner, for which he apologised, stating this to be out of character. That Panel had also found him to be genuinely contrite, with the genesis of the offending being his frustration by on-field occurrences and his wish to convey messages to the Match Officials, which he was unable to do. The Panel also found the previous offending spontaneous, whereas in this case we have found that Mr. Cockerill deliberately returned to the touchline after the incident should have been over. In both cases, Mr. Cockerill was described as very passionate, allowing his emotions to get the better of him.

24. Mr. McEvilly's second statement also deposed that Mr. Cockerill's comments made in a BBC interview on 29th December 2012 following the Leicester Tigers v Gloucester rugby match had been referred to him in view of criticism made of the Match Referee. That resulted in his writing a private and confidential letter to Mr. Cockerill warning him about his conduct and that a copy of the letter was to be kept on file. Mr. Cockerill's response to this included the following comments:-

"I have either brought the game into disrepute or I have not. If I have, charge me. If I have not, don't send me pointless e-mails".

25. Mr. Green QC pointed out to the Panel that in the earlier case Mr. Cockerill had described "a Micky Mouse competition with Micky Mouse refereeing". By comparison, the Aviva Premiership Final was the biggest match of the season on the biggest day and drew the Panel's attention to what he submitted was a perceived lack of contrition, apology or acceptance that he had done anything wrong on this latter occasion.

Mitigating Features

26. Mr. Tully asked Mr. Peter Wheeler to speak on Mr. Cockerill's behalf. Mr. Wheeler was anxious to ensure the Panel knew that there was another side to Mr. Cockerill to that which it had heard. He was a committed and passionate man, setting high standards of honesty and discipline. He inspires loyalty and commitment and the Club's on-field disciplinary record is exemplary. He has a good relationship with Referees and a passion for player safety. He has been at the Club for 30 years. The Club knows him well and regards him positively, whilst acknowledging that some aspects of his character are "not controlled". He asked us to distinguish the previous finding, which was deliberately aimed at Match Officials and called their integrity and ability into question. The genesis for this incident lay in player protection and welfare. The exchange with Mr. Terheege was limited and the latter was not upset by the behaviour

Sanction

27. We have two major concerns. The first is that in 2009 Mr. Cockerill accepted that his disparaging remarks concerning the competition and its officiating had been wrong. He was contrite, apologised and maintained that it would not happen again. In 2013, he received a written warning and within a matter of months was involved in this incident. Our second major concern was that when giving evidence Mr. Cockerill maintained that the use of the words "f***" and "f*****g" were justified in the circumstances. He also maintained that players who swear at Referees need not be sent off or disciplined. His use of swear words which he did not deny did not, he maintained, make his actions aggressive, obscene, inappropriate or unprofessional. Certain of the game's core values, namely respect, discipline and sportsmanship, seem to us to have passed Mr. Cockerill by.

He does not seem to appreciate the corrosive effect of his behaviour upon players, medical staff and other coaches with its attendant loss of moral authority, nor the effect of his behaviour upon the viewing public and the press. If subjectively he feels entitled to behave in this manner, that appears to be enough justification for him to do so, which is a continuing concern which must be factored into our approach to sanction.

28. The previous suspension of four weeks was clearly not enough to concentrate Mr. Cockerill's mind and remind him of his position and responsibility within the game. He remains in a position of authority in his Club and a role model for aspiring players and coaches and is still a highly respected figure in the game. Any suspension from coaching on match days must be immediate and meaningful, hence the sanction referred to above. This means that he will have no input whatsoever on match days for the following seven Aviva Premiership League games and the first two rounds of the European Cup:

7 th September 2013	Worcester (H)
14 th September 2013	Bath (A)
21 st September 2013	Newcastle (H)
28 th September 2013	Exeter (A)
5 th October 2013	Northampton (H)
12 th October 2013	Europe (1)
19 th October 2013	Europe (2)
26 th October 2013	London Wasps (A)
2 nd November 2013	Harlequins (H).

29. In coming to the above, we have taken note of Mr. Cockerill's engagement (or lack thereof) with the disciplinary process and sanctioning regime, together with the need to protect the image of the game and the Match Officials who operate within it. The sanction covers the first one third of the Premiership season and the first one-third of the European Cup pool games.

Costs

30. Costs of £500.00 are awarded against Mr. Cockerill.

Right of Appeal

31. Mr. Cockerill is reminded of his right of appeal against this decision.

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Antony Davies
Chairman

HHJ Sean Enright
Daniel White

3rd July 2013

