

RUGBY FOOTBALL UNION
COMPETITIONS APPEAL HEARING

VENUE: 50-52 Chancery Lane, London

DATE: 17 February 2011

Club: Loughborough Students RFC

Matter: RFU Regulation 13.4.5

Panel: Jeremy Summers (Chairman), Robert Horner and Elizabeth Riley (“the Panel”)

Secretary: Bruce Reece-Russel

In attendance:

Loughborough Students RFC (LSRFC)

Alan Buzza – Director of Rugby

Dave Morris – Head Coach

Malcolm Ross – RFU Council Member for Leicestershire.

RFU

Jonathan Dance - RFU Board of Directors

Norman Robertson – Chairman, NCA

Polly Handford, Deputy Head of Legal (observing)

DECISION

1. **For the reasons detailed below, the Panel upheld an appeal brought by LSRFC against a decision of the RFU Competitions Sub Committee by which that Sub Committee had suspended RFU Regulation 13.4.5.**

PRELIMINARIES

2. There was no objection to the composition of the Panel and although Mr Dance properly noted that he had previously sat on RFU panels with both Mr Horner and Mr Summers, no preliminary issues arose.

THE APPEAL

3. The Panel convened to consider an appeal by LSRFC against a decision that, in written form at least, was undated. It however appeared to be common ground that the notice had been sent out to all relevant clubs by e-mail dated 9 February 2011.
4. That decision gave notice of the suspension of RFU Regulation 13.4.5 and was expressed in the following terms:

“Following the inclement weather in the weeks before Christmas across the country and in certain parts of the country in January, there is now a considerable number of League matches that have had to be re-arranged. These re-arranged matches are taking up all free dates in January, February, March and April.

If there are further postponements, the dates arranged for National Cups, League play-offs and other competitions in May will be threatened and of course Clubs will have to make arrangements to continue to play in May.

Organising Committees will continue to endeavour that Clubs’ League seasons end in April.

Because of the limited flexibility and lack of free dates, the RFU Competitions Sub Committee, which has the overall responsibility for managing all RFU Competitions for Levels 3 and below, has been considering the position. Pursuant to the powers granted to it under Regulation 13.1.6, it has decided that an initial step that can be taken to prevent further endangering the playing of matches on dates specified is to suspend Regulation 13.4.5.

*The effect of this is that if a Club releases three or more players to a nationally selected England representative team (or five or more players for a representative team of another Union) it will **not** be able to require that a League Match (or re-arranged match) be postponed from the date specified by the Organising Committee.*

If there are further League games postponed further action may be required (which may include requiring games affecting promotion and relegation to take precedence over other matches).

If any Club affected by this decision wishes to appeal against this decision to suspend Regulation 13.4.5, it must give notice of its appeal to the RFU Disciplinary Manager at Twickenham within 48 hours of receipt of this notification.”

5. The notice was issued under the authority of the Chairman of the RFU Competitions Sub Committee.
6. Regulation 13.4.5 provides as follows:-
“Players in Representative Matches
(a) England

Where a Representative Match involving England's Senior Team, Saxons, Under 20, Sevens, Students or Counties XV's or any other team picked by internationally appointed selectors to represent England, an Inter Service Championship match at senior level or the County Championship Quarter-Finals, Semi Finals or Final is played on a date specified for a League Match, any Club (other than a Premiership or Championship club) which is affected by three or more players or replacements (other than England Academy Players) taking part in such Representative Match may require a League Match to be rearranged for a later date. The dates for playing such rearranged League Matches will be fixed by the appropriate Committee for the League concerned.

(b) Other National Unions

Where a Representative Match involving any Senior National Union other Representative Team(s) or Second Senior Representative Team(s) of any National Union other than England is played on a date fixed for a League Match any Club which is affected by five or more players or replacements taking part in such Representative Match may require the League Match to be rearranged for a later date. The appropriate Committee will fix such rearranged League Match for the League concerned."

7. RFU Regulation 13.1.6 relied upon by the Competitions Sub Committee confers the following power:-

Power to amend or vary or make further provisions during the season

"13.1.6 In the event that the Committee considers it is in the interests of Rugby Football or an RFU Competition, it may amend or vary RFU Regulation 13 (inclusive) and the Appendices and/or make further regulations during a Season.

(a) where in the view of the Committee exceptional and material circumstances have occurred during any RFU Competition which either have not been provided for in or cannot be equitably dealt with under RFU Regulation 13 (particularly if promotion or relegation is likely to be materially affected), the Committee may at its own instigation introduce regulations for the current Season and/or determine the results of matches that have not been played for reasons related to the above exceptional and material circumstances and/or determine which Clubs should or should not be relegated;

(b) any regulation or decision made or taken by the Committee under this Regulation shall become final and binding unless any person or Club affected has given notice of an appeal to the RFU Disciplinary Manager within 48 hours of that person or Club affected being made aware of it and an Appeals Panel rules that the regulation or decision of the committee shall not apply."

8. LSRFC lodged an appeal in response to the decision at paragraph 4 above and in written grounds of appeal made the following points:

- The decision would impact on LSRFC in a way that it would not on any other club;
- There had been limited consultation with LSRFC prior to the decision having been made;

- The decision had been taken 4 days before the England Students squad had been due to be announced. This had left LSRFC in the invidious position of having to choose between withdrawing its players from the England squad or in effect giving up any hope of promotion in the current season;
 - LSRFC would contribute 8 players to the England Students 26 man squad;
 - The committee had suspended Regulation 13.4.5 without first considering whether there were other practical solutions available;
 - A number of alternative options were put forward.
9. Although not advanced by either party, the Panel felt that consideration should also be given to RFU Regulations 2.4, 6.1 and in particular the opening sentence to 6.1 which states:

“The RFU aims to ensure there is no distortion of fairness and aims to promote an equal opportunity for success and a level playing field between Clubs in the Premiership, a League or any other competition in which Clubs take part.”

SUBMISSIONS

10. Mr Morris and Mr Buzza stressed the very real dilemma that had faced the club. It had always supported England and wished to continue to do so. Further the prospect of depriving its players of the opportunity of representing an England team, so that LSRFC could pursue its goal of promotion, was not an attractive one.
11. LSRFC had contacted Competitions in December and no mention had then been made as to the possible suspension of Regulation 13.4.5. LSRFC had then not been further consulted prior to the decision having been taken on or about 8 February 2011.
12. In its view no other club would be affected in such a severe way by the suspension of the Regulation and, whilst it understood the need to avoid further delays, it noted that the season officially does not conclude until the end of May and as such other means could be deployed to address the position without suspending Regulation 13.4.5.
13. There are three relevant league dates, 26 February, 5 March and 26 March, which, if Regulation 13.4.5 were to be suspended, would leave LSRFC without many of its strongest players. LSRFC nevertheless conceded that it was only the first of these fixtures that caused any concern. This was against Westoe where both clubs will be competing for what may well be the chance of promotion or the right to play in the

promotion play-off game against the runner up in National 2 South. LSRFC therefore agreed that it would not be prejudiced if it were to be without its England players in the remaining two fixtures.

14. LSRFC explained further the various options it had considered, but it is not necessary to repeat those in any detail for the purposes of this judgment.
15. In response Mr Dance indicated that there had been great concern as to the effect that this year's severe winter could have if action was not taken to avoid further postponements if at all possible. He though confirmed that no other course of action had been considered and that there had been no prior consultation with relevant clubs. He also contended that LSRFC would not be the only club that risked hardship as a result of suspending Regulation 13.4.5, although no specific detail was given in this respect.
16. In response to a suggestion from the Panel both parties appeared to agree that delaying the suspension until 1 March 2011 (and so avoid it having effect for the LSRFC v Westoe game) would be a workable solution.

FINDINGS

17. The Panel was of the view that the Competitions Sub Committee had acted in what it felt were the best of interests of the game having regard to what is to be hoped will be a unique situation brought on by the unduly harsh winter this year.
18. However the Panel had very real concerns that no regard had been paid to the inevitably disproportionate impact the suspension of Regulation 13.4.5 would have on LSRFC. Similarly no consideration had been given as to whether other means were available to achieve the desired outcome of preventing further fixture postponements if at all possible.
19. The Panel also considered that there were not insignificant issues arising from the way in which the decision was taken and then communicated to the game¹. The Committee had not met formally, so, seemingly, there was not a formal minute of the decision, and the briefing paper requesting a postal vote was deficient in that it did not raise a number of the issues which had validly arisen during the course of the appeal hearing.

¹ The Panel had concerns about the notification document itself which had perhaps been prepared in some haste and had thus not been as helpful as might ordinarily have been the case.

20. There was no evidence before the Panel that any other club would be affected by the suspension either at all or to anywhere near the same degree as would be the position with LSRFC.
21. The Panel was further of the view that the Sub Committee had failed to have proper regard to the opening sentence of Regulation 6.1 (set out at paragraph 9 above) which the Panel considered was an overarching principle as to the way in which the competitive game must be administered.
22. In consequence of the above, the Panel concluded that the suspension would give to a disproportionately adverse impact being suffered by LSRFC.

ORDER

23. In all the circumstances the Panel determined that the suspension of Regulation 13.4.5 should not be allowed to stand and the appeal was allowed accordingly.
24. Careful consideration was given as to whether the suspension of the Regulation could have been delayed for a short period. The Panel nevertheless concluded that such a solution would not adequately address the gravity of the concerns that arose from the issues set out above.

COSTS

25. No order for costs was made save that any appeal fee lodged by LSRFC is to be returned, the appeal having been allowed.

COMMENT

26. The Panel, whilst accepting that there might be valid reason for suspending a particular RFU Regulation, was concerned as to the lack of provisions within the Regulations as to how that should be done and what approval ought reasonably to be necessary. The decision made in the present proceedings, whilst undoubtedly well intentioned, was able to be made without prior consultation and without requiring ratification.

27. It may also be appropriate to revisit the terms of Regulation 13.4.5 in any event so that consideration can be given as to whether any amendment could be beneficial to reflect the present structure of the RFU leagues.

28. The Panel notes the potential impact of RFU Regulation 13.6.2. If LSRFC is considering playing League fixtures on 5th and/or 26th March (or thereafter) having released its England Players to play for a national team on that day the club should consider whether it is first necessary to obtain written confirmation from the RFU at Twickenham that it will not thereby render itself liable to penalty under this Regulation.

Jeremy Summers

Chairman

22 February 2011