

RUGBY FOOTBALL UNION

APPEAL PANEL

JUDGMENT

Club: Tonbridge Juddians RFC
Panel: Matthew Weaver QC (Chairman), John Vale and John Downham
Secretary: Oliver Norris

HEARING

Date: 31st March 2022
Venue: By video
Attending: Will Bordell (Counsel for Tonbridge Juddians RFC)
Gareth Winters (Tonbridge Juddians RFC)
Paul Wheeler (Tonbridge Juddians RFC)
Alys Lewis (RFU)
David Barnes (RFU)
Sabrina McGill (RFU)
Mike Starmer-Smith (Guildford RFC, observer)

SUMMARY OF DECISION

1. The Panel allow the appeal and direct that the Club be re-instated into the Cup and permitted to play the final with the results of the quarter-final between the Club and Blackheath FC on 13th February 2022 and the semi-final between the Club and Guildford RFC on 13th March 2022 to stand

2. As the Club breached the Cup Regulations, the Club is to be given a formal reprimand in respect of its selection of ineligible players in the Cup. Such reprimand is to remain on the Club's record for the remainder of this season and for season 2022/2023 and the Panel would expect it to be referred to and taken into account by any further Disputes Committee and/or RFU appeal panel should the Club be found to be in breach of the eligibility criteria of any cup regulations in the future.

3. Further, the Panel make the following additional orders:
 - a. Players within the Club's squad who were registered after 17th October 2021 should be considered as "eligible" for the purposes of F.3 of the Cup Regulations if they were registered by the date of the semi-final and have been a registered member of the Club in any season prior to the 2021/2022

season. As such, the selection of such players for the final should not be treated as a breach of F.3 of the Cup Regulations; and

- b. Any players who were not registered by 17th October 2021 and have not previously been registered as members of the Club are not to be considered as “eligible” for the purposes of F.3 of the Cup Regulations. As such, the selection of such players for the final should be treated as a breach of F.3 of the Cup Regulations.

4. The appeal fee paid by the Club is to be refunded.

PRELIMINARY MATTERS

5. The members of the Panel identified themselves and the Chairman explained the procedure to be followed. There were no objections to the composition of the Panel.
6. The Chairman confirmed the Panel’s earlier ruling that Guildford RFC ought to be entitled to observe the hearing but not participate.

THE APPEAL

7. The Club entered an under 18s side in the Boys’ Under 18 National Cup (“**the Cup**”) for the seasons 2021/2022. Having progressed through the early rounds, the Club played and beat Blackheath FC in the quarter-final on 13th February 2022 (“**the Quarter-Final**”) and then Guildford RFC in the semi-final on 13th March 2022 (“**the Semi-Final**”).
8. Following the Quarter-Final and shortly before the Semi-Final, the Club were notified by the RFU that on inspection of the match card for that match, it had been identified that certain of the Club’s players in the Quarter-Final were ineligible under the Boys’ Under 18s National Cup Regulations 2021-2022 (“**the Cup Regulations**”).
9. The issue of the allegedly ineligible players was put before the Boys’ Under 18 National Cup Disputes Committee (“**the Disputes Committee**”) and a decision was made by the Disputes Committee on 24th March 2022 to disqualify the Club from the Cup and, therefore, to prevent the Club from playing the final (“**the Semi-Final Decision**”).
10. By a Notice of Appeal dated 29th March 2022 (“**the Notice of Appeal**”) the Club appealed against the Decision.

11. During the hearing, it was agreed with the RFU that the Panel ought to consider the Dispute Committee's decision dated 24th March 2022 in respect of the quarter-final match in the Cup between the Club and Blackheath FC, played on 13th February 2022 ("the Quarter-Final Decision"), in addition to the Semi-Final Decision. By doing so, the Panel considered that it would prevent the obvious confusion and additional time and expense that might be caused if the Appeal was successful but the decision in respect of the quarter-final was then re-visited, a sanction imposed by the Dispute Committee and a subsequent appeal lodged by the Club which would raise materially similar issues for determination by an RFU Appeal Panel.

THE RELEVANT REGULATIONS

12. This appeal concerns both the Cup Regulations and the RFU Regulations.

13. The relevant provisions within the RFU Regulations are as follows:

19.1.5 *The overriding objective of RFU Regulation 19 is to maintain and promote fair play, protect the health and welfare of Players (and others involved in the Game), ensure that acts of Foul Play and Misconduct (on and off the field of play) are dealt with expeditiously and fairly by independent means within the Game and that the image and reputation of the Game is not adversely affected. To achieve consistency and uniformity in the administration, assessment and implementation of sanctions regarding foul play and misconduct.*

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19.13 Appeals under RFU Regulation 13 (Adult Competitions) or RFU Regulation 16 (Adult Womens Competitions) and all other Competitions

19.13.1 *A Club, or other party to a complaint or dispute, may appeal against a decision of the Divisional Organising Committee, Disputes Committee, Constituent Body, or NCA executive, within 14 days beginning with the date on which the written decision was sent (or such other period as may be specified in the decision). Such appeal must be put in writing to the RFU Head of Discipline. The notice of appeal shall:*

(i) set out in full details of the matter appealed against and, if the whole of the decision is not appealed against, specify that part of it which is appealed against;

(ii) set out in full which of the following ground(s) of appeal it is relying upon:

(a) came to a decision to which no reasonable body could have come; or

(b) made an error of law in reaching its decision; or

(c) failed to act fairly in a procedural sense; or

(d) the sanction imposed was so excessive/lenient as to be unreasonable

(iii) be accompanied by the administrative fee set out in Appendix 3, which is refundable in the event that the appeal is upheld unless the Appeal Panel determines otherwise.

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19.13.4 *An Appeal Panel shall (in addition to the power to give any directions necessary for the proper conduct of the appeal as set out in Regulation 19.8.4) have the power to:*

(i) allow or dismiss the appeal;

(ii) vary the decision appealed against in such manner as it shall think fit including the power to increase, decrease or remit any penalty imposed;

- (iii) remit the matter, with such directions as it thinks fit, for reconsideration;
- (iv) make such further orders as it considers appropriate.

19.13.5 Subject to RFU Regulation 19.15.3 the decision of the Appeal Panel shall be final and binding.

14. The relevant provisions of the Cup Regulations are as follows:

F. Player Eligibility

1. *Players must be under the age of 18 at midnight on 31st August of the effective season to be eligible to play in the Competition.*
2. *All Clubs and players must comply with RFU Regulation 15, including the eligibility requirements for playing up, and the restrictions on playing in the front row. U16s and U17s can only play in an U18 match if the conditions of RFU Regulation 15 are satisfied. U16s cannot in any circumstances play in the front row of the scrum in any U18 match. Players who are playing down into the U18 age grade pursuant to RFU Regulations 15 are not eligible to participate in this Competition.*
3. *All players must be bona fide members of the Club and be registered for that Club on the RFU GMS database at the time of the Round 1 fixture. For all other fixtures from Round 2 onwards, all players must be bona fide members of the Club and be registered for that Club on the RFU GMS database on or before 17 October 2021.*
4. *No Player may play for more than one Club in the Competition during any one season.*
5. *The following Players are ineligible to compete in the Competition:*
 - (a) *Players who are classified as RFU England Academy Players (as defined in RFU Regulation 1); or*
 - (b) *Players who have been selected for any England Age Grade national representative match squad (excluding England County representative squads) or comparable team from another World Rugby Tier One Nation during the current season and/or the prior season.*

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2. Competition Organisation

2.1. *The Competition will be administered by the Competition Organiser who shall manage the delivery of the Competition.*

2.2. *The Competition Organiser shall have discretion to decide on matters not provided for in, as well as on the interpretation of, these Regulations in the context of the Competition. This discretion shall include the interpretation of these Regulations in accordance with the underlying principles and intent (insofar as it can be ascertained) of the relevant regulation and in the interests of rugby union football.*

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9. Disputes and Breaches of Regulations

9.1. *Subject to the right of appeal in accordance with RFU Regulation 19, the Disputes Committee shall have the power to discipline any Entrant or person for breach of any of these Regulations and/or any RFU Regulations. Ignorance of any such regulations cannot be deemed an excuse in the event of breach.*

9.2. *Any matters alleged to be in breach of these Regulations and/or RFU Regulations shall be referred immediately to the Disputes Committee; c/o the Competition Organiser within 24 hours following the conclusion of a match. Written confirmation must be sent to the Competition Organiser within 48 hours of the conclusion of the match setting out the grounds of the complaint/breach in full.*

9.3. *The Disputes Committee shall have jurisdiction to impose such penalty as it thinks fit including, but not limited to, financial sanctions, disqualification and suspension. For the avoidance of doubt, this power shall include a power to impose any sanction for breaching these or any other RFU Regulation, in line with tariffs and guidelines where these exist.*

10. Sanctions

10.1. *Having reviewed the Competition Organiser's evidence or the Disputes Committee finds a breach of a Regulation has occurred, it may bring breach proceedings. If it feels there is a case to answer the party committing the alleged breach will be notified and given an opportunity to make submissions or attend a hearing. Such a hearing will be conducted as set out in Appendix 6 of RFU Regulation 19. The National Age Grade Disciplinary Secretary will be copied in to any such notification.*

10.2. *Sanctions open to the Disputes Committee in respect of any breach of these Regulations and/or RFU Regulations will include but are not limited to the following:*

- *Reprimand an individual or Entrant*
- *A deduction of points*
- *A fine up to £100 and/or an award or reasonable costs as scheduled by either the Disputes Committee and/or a complainant*
- *Order a replay*
- *Order that the result is that an Entrant has lost the match*
- *Exclusion/disqualification of an Entrant from the Competition, for a specific period of time as the Disputes Committee may decide.*

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11. Right of Appeal

11.1. *Should an Entrant or other party who is involved in the proceedings wish to appeal a decision of the Disputes Committee, that party shall have a right to appeal in accordance with this Regulation 11.*

11.2. *Such aggrieved party may, within 72 hours from the receipt of the letter or notice informing it of the Disputes Committee's decision, lodge an appeal in writing to the Competition Organiser, who shall then notify the National Age Grade Discipline Secretary and the RFU Head of Discipline.*

11.3. *The National Age Grade Discipline Secretary, together with the RFU Discipline Department, will direct how the appeal will be heard and conducted and will issue case management directions until a panel is appointed to hear the appeal. Any appeal will normally be determined by written submissions unless the National Age Grade Discipline Secretary and RFU Discipline Department consider it appropriate to have a live hearing in which case such hearing will take place as soon as practicable to avoid undue delay to the next round. The decision of the appeal panel is final.*

15. Regulation F.3 in the version of the Cup Regulations sent out initially to all clubs concerned referred to a registration date of 10th November 2019. This was plainly a typographical error. An amended version of the Cup Regulations showing the date for registration as 17th October 2021 was sent to clubs by e-mail from the RFU sent on 14th October 2021. That e-mail did not identify the previous error in F.3 but did, within the e-mail, highlight the registration date of 17th October 2021. It was not disputed by the parties that the first notification to clubs of the correct date for registration, namely 17th October 2021, was on 14th October 2021.

THE SEMI-FINAL DECISION

16. The relevant sections of the Semi-Final Decision read as follows:

3. Position of the Disputes Committee

The main points considered by the Disputes Committee were the following:

- *Match cards submitted by Tonbridge Juddians.*

- *Player data pulled from the Team Management module of GMS.*
- *Registration dates pulled from the Team Management module of GMS.*
 - o *In the quarter-final fixture, Tonbridge Juddians played eight players whose registration date was past the deadline of 17 October 2021 therefore ineligible to play.*
 - o *In the semi-final fixture, Tonbridge Juddians played six players whose registration date was past the deadline of 17 October 2021 therefore ineligible to play.*
 - o *One player, believed to be an England Academy Player, currently at Bristol Academy, played in the match.*
- *Detailed information and representations from all teams in relation to separate breaches of regulation F3.*
- *A decision was requested after a subsequent round of the competition had taken place.*

4. Decision/Sanction

a. Pursuant to its powers under Regulation 9, the Disputes Committee have decided that Tonbridge Juddians will be disqualified from the competition and will not be permitted to participate in the final of the competition due to the club having played ineligible players in the quarter-final and semi-final.

b. The Disputes Committee discussed whether it was appropriate for the opposition to go through to the final in place of Tonbridge Juddians and noted the following:

- i. The Dispute Committees' powers are limited to determining sanction in respect of breaches of the regulations;*
- ii. Regulation 2.2 stipulates that: The Competition Organiser shall have discretion to decide on matters not provided for in, as well as on the interpretation of, these Regulations in the context of the Competition. This discretion shall include the interpretation of these Regulations in accordance with the underlying principles and intent (insofar as it can be ascertained) of the relevant regulation and in the interests of rugby union football.*
- iii. Therefore, given the regulations do not set out a process for replacing a club who is disqualified from the final, the decision as to who shall replace Tonbridge Juddians in the final is a decision for the Competition Organiser.*
- iv. However, the Disputes Committee noted that the opposition had also breached the player registration provisions and as such, recommended to the Competition Organiser that it was not appropriate for them to be involved in the final.*

c. Given that Guildford is no longer in the competition, the Disputes Committee is limited in the sanctions available to it. However, the Disputes Committee feel it appropriate to issue Guildford with a formal written warning with regards to player registration which will remain on the club's record for next season.

5. Appeal

All affected parties will have the right to appeal this decision in accordance with Regulation 11 and any appeal must be lodged with the RFU Head of Discipline by Tuesday 29 March, 5 pm.

THE QUARTER-FINAL DECISION

17. The relevant sections of the Quarter-Final Decision read as follows:

3. Position of the Disputes Committee

The main points considered by the Disputes Committee were the following:

- *Match cards submitted by Tonbridge Juddians.*
- *Player data pulled from the Team Management module of GMS.*
- *Registration dates pulled from the Team Management module of GMS.*
 - o *Tonbridge Juddians played eight players whose registration date was past the deadline of 17 October 2021 therefore ineligible to play.*
 - o *One player, believed to be an England Academy Player, currently at Bristol Academy, played in this match for Tonbridge Juddians*
 - o *Blackheath played 16 players who were not registered, therefore ineligible to play*
 - o *Blackheath played one player whose registration date was past the deadline of 17 October 2021, therefore ineligible to play.*

4. Decision/Sanction

a. Pursuant to its powers under Regulation 9, the Disputes Committee have decided that:

i. given Tonbridge Juddians is subject to a further decision pertaining to the semi-final, their sanction will be addressed in that separate Disputes Committee decision.

ii. Given that Blackheath is no longer in the competition, the Disputes Committee is limited in the sanctions available to it. However, the Disputes Committee feel it appropriate to issue Blackheath with a formal written warning with regards to player registration which will remain on the club's record for next season.

5. Appeal

All affected parties will have the right to appeal this decision in accordance with Regulation 11 and any appeal must be lodged with the RFU Head of Discipline by Tuesday 29 March, 5 pm.

18. It was common ground that until it was provided by the RFU under cover of an e-mail dated 31st March 2022, a copy of the Quarter-Final Decision had not previously been sent to the Club.

RELEVANT BACKGROUND TO THE APPEAL

19. Due to the COVID-19 pandemic, the 2021/2022 Cup competition was the first to be held since the 2019/2020 season. Prior to the start of the 2021/2022 season, all clubs were informed about a change to the GMS system regarding registration of age grade players. Registration was to become known as "Affiliation" and all age grade players were de-affiliated from their clubs, rendering them "inactive". As such, an age grade player's parent was required to access their child's GMS account and re-affiliate him or her to their respective club in order to register them with that club. This is not something which parents had been asked to do in previous seasons.
20. That the change in the GMS requirements may have caused registration problems for parents and clubs which go beyond the usual/ordinary issues experienced in years gone by could be said to be illustrated by the number of clubs in the Cup whom the RFU have identified as playing ineligible players (due to registration issues). According to the RFU, of the 8 quarter-final teams, only 4 played squads without an ineligible player. Of TJ's opponents, Blackheath FC played 16 ineligible players in the quarter-final and Guildford played 9 ineligible players in the semi-final.
21. It appears to be the case that match cards were not routinely checked during the tournament. As such, it is perfectly possible that other clubs within the Cup fielded ineligible players. Indeed, given the number of quarter-finalists who fielded ineligible players (50%), it would seem highly likely that a number of clubs within the competition fielded ineligible players.

THE CLUB'S SUBMISSIONS

22. The Club's grounds of appeal were very clearly set out by Mr Bordell in the Notice of Appeal and developed in oral submissions. The Notice of Appeal had annexed to it a table (previously provided to the RFU on 18th March 2022) which explained the position in respect of all players who were identified as ineligible for the quarter-final. The table is set out below (with some personal information redacted to preserve confidentiality):

Name and RFU ID ¹	Affiliation date per GMS	Summary of explanation provided to the Disputes Committee	Further comment
	09.10.2021	<p>The RFU has suggested that [REDACTED] is an England Academy Player playing at Bristol Academy in breach of Regulation F5 of the National Cup Regulations.</p> <p>TJs' position is that [REDACTED] has played at the club since 07.10.2009, has never left the club nor played for any other club, and is not part of any Premiership or England Academy. [REDACTED] has never done any of the pathway programmes. His parents also confirm they have no knowledge of him being on this list.</p>	<p>On 26 March 2022, Mr Withers emailed Gethin Watts of the Bristol Bears Academy to discuss [REDACTED]'s status as an academy player. Mr Watts confirmed, copying Donald Barrell of the RFU to provide verification if necessary: "To my knowledge [REDACTED] has never been a player at Bristol Bears and is certainly not now registered as an EAP player with us here" [71].</p>
	18.10.2021	<p>This is a duplicate account issue. [REDACTED] has been at TJs since the start of Minis. He is also listed under the ID [REDACTED]. Our GMS data shows [REDACTED] first associating to the club 23.11.2009.</p>	<p>[REDACTED]'s parents have provided details of their administrative difficulties in registering their son using the online GMS platform at [83-86].</p>
	19.10.2021	<p>[REDACTED] joined TJs at the start of the 2020-21 season and has a 'date associated to club' date on our GMS export of 06.09.2020.</p>	<p>[REDACTED]'s parents have provided a letter at [82] recording their difficulties in registering [REDACTED] using the online system.</p>
	22.10.2021	<p>[REDACTED] joined TJs as an U13 and has a 'date associated to club' date on our GMS export of 06.02.2018.</p>	<p>[REDACTED]'s parents have provided a letter in support at [80-81] outlining that they paid their subscription fees of £200 in August 2021 and that [REDACTED] has been a committed member of TJs since 2018.</p>
	31.10.2021	<p>Our GMS export for this season shows this RFU ID was associated to the club on 17.10.2021. Again, there is a duplicate account issue here as we have a number listed for [REDACTED] from U16s as [REDACTED] [REDACTED] has been at TJs since he was an U11 (2014) and not left the club or played for any other club in that time.</p>	<p>[REDACTED]'s parents have provided information about their technical difficulties with renewing their son's affiliation online at [74-76]. They confirm that [REDACTED] has played for TJs every season since 2014.</p>

¹ This information has been removed to preserve confidentiality

03.11.2021	<p>█████ joined TJs as a Mini and has a 'date associated to club' date on our GMS export of 19.03.2013.</p>	<p>█████'s parents have provided a letter in support at [77] demonstrating █████'s longterm commitment to TJs for almost a decade.</p>
16.12.2021	<p>█████ and his father discussed joining TJs with team's players and parents at Saracens sessions over the summer off-season. █████ decided to join the team at the start of the U18 season but suffered a hamstring injury in early September 2021 playing for school. This delayed him in joining the club formally. Evidence has been supplied demonstrating his email introduction to TJs dated 10.10.2021. █████ first trained with TJs on 13.10.2021 and onwards after that, gradually increasing his activity as his injury improved. █████ purchased kit and attended matches whilst unable to play. He has not trained or played with any other club this season.</p> <p>It is also noted that █████ could not be described as a player 'brought in to help win the competition'. Since joining, he has played in several B and mixed ability games and only made two appearances in the A team, one of which was the half he played in the National Cup Quarter-Final. He was not selected in Round 4 despite being fit.</p>	<p>█████'s father has confirmed this narrative and provided further detail in his supporting letter at [78-79].</p>
20.01.2022	<p>█████ made contact with Gareth Withers via email on 05.06.2021 asking to join TJs. The two kept in touch during the off season whilst █████ was away in America and he started attending training on 24.08.2021. Screenshots of the relevant emails have been provided to the Disputes Committee. █████ suffered a shoulder injury at the start of September 2021 whilst playing for school that required surgery. As such, his membership payments, paperwork and registrations were delayed pending his recovery. Once it appeared very likely he would be able to return this season these were completed. During the first half of the season █████ regularly attended fixtures to support his teammates.</p>	<p>█████'s mother gives further detail of █████'s injury and process of joining TJs in her supporting letter at [87-88]. She notes that she was unaware of the registration deadline date of 17 October 2021, and when this deadline was communicated on 14 October 2021, she and her family were abroad on holiday during █████'s school half term.</p>
09.02.2022	<p>This is also a duplicate account situation. █████ appears on our Quarter-Final match card under ID █████ which has been his ID since he joined TJs at the start of Minis. However, this season there appears to have been a second ID created (█████). █████ joined TJs as a Mini and has a 'date associated to club' date of 16.05.2009 linked to the █████ ID.</p>	<p>█████'s father has provided a message in support at [89], describing how his son has played for TJs since he was 6 or 7 years' old.</p>

23. By way of summary only, the Club relied on the following grounds in support of its appeal:

- a. That the players themselves are blameless for any failures to register within the deadline and will be the ones who suffer if they are not permitted to play in the final;
- b. The issue concerning one player in particular (whom is not named in this judgment in order to preserve confidentiality given the player's age) renders the Semi-Final Decision excessive and wrong. That player was wrongly identified by the Disputes Committee as an England Academy Player, playing at Bristol Bears. In fact, the player in question had never played for an academy team. A player with the same name, but a different RFU ID and different date of birth, played for Leicester Tigers and was an England Academy Player. This error on the part of the Disputes Committee was said to have impacted on their decision;
- c. Whilst TJ was not seeking to minimise the importance of the Cup Regulations, there was no substantive unfairness in TJ fielding ineligible players. The issues concerned, in the main, problems with registration of existing club members;
- d. Regulations 9.1 and 9.2 of the Cup Regulations should be read as providing a short window for the notification of possible breaches of the Cup Regulations which was exceeded by the complaint lodged by Blackheath FC in respect of the quarter-final. The reasons for having a short window are obvious in the context of a knockout competition;
- e. There are mitigating circumstances:
 - i. Of the 8 ineligible players, 6 were life-long members of the Club;
 - ii. The deadline for registration was only notified to clubs 3 days prior, giving the Club little time to ensure full registration of the squad. The original date in the Cup Regulations of 10th November 2019, whilst an obvious typo, suggested a later registration date than October 2021;
 - iii. 4 of the 8 ineligible players were only registered slightly after the deadline. As such, in respect of them, the breach was a relatively minor one;
 - iv. This was the first season where parents had been required to register players, the issues that have arisen here can fairly be seen as teething problems;
 - v. In respect of 2 players not previously members of the Club, they had both contacted the Club prior to the registration deadline but had both suffered serious injuries which delayed their playing for the Club. As such, their registration was also delayed. Neither of them had registered for any other club for that season;
- f. The implications of disqualifying the Club render the future of the Cup unclear. It is obviously inappropriate for Blackheath FC or Guildford RFC to replace the Club in the final and, as such, it casts doubt as to how the competition can properly continue;

- g. There were alternative sanctions available to the Disputes Committee. Regulation 2.2 of the Cup Regulations allows the Competition Organiser to interpret the Cup Regulations. Regulation F.3 ought to be interpreted with the emphasis on players being “bona fide members” of the Club, with the deadline for registration intended to ensure this rather than as a purely standalone requirement.
24. Mr Bordell was also able to confirm that the Club was not aware of the Quarter-Final Decision until the day of the hearing and whilst the communications with the RFU prior to 24th March 2022 had all been concerning the quarter-final match, the Semi-Final Decision was the only decision provided to the Club and addressed issues with the semi-final which had not been highlighted to the Club prior to the decision being made.

THE RFU'S SUBMISSIONS

25. The RFU submitted that regulations 9.1 and 9.2 of the Cup Regulations work independently of one another. As such, whether a referral is made within the deadlines specified in regulation 9.2 does not determine whether the Disputes Committee can consider the matter. In addition, the Panel were asked to have in mind that the Cup is a high-profile competition and, as such, the integrity of it is paramount, making strict adherence to the Cup Regulations of prime importance. This has been demonstrated by various decisions disqualifying clubs for breaching regulations.
26. It was also said that regulation 2.2 of the Cup Regulations did not permit the interpretation of F.3 that the Club urged the Panel to adopt as the issues of player registration were clearly set out in the Cup Regulations.

CONCLUSIONS &

DECISION OF THE PANEL

27. The RFU Regulations provide that an appeal can only succeed if the Panel are satisfied that the original tribunal:
- a. came to a decision to which no reasonable body could have come; or
 - b. made an error of law in reaching its decision; or
 - c. failed to act fairly in a procedural sense; or
 - d. imposed a sanction so excessive/lenient as to be unreasonable.
28. The role of the Panel is not, therefore, simply to determine whether it would have come to the same conclusion as the Disputes Committee had it considered the issue at first instance. There must be an unreasonable decision, an error of law, procedural unfairness or an excessive sanction in order for an appeal to succeed.

29. Should an appeal succeed, the Panel can then:
- a. allow or dismiss the appeal;
 - b. vary the decision appealed against in such manner as it shall think fit including the power to increase, decrease or remit any penalty imposed;
 - c. remit the matter, with such directions as it thinks fit, for reconsideration; and/or
 - d. make such further orders as it considers appropriate.
30. Neither the Semi-Final Decision nor the Quarter-Final Decision provide significant detail about the factors which the Disputes Committee took into account when reaching their decision or the alternatives to disqualification they considered and why they discounted them.
31. What the two decisions do reveal is that the Disputes Committee took into account the facts that the Club played 8 ineligible players on the quarter-final and 6 in the semi-final. There is no information provided in either decisions as to whether and to what extent the Disputes Committee took into consideration the Club's explanations for the failure to register by the deadline or, indeed, the fact that all but 2 of the players concerned were life-long members of the Club and 4 of those players missed the registration deadline by 5 days or less.
32. There is no indication in the decisions that the Disputes Committee took into consideration the serious injuries to 2 of the players which is said to have delayed their registration or the issues with affiliation within the GMS system which the parents of the players experienced and which are somewhat obvious by the significant number of duplicate accounts produced for all of the players by their parents when attempting to register them. Indeed, the change in the registration/affiliation system on GMS is not mentioned in the decisions at all.
33. Significantly, both decisions proceed on a finding of fact that the Club played an England Academy Player in both matches. Whilst it is not possible to know the impact that this fact will have had on the ultimate decisions and the sanction imposed, it is plain and obvious that the Disputes Committee took it into account when they ought not have done given that it was untrue.
34. From the information provided to the Panel and having considered the submissions from the Club and from the RFU, the Panel make the following findings:
- a. The Club breached the Cup Regulations. They fielded 8 ineligible players in the quarter-final and 6 in the semi-final;
 - b. Whilst regulations 9.1 and 9.2 of the Cup Regulations must be read together and, in doing so, appear to create a deadline for the referral of issues of breach (whether by a club or by the RFU), it is unlikely

that regulation 9.2 was drafted with the intention of being an absolute bar to breaches raised more than 24/48 hours after a game. Whilst the delay in raising a complaint will ordinarily be a factor that the Disputes Committee ought to have in mind, it is not, of itself, determinative. In any event, whilst the complaint regarding the quarter-final was made outside of the 24/48 hour period, the complaint in respect of the semi-final was not and, as such, the delay is not a significant factor in this appeal;

- c. The ineligible players were all ineligible due to being registered after the deadline of 17th October 2021;
- d. All but 2 of those players have been members of the Club, some of them from as early as 2009. 4 of the players registered late were registered 1, 2 or 5 days late;
- e. The two players that joined the Club this season and were registered out of time contacted the Club and began training with the Club prior to the deadline for registration but were not registered until they were fully fit;
- f. The parents of the players concerned all expressed difficulties with registering/affiliating their children on the GMS system. There is no reason to doubt these difficulties;
- g. The original Cup Regulations referred to a registration deadline of 10th November 2019, only on 14th October 2021 was the Club told that all players had to be registered by 17th October 2021;
- h. The Disputes Committee erred by taking into account the player who was assumed to be an England Academy Player and based their decision, at least in part, on that fact;
- i. It appears to be the case that a number of clubs, including 4 of the 8 quarter-finalists and the Club's previous 2 opponents were unable to register all of their players by the 17th October 2021 deadline. Indeed, both Blackheath FC and Guildford RFC fielded more ineligible players than the Club in their respective fixtures;
- j. The RFU does not appear to have checked the eligibility of players in the Cup until an issue was raised at the quarter-final stage. This allowed clubs, including the Club, to progress in the Cup despite having ineligible players;
- k. There is no evidence in either of the decisions that the Disputes Committee paid consideration to the explanations provided by the Club for late registration of the players;
- l. There is no evidence that the Disputes Committee considered alternative sanctions to disqualification;
- m. The purpose behind F.3 of the Cup Regulations is obvious. It is designed to ensure that all players fielded by a club in the Cup are players who started the season with that club and are, therefore, 'members' of the club in the ordinary meaning. It is designed to prevent clubs from recruiting players specifically for the Cup and to stop clubs from playing players who join the club part way through the season or who are members of other clubs but wish to play in the Cup's latter stages; and

- n. There is no suggestion here that the Club recruited players to play in the Cup or that players joined part way through the season. All of the players concerned were considered to have joined the Club (irrespective of official registration) at the beginning of the season and were not members of any other club. As such, the mischief which F.3 is designed to prevent did not occur here and it cannot be said, objectively, that the Club gained any significant advantage or that any opposition side suffered any obvious prejudice in any real or practical sense.

35. Given all of the above, the Panel considered that the Disputes Committee:

- a. Took into account a factor (namely the alleged England Academy Player) that it ought not to have done;
- b. Failed (so far as can be gleaned from the two decisions) to take into account, whether adequately or at all:
 - i. The difficulties in registering players this season under GMS given the changes in the system from previous seasons;
 - ii. The exceptional circumstances which existed at the beginning of season 2021/2022, namely that it was the first season back after the significant interruption to rugby caused by the COVID-19 pandemic and its impact on age grade rugby players;
 - iii. The fact that other clubs appeared to have had similar issues;
 - iv. The relatively minor breaches by 4 of the players (in being 5 days or less late);
 - v. The fact that all but 2 players were historic members of the Club;
 - vi. The fact that the 2 other players had serious injuries which impacted upon the timing of their registrations;
 - vii. The purpose behind F.3 of the Cup Regulations;
 - viii. The fact that there was no obvious malice or ill-intent behind the Club's breaches of the Cup Regulations;
 - ix. The fact that as match cards were not checked earlier in the Cup, the Club were not given a reprimand or warning as they might otherwise have been; and
 - x. The appropriateness of an alternative sanction other than immediate disqualification
- c. In the circumstances, came to a decision, in disqualifying the Club, that no reasonable body could have come to;
- d. Imposed a sanction that was, in all the circumstances, so excessive as to be unreasonable.

36. In addition, whilst not a matter which would, by itself, have been sufficient for the appeal to succeed, in deciding the complaint in respect of the semi-final without notifying the Club that such an issue was to be decided and

not seeking an explanation from the Club as to the semi-final squad, the Disputes Committee acted in a procedurally unfair manner.

37. The Panel, therefore, allow the appeal. The Club will be re-instated into the Cup and permitted to play the final. For the avoidance of doubt, the results of the quarter-final against Blackheath FC and the semi-final against Guildford RFC are to stand.

38. As the Club breached the Cup Regulations, the Club is to be given a formal reprimand in respect of its selection of ineligible players in the Cup. Such reprimand is to remain on the Club's record for the remainder of this season and for season 2022/2023 and the Panel would expect it to be referred to and taken into account by any further Disputes Committee and/or RFU appeal panel should the Club be found to be in breach of the eligibility criteria of any cup regulations in the future.

39. Whilst, ordinarily, an appeal panel can only adjudicate on historic decisions, without any further order of the Panel, it presents a very real possibility that the Club will field some or all of the ineligible players in the final, giving rise to a possible complaint and a further decision of the disputes Committee and possible appeal which would have to cover much, if not all, of the same ground as this appeal. As such, the Panel consider that it is both necessary and appropriate to provide the following directions which will, it is hoped, assist with the Club, any potential complainant, the Disputes Committee and any further appeal panel. For the purposes of the Cup for season 2021/2022

- a. Players within the Club's squad who were registered after 17th October 2021 should be considered as "eligible" for the purposes of F.3 of the Cup Regulations if they were registered by the date of the semi-final and have been a registered member of the Club in any season prior to the 2021/2022 season. As such, the selection of such players for the final should not be treated as a breach of F.3 of the Cup Regulations; and
- b. Any players who were not registered by 17th October 2021 and have not previously been registered as members of the Club are not to be considered as "eligible" for the purposes of F.3 of the Cup Regulations. As such, the selection of such players for the final should be treated as a breach of F.3 of the Cup Regulations.

COSTS

40. As the appeal was successful, the Club is to have any fee it paid for this appeal refunded as soon as is practicable.

RIGHT OF APPEAL

41. Pursuant to regulation 19.13.5 of the RFU Regulations and regulation 11.3 of the Cup Regulations, there is no right of appeal from this decision.

POST SCRIPT

42. The Panel wish to make clear that this decision is made exclusively on the facts of this appeal and the particular circumstances surrounding the breaches committed by the Club including, but not limited, to the exceptional issues surrounding the COVID-19 pandemic and the changes to the GMS system and the process of registration/affiliation of age grade players.
43. This decision is not, and should not be taken to be, approving or excusing breaches of regulations in any way. The Panel endorse the submissions made by the RFU that competition regulations exist to protect the integrity of a competition and strict adherence to such regulations is vital to that integrity being maintained and ought to be enforced wherever appropriate. There are undoubtedly cases where the selection and fielding of an ineligible player (or players) in a competition will warrant immediate disqualification from that competition and nothing in this judgment ought to be relied upon as grounds for concluding otherwise.
44. It will be clear from this decision that factors relevant to the Panel's decision were the failure by the RFU to check all match day cards from all rounds of the Cup and the lack of detail contained with the decisions of the Disputes Committee. The Panel would encourage the RFU to consider improving the method by which clubs within the Cup register their squads. The Panel is aware that electronic match cards are used in adult competitions and would ask the RFU to consider whether using an electronic system for the Cup would assist in allowing clubs to identify in advance eligible and ineligible players and allow the RFU to check the use of ineligible players at an earlier stage.
45. As for the Disputes Committee, following on from the observations the Panel have made above, it would be sensible (and helpful for any further appeals) if the Disputes Committee recorded within their written decisions details of the facts and factors that they have taken into account and those which they have rejected or considered were of little persuasive weight. In addition, an explanation as to how the Disputes Committee arrived at the sanction invoked, including why alternative sanctions were rejected, would be sensible.

46. None of the above should be taken as a criticism of either the RFU or the Disputes Committee who both carry out difficult tasks with limited resources and to whom the Panel express their thanks for the work they do on behalf of the community game.

Matthew Weaver QC

Chairman

1st April 2022