

Tring RUFC v London and South East Division League Secretary

Decision on appeal

Hearing date: 4 November 2021.

Venue: Remote by zoom.

Panel: Sir James Dingemans: John Downham; and Tom Gilbert.

Panel Secretary: Beccy Morgan.

Attendance on behalf of Tring RFC: John Hardy QC (counsel); John Ball, Chairman; Nick Turner, Health and Safety and Covid Officer; Stephen Wooler CB, Vice-President.

Attendance on behalf of the RFU: Paul Kaminski, RFU Competition Secretary; Paul Astbury London and South East Division League Secretary.

Introduction

1. This is an appeal by Tring RUFC from a judgment of a Disciplinary panel dated 11 October 2021 upholding the sanction imposed by the London and South East Division League Secretary (“the League Secretary”) imposed on 12 September 2021. The sanction was of a 5 points deduction imposed on Tring RUFC for failing to fulfil an away fixture on 11 September 2021 with Dorking RFC. The fact that the fixture was not fulfilled also meant that Dorking RFC were awarded 5 points for the match as the fixture had not been fulfilled, and the next meeting of Tring RUFC and Dorking RFC which would have been a Tring RUFC home fixture would be played at Dorking RFC.

Factual background

2. The facts are not in dispute and can be briefly set out. Three players at Tring RUFC had, by Friday 10 September 2021, before the Saturday 11 September fixture against Dorking RFC, suffered from hand, foot and mouth disease (“HFM”). The fact that three players suffered from HFM meant that there was an “outbreak” of HFM, and other players were reporting illness. HFM is contagious and is spread by contact. There is an incubation period of six days. Tring RUFC adduced some evidence of the side effects of HFM. It might be noted that HFM is different from what is called livestock Foot and Mouth disease.

3. The extent of the spread of HFM among the Tring RUFC playing squad was not known on 10 September 2011 and it was effectively unknowable because of the six day incubation period. Tring RUFC therefore decided to attempt to postpone the fixture on Saturday 11 September. Dorking RFC did not agree the postponement. It seems that was because Dorking RFC's players were committed to other matters on 9 October 2021 (which would have otherwise been available as a date) and the informal medical advice that Dorking RFC had obtained in the short time available on Friday 10 September did not suggest to them the need for isolation or quarantine of players. Nothing turns on the reasons that Dorking RFC decided to ask that the fixture be fulfilled. It is common ground that Dorking RFC did ask for the fixture to be fulfilled but Tring RUFC decided that they could not fulfil the fixture. This was because of the unacceptable risk of spreading HFM among the players of both sides.

The relevant Regulation

4. RFU Regulation 13.6.11(b) provides:

“If the Organising Committee considers that a Club has unjustifiably failed to fulfil its obligations, it shall have regard to Appendix 3 of this Regulation and may deduct League points from that Club and/or order the match to be replayed (provided it has regard to promotion and relegation issues in any relevant League, including the effect on other Clubs, and to the commitments of the Clubs concerned). In ‘Home and Away’ leagues when the first fixture is defaulted by the ‘away’ team the return fixture shall be reversed and take place at the ground of the non-offending Club. For the avoidance of doubt, lack of players or insufficient front row players with Effective Registration whether through injury, illness or because of work or other commitments shall not be deemed to be a justifiable reason for not playing or seeking a postponement of a League Match.”

The decisions below

5. The League Secretary decided that the outbreak of HFM among Tring RUFC players was not a “justifiable reason” for not playing the match against Dorking RFC. The League Secretary accepted that he had a discretion as to penalty but said that the decision had to be consistent with other such decisions and imposed the 5 point deduction.
6. The Disciplinary panel held that the League Secretary had interpreted the Regulation 13.6.11(b) correctly and as a consequence had not made an error of law. The decision to impose the 5 point penalty was therefore reasonable. The League Secretary had acted fairly and the sanction was not so excessive as to be unreasonable.

The appeal

7. The appeal is brought on the grounds that the panel's decision was wrong in law (the misinterpretation of Regulation 13.6.11(b)) and upheld a decision that no reasonable League Secretary could have reached. It was said that the Disciplinary panel acted unfairly by upholding a sanction which was manifestly excessive. Mr Hardy QC clarified in his submissions that he relied on all the grounds of appeal and submitted that the Disciplinary panel: a) Came to a decision to which no reasonable body could have come; b) Made an error of law in reaching its decision; c) Failed to act fairly in a procedural sense; d) The sanction imposed was so excessive/lenient as to be unreasonable.
8. Mr Turner, who has very considerable experience in health and safety matters, also addressed the appeal panel. Mr Turner submitted that if the current decision stands, its effect will be to require all clubs in the league to field a team despite knowing that they may be contagious with an infectious disease. He submitted that this would be inconsistent with health and safety obligations on Clubs, and that the decision of the League Secretary and the Disciplinary panel had been to create a strong incentive for clubs not to disclose risk but to press ahead in the hope that the outbreak does not spread further. He submitted that such a consequence flies in the face of common sense and is inconsistent with the general duty of care under the Health and Safety at Work Act and the Management of Health and Safety Regulations.
9. Mr Kaminski, on behalf of RFU Competitions, submitted that the decision of the League Secretary was both right and reasonable. Competitions would not be performed within the season if there was not a clear system requiring clubs to perform fixtures on the scheduled dates, and a clear and consistent sanction for failing to fulfil a fixture. That sanction had been applied here and should be upheld.
10. We are grateful to Mr Hardy, Mr Turner and Mr Kaminski for their helpful submissions.

The proper interpretation of the Regulation 13.6.11(b)

11. It is clear that Regulation 13.6.11(b) is intended to ensure that fixtures are played on their scheduled dates. The scheme of Regulation 13.6.11(b) is to make it clear that what might be considered at first consideration justifiable reasons for failing to fulfil a fixture, namely "lack of players ... whether through injury, illness or ... work or other commitments" are not justifiable reasons for the purposes of Regulation 13.6.11(b). It

seems clear that this is because Regulation 13.6.11(b) is intended to ensure that fixtures are played on their scheduled dates and there is a clear basis for deciding which side should bear the responsibility for the failure to fulfil the fixture.

12. It is clear that in this case it was Tring RUFC that did not fulfil the fixture with Dorking RFC. It is also clear that this was because there had been an outbreak of HFM among Tring RUFC players and Tring RUFC acted responsibly in stopping the spread among their own players and preventing a spread to Dorking RFC players. The outbreak of HFM among Tring RUFC players meant that there was a lack of players and in our judgement the League Secretary and the Disciplinary panel were right to find that this was a “lack of players ... through ... illness ...” within the meaning of Regulation 13.6.11(b). We accept that there is a difference between someone who is actually ill with HFM and someone who is potentially ill with HFM but where it can’t be known at the relevant time because of the six-day incubation period. In our judgement, however, both situations are covered by the wording of a “lack of players through illness”. This is because unless there had been the illness, namely HFM, there would have been the players available to play the fixture.

No basis for setting aside decision of Disciplinary panel

13. Mr Hardy in his submissions pointed out that, even if the interpretation put on Regulation 13.6.11(b) was correct, the Regulation expressly provided only that the League Secretary “... may deduct League points from that Club”. It did not mandate the League Secretary to make the deduction, and it was in this respect that account should be taken of Mr Turner’s view that making a deduction in a case such as this would encourage clubs to field contagious players. Mr Hardy also submitted that Tring RUFC had lost the game (which was awarded to Dorking RFC) and had lost their home fixture, and it was disproportionate to impose the 5-point deduction as well. Mr Kaminski in his submissions underlined the importance of imposing consistent penalties on those who had not fulfilled their fixtures. There were almost always understandable reasons for the failure to fulfil fixtures, but a consistency of approach led to fairness for all the clubs.
14. We should deal first with the suggestion that dismissing this appeal would lead to a situation where the health and safety of future players would be put at risk because clubs in the position of Tring RUFC might decide to field players even though they might be infected. Any such action would be contrary to the core values of the game,

including the values of integrity and respect. In our judgement any Club which put any player at risk by fielding players who were known to be at real risk of passing on an infection to other players and teams would be very likely to face proceedings under the RFU Regulations and Rules (including Rule 5.12) for penalties far in excess of a 5-point deduction.

15. In our judgement the submissions on behalf of Tring RUFC have conflated what was their proper and reasonable response to the outbreak of HFM among its players, informed by expert guidance from Mr Turner, with what is a justifiable reason for not fulfilling a fixture for the purposes of Regulation 13.6.11(b). If a rugby club is unable to fulfil a fixture because it has a front row unable to play because of head injuries, it will not have a justifiable reason under Regulation 13.6.11(b) for not fulfilling the fixture, even though every reasonable person will think that not playing the fixture was a proper and reasonable response to the situation (and if that rugby club attempted to field players who were suffering from head injuries it would be very likely to face proceedings under RFU Regulations and Rules). Similarly, the response by Tring RUFC to the outbreak of HFM was a proper and reasonable response to the situation. This did not make it a justifiable reason for the purpose of Regulation 13.6.11(b). Regulation 13.6.11(b), and the sanctions applied for its breach, are aimed at ensuring that there is a fair and consistent process for dealing with the consequences of fixtures not being fulfilled, even where that consequence is because of illness or injury.
16. In our judgment the League Secretary and the Disciplinary panel below were entitled to consider that the 5-point deduction was properly imposed on Tring RUFC. We consider that Mr Kaminski was right to submit that even if a club acts reasonably and properly (as Tring RUFC did), that does not mean that they have a justifiable reason under Regulation 13.6.11(b) for not fulfilling the fixture. Once that is accepted the need for consistency in the applications of penalties ensures that there is predictability and therefore fairness for all the clubs involved in competition. Mr Hardy's submission to the effect that the League Secretary should have left in place the notional loss to Dorking RFC on the day of the fixture, and the subsequent movement of Tring RUFC's home fixture to an away fixture at Dorking RFC, but should not in addition have imposed the 5 point deduction was elegantly made, but in our judgement both the League Secretary and Disciplinary panel were entitled to consider that consistency and predictability was a principled way to achieve fairness for all

clubs. As it is the Disciplinary panel's decision was a reasonable one for it to make, it did not involve an error of law, they acted fairly in the procedure of the appeal, and the sanction was not so excessive as to be unreasonable.

17. For all these reasons the appeal is dismissed.

18. Appeal costs in the sum of £125 are payable upon receipt of invoice from the RFU in line with RFU Regulation 19, Appendix 3.

Sir James Dingemans

John Downham

Tom Gilbart

8 November 2021