APPEAL PANEL

Club:	Plymouth Albion RFC
Appeal Panel:	Philip Evans QC, Dr Julian Morris, Tom Gilbart
Secretary to hearing:	Adam Maunder
Hearing date:	26 May 2020
RFU Representative:	Daniel Saoul QC
Club's Representative:	Max Venables
Attending:	David Barnes, Alys Lewis, Sebastian Bult (RFU)

JUDGMENT

1. This appeal was heard on the 26 May 2020 by video link. Plymouth Albion RFC ('the Club') appeals against the decision of an RFU disciplinary panel ('the Panel').

2. The conclusion of the Panel was that the charge was proven on the balance of probabilities and that the necessary and proportionate sanction was one of a 20-point deduction to be apportioned as follows:

   a. 5 league points are to be deducted from the Club's Men's First XV at the start of the 2020/21 season;

   b. The remaining 15-point deduction is to be suspended for two seasons. The effect of that suspended sanction is that if the Club commits any further breach of Regulation 7 during the relevant submission windows in the 2019/20 or 2020/21 seasons, the Panel anticipated that the remaining 15-point deduction would be activated.

3. The Club appeals only to the extent that they challenge the sanction imposed on them, they do not challenge the finding that the charge was proved.

4. At the very outset of this hearing and particularly because the Club were no longer legally represented, we took the step of clarifying with Mr Venables the precise basis and the extent of the Club's appeal. We drew attention to Regulation 19.12.1, which sets out the test to be applied when considering an appeal of this nature.

5. An appeal may be commenced on the grounds that the disciplinary panel:

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

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

(c) failed to act fairly in a procedural sense.

(d) The sanction imposed was so excessive as to be unreasonable.

6. Mr Venables confirmed the Club's grounds fell under both (b) and (d) set out above.

7. The original hearing before the Panel took place over three separate dates; 3 March, 3 April and 9 April 2020. The Panel's detailed judgment was dated 20 April 2020. This appeal judgment should be read in conjunction with the judgment that of the disciplinary panel which is available at [link to judgment here]. It admirably sets out the relevant rules, the background to regulation 7, the details of the allegations, the evidence they heard and the detailed findings the Panel reached.

8. In summary the Club was charged with an offence contrary to RFU regulation 7.4 in that it failed to submit an accurate declaration to the RFU between 1 March to 30 June 2019 in respect of gross payments of Material Benefits paid to any third party in relation to playing rugby.

9. The Panel set out a brief chronology of the proceedings at paragraph 5 (a) – (e) of their judgment. The hearing was originally convened for the 9 September 2019 but adjourned to the 5 February 2020 by video hearing. At that stage the club had indicated that it accepted the charges. The Club however retracted its acceptance of the charge on the 31 January 2020 and it also requested a hearing in person rather than by video. The Club's request had the effect of forcing the further adjournment of the matter to the 3 March 2020 when all parties were able to convene in person.

10. During the hearing on the 3 March and the 3 April the panel heard comprehensive opening statements and extensive evidence from witness both from the RFU and the Club. We understand the predominant reason why the 3 March hearing could not conclude was because the evidence took much longer to deal with before the Panel than had been estimated in advance.

11. Having heard the evidence the panel set out clearly the relevant context of regulation 7 (paragraphs 10-22) and the background this matter (paragraph 23). They then provided a detailed summary of the evidence they had considered and of the submissions advanced by both parties.

12. Having set those matters out in detail the Panel set out their findings and conclusions which for convenience and clarity we have inserted [in part] below;

(58) a. When the Club submitted the Declaration on 25 June 2019, it contained an inaccurate and false response to the first question in that the Club ought to have acknowledged that it did pay material

benefits to its players.

b. The Panel accepts that the Club's error was not deliberate or dishonest and there was no attempt on behalf of the Club to mislead the RFU.

c. As was recognised by the Panel in RFU v Rams RFC, the system for submitting such declarations provides for a number of procedural steps which, in part, appear to be designed to prevent inaccurate or false declarations being made to the RFU. The form includes a requirement that each signatory to the declaration confirms the following:

i. That the information and statements in the declaration are true and accurate;
ii. That full and proper enquiries have been made in relation to the information contained in the declaration;
iii. That the content and submissions within the declaration have been approved and minuted at a formal club meeting.

d. It is self-evident that the process by which a payment of players declaration is made places an obligation on that club to ensure that the information contained on the form is accurate.

e. If there was a lack of clarity or understanding as to what was required by the declaration, or as to what the questions referred, it was incumbent on the Club to seek that clarity before it submitted its declaration.

f. The Panel rejected the suggestion made on behalf of the Club that there was ambiguity as to whether a declaration could be made more than once. ……. it was clear and obvious that a club would only be able to make a single declaration in any given year.

g. The evidence given to the Panel by the Club was entirely unsatisfactory. The Club's evidence was, in part, that it answered the first question incorrectly because it misunderstood the phrase 'material benefits' and (wrongly) thought that it related to matters other than wages or salary. However, the Club also accepted that it paid players benefits (aside from wages or salary). On the Club's own evidence, the four signatories cannot all have signed the declaration believing that the information and statements on the form were true and accurate.

h. As stated above, the Panel has accepted that the inaccurate response to the first question was not deliberate or dishonest. However, the Panel finds that the four signatories of the Club had wholly insufficient regard for the process surrounding the submission of, and content within, its declaration. This was a process to which they, acting on behalf of the Club, paid scant regard. If the Club had taken time to read and understand the Regulations, and had followed the process correctly, including by holding a formal (minuted) club meeting at which the substance of the declaration was discussed in detail, it would not have fallen into error in the manner in which it did.

i. In failing to have adequate regard for the process surrounding the submission of, and content within, its declaration, the Club acted in a highly negligent manner.

j. While some measure of blame appears to have been pointed by the Club towards Mr Venables, the Panel finds that each of the four signatories is equally culpable for the failure to answer the first question accurately.

k. The Panel have considered the contents of Mr Venables' email to the RFU of 25 June 2019 with care. The Panel reject Mr Venables' contention that he was attempting to open a dialogue with the RFU or that he was in some way seeking affirmation or confirmation that the contents of the Declaration were correct. Instead, the Panel finds that Mr Venables was simply seeking to ensure that the Declaration had been submitted (i.e. sent) correctly.

l. The Panel finds that the attempt by the Club to recast the meaning of this email was an attempt to bolster its case that the Regulations, or the wording on the form itself, are ambiguous.

m. In administering the process in the manner in which it did, the RFU was acting entirely reasonably. The Panel considers that it was appropriate for the RFU to adopt a system of ensuring a club would only make one declaration per year and that a club would not then have an opportunity to amend its

(signed) declaration once made. Such a system, in the Panel's view, was fair to all clubs.

[59]

60. The Panel have concluded that the Regulations are not ambiguous and that it was clear and obvious that only one declaration could be made within the relevant window. While the Club may view the RFU's conduct towards it as onerous and heavy-handed, the Panel accepts that the RFU's conduct has to be viewed in the context of it having to review a considerable number of submissions in circumstances where there was a need to rely on self-policing, self-declaration and self-certification. The Panel has found that the manner in which the RFU administered the Regulations was entirely reasonable.

61. This is, at its heart, a remarkably simple case: the Club had to answer two questions; it answered one of those questions inaccurately. In so doing, it failed to submit an accurate declaration, contrary to RFU Regulation 7.4. The Club's approach to the payment to players declaration was wholly inappropriate and it failed to grasp the seriousness of the process. The fault for those failures lies entirely at the Club's door.

62. In conclusion, for all the reasons set out above, the Panel finds the matter proven on the balance of probabilities.

13. The submissions supporting the appeal were contained in an email from Mr Venables dated the 12 May 2020. The Club submits the total sanction was too high and the decision to deduct the immediate 5-point reduction form the 2020/21 season was wrong. They advanced a number of reasons why they say the sanction imposed on them was disproportionate and unfair.

14. The Club submits the Panel fell into error because they misstated the Club's culpability based on the facts as they had found them to be. They argued it was not open to the panel to find that the club had acted in a "highly negligent manner". The question for this appeal is whether it was a reasonable conclusion open to the Panel to draw from the facts as they found them to be.

15. It is obvious to us that the Panel spent a considerable amount of time and care engaged in the process of listening to the evidence. Having done so they found the evidence from the Club was "entirely unsatisfactory" and they explained why (see above). The Panel found that the four signatories cannot all have signed the form believing the declaration they were purportedly making on behalf of the Club was correct. They found that the signatories had taken wholly insufficient regard for the process surrounding the declaration they were making by their signature. We agree entirely with the Panel's conclusions on those points. The declaration attached to the signature was self-evidently an important one and so much so that it required it to be minuted as having been discussed during a formal meeting. We endorse the finding of the panel in making the point that had the four signatories participated in a properly conducted meeting, at which the matters to which they applied their confirmatory signatures were discussed, the inaccuracy of their declarations would have become obvious to them and we assume they would not have signed in the way they did.

16. We recognise the Panel concluded the Clubs actions were not found to be deliberate or dishonest and we, as the Panel did, have taken that into account. Nonetheless we agree with the observations of the Panel as to the context of these regulations and the importance of them to the game. Such safeguards as the requirement for 4 signatures, the detailed declaration and the need to minute the matter, clearly indicate that an appropriate level of governance is expected by the RFU of the clubs when they are making representations about this matter. That level of governance was clearly not present here.

17. We conclude that the Panel's finding of "high culpability" was a perfectly reasonable one for them to make to and it cannot in any way be said to have arisen as a result of an error in law.

18. In regard to the total sanction imposed Plymouth submits it was disproportionate when compared to that imposed on the Rams RFC in a judgment dated 12 February 2020 [link to judgement here]. The Rams RFC received precisely the same sanction as Plymouth save that the immediate deduction of 5-points took effect in the 2019/2020 season.

19. In the Rams RFC judgment the disciplinary Panel there referred at paragraph 69 to the absence of any sanction framework within regulation 7. As a consequence the disciplinary Panel identified at paragraph 70 of its judgment the factors it had in mind when deciding the question of necessity of sanction and the proportionality and its reasons for doing so. They were:

    (a) The importance of the policy which sits behind these regulations;
    (b) The need for deterrence; and,
    (c) The need to punish a breach of the Regulations.

20. The disciplinary Panel in Rams RFC went on to identify a range of factors which might be of some relevance in assessing the seriousness and significance of a breach of Regulation 7 in their judgment at paragraph 72. We agree that those factors are relevant when making such an assessment. We do not however consider the list is intended to be an exhaustive one. The Panel in the instant case specifically adopted the same approach in this case as was taken in Rams RFC but made it clear that they had considered the sanction appropriate for Plymouth entirely on its own facts. The approach taken in both cases had the advantage of providing a consistent approach and the instant case continued the commendably transparent method adopted in the Rams RFC matter.

21. Having identified the list of matters relevant to its decision at paragraph 68 the panel explained where and why those factors applied and why as a consequence it decided a 20-point deduction

was in their view the appropriate sanction. We can find no fault with the process or with the reasoning adopted by the Panel in arriving at that decision.

22. The Club argues before us that the culpability of Rams RFC was clearly greater and therefore the imposition of the same sanction means, the sanction imposed on them was so excessive as to be unreasonable. We do not agree with that submission. As is almost always the case it is right that the facts of the Rams case contained differences and it might be possible to argue that aspects of Rams RFC behaviour were more serious. However, there were also serious features in the instant case and the Rams RFC accepted the charges providing them with the appropriate mitigation for doing so. Plymouth did not. It is clear to us that the Panel did decide the instant case on its own facts and that they arrived at a perfectly reasonable sanction. It is often unhelpful to compare to cases which are factually distinct, but here, having conducted that exercise we are entirely satisfied that no injustice has been done to the Club.

23. As well as advancing the appeal on the basis that the sanction was too great, Plymouth argue that, as a matter of principle, the immediate points deduction should have been made effective in the 2019/2020 season. As part of their written grounds they complain that the hearing did not finish on the 3 March because a panel member was not available beyond 3pm. They say that had it concluded that day the points deduction would have taken place in the 2019/2020 season. As it was, the hearing was adjourned part heard and the evidence and submissions completed on 3 April 2020 the same day that the 2019/2020 season was taken to end the season.

24. We asked a number of questions in the hearing surrounding this point and we asked for the parties to provide us with the relevant correspondence surrounding the chronology of the hearings. Having then received a significant quantity of material we felt it appropriate to give the Club a reasonable period to make any further representations it wished to as a result of the new material. Mr Venables confirmed via Mr Maunder that there was nothing further the Club wished to add. The additional correspondence confirmed that set out above that on the 9 September 2019 the Club originally indicated it would accept the charges. It also clarified that the original hearing date of the 16 September was adjourned through no fault of the Club's. The hearing was then re-listed for the 5 February 2020 and was originally to be held by video link. However, on the 31 January 2020 Counsel acting for the Club sent a long email. It sought a hearing in person and confirmed that the Club having taken legal advice and having been provided with the full bundle would be contesting the charge. Further directions were made by the Panel and given the request for the hearing to be in person it was set down for the 3 March 2020. On the 3 March, for the reasons already set out above it proved impossible to complete the hearing.

25. The Panel accurately summarised that chronology in its judgment and it is clear the Panel had the delay and the reasons for it, well in mind when taking the decision to impose the immediate 5-point deduction in the 2020/2021 season rather than the 2019/2020 season. By the time they imposed the sanction the 2019/20 season had concluded. Having considered all of the factors the Panel took the view that to effectively back date the immediate reduction in points would result in a sanction which could not be described as meaningful. The Club was of course entitled to dispute the charge as they did, and to ask for a hearing in person, but, it is simply a fact that those two factors contributed greatly to the ultimate delay in the conclusion of the hearing and therefore the date on which the Panel came to its assessment as to when the immediate deduction should take effect. We do not take the view that the Panel's decision to impose the 5-point immediate reduction in the forthcoming season can be described as unreasonable.

26. Finally, Plymouth argued that the disciplinary panel failed to have sufficient regard to the impact of the Covid-19 crisis on the club. This included the fact that Plymouth not only lost the benefits payment which would have come to them under the scheme but as a result of their breach they would additionally not be eligible for any of the additional help packages made available to rugby clubs as a direct result of the Covid-19 crisis.

27. The panel clearly did have regard to the impact of the Covid-19 crisis. The lock down was put into place by the Government on the 23 March 2020. Therefore by the time of the final hearing which took place on the 3 April the likely impact of the situation was no doubt at the fore of everyone's minds. The disciplinary panel reconvened on the 9 April in the absence of the parties and when lockdown had been in place for well over two weeks. The panel makes it clear in its judgment at paragraph 68(i) that it did recognise and that it was taking into account the additional effects that Covid-19 would have on the Club. From what we have heard all necessary information was available to the panel at the relevant time and when it reached its decision it properly took that information into account. For completeness we note we were told the Club would become re-eligible for the relevant benefits and any relevant Covid-19 benefits from the beginning of the next season, subject of course to the submission by them of a correct and proper declaration.

28. For the reasons set out we do not find that any part of the decision here was one which no reasonable body could have come to or that it was reached as a result of any error of law, neither do we find that the sanction imposed was so excessive as to be unreasonable. Consequently, this appeal in unsuccessful.

29. The RFU did not seek any costs given the timing and the particular circumstances of this appeal.

Philip Evans QC

Appeal Panel Chairman

7 June 2020.