RUGBY FOOTBALL UNION
DISCIPLINARY PANEL
JUDGMENT

Club:	Plymouth Albion RFC
Panel:	Gareth Graham (Chairman), Tim Naylor, Aidan O'Brien
Secretary:	Rebecca Morgan

HEARING

Dates:	3 March, 3 April & 9 April 2020.
RFU Representative:	Daniel Saoul QC
Club's Representative:	Sam Jones (Counsel)
Attending:	Max Venables (Plymouth Albion RFC)
	David Barnes, Aly Lewis, David Stubley (RFU)

DECISION

1. The Panel finds the charges brought against Plymouth Albion RFC ("the Club") proven.

2. The Club is sanctioned to a deduction of 20 league points. Of those, 5 points are to be deducted from the Club at the start of the 2020/21 season. The remaining 15-point deduction is to be suspended for two seasons.

INTRODUCTION

3. The Club was charged with an offence contrary to RFU Regulation 7.4 in that it had 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.

4. The Panel was provided with a bundle running to almost 400 pages and extensive written submissions from both Parties. The Panel is grateful to the Parties for the way in which they prepared for and conducted themselves throughout the various hearings and for their helpful and comprehensive written submissions.

5. A brief chronology to the proceedings is as follows:

    a. The Club initially accepted the charges by email dated 9 September 2019. For various reasons, a hearing was not convened until 5 February 2020; it was to be held by video.

    b. On 31 January 2020, the Club's Representative emailed the Panel to indicate that the Club would be contesting the charge and that it wished to have a hearing in person. The hearing due to take place on 5 February 2020 was postponed in light of the Club's request for the hearing to be in person.

    c. On 3 March 2020, a hearing took place in person at the Holiday Inn London, Bloomsbury. The Panel heard comprehensive opening statements from the RFU and the Club as well as evidence from two RFU witnesses. Due to time constraints, the hearing was then adjourned.

d. On 3 April 2020, the hearing was reconvened (by video due to the Covid-19 pandemic). The Panel heard evidence from four witnesses of the Club and then submissions.

e. The Panel reconvened in the absence of the Parties on 9 April 2020 to consider its decision.

6. This document contains the Panel's reasoned decision, reached after consideration of the evidence, the written and oral submissions and documentation placed before us. It is a summary. The fact that specific reference is not made herein to any part or aspect thereof does not mean it was not considered and given the appropriate weight.

PRELIMINARY ISSUES

7. There was no objection to the composition of the Panel.

CHARGE AND PLEA

8. The Club was charged as follows:

Statement of Offence

Failure to submit an accurate Declaration, contrary to RFU Regulation 7.4.

Particulars of Offence

Plymouth Albion RFC failed to submit an accurate Declaration, in accordance with RFU Regulation 7.4.1, during the submission window commencing 1 March and closing 30 June in respect of any Gross Payments of Material Benefits paid or payable between 1 June of the previous year and 31 May of the current season by or on behalf of Plymouth Albion RFC (directly or indirectly) to any third party in respect of playing rugby union.

9. The Club denied the charge.

CONTEXT AND REGULATION 7

10. There are 1,864 registered clubs in England. In recent years, there has been a growing concern at the RFU as to the payment of players in the lower level of the game and for the continued sustainability of the community game. Consequently, the RFU, in accordance with its duties as the national governing body for rugby, developed a mechanism by which it can provide financial assistance to clubs in an attempt to ensure a relatively level (financial) playing field.

11. The mechanism by which the RFU provides such assistance to clubs at Levels 3 and below is by way of "RFU Benefits". As defined at RFU Regulation 7.2.8, eligible clubs may receive the following monetary and non-monetary benefits:

(a) Travel funding and Long Distance Allowances for league and cup matches (including offshore travel).
(b) Supplemental Ticket Fund.
(c) Rugby Football Foundation (RFF) and (RFU) Interest Free Loans and Grants.
(d) Green Deal Interest Free Loans RFF up to £20,000.
(e) Rugby Football Union Grants.
(f) Other interest free loans.
(g) Subsidised Match Officials' costs at Levels 3 and 4.
(h) Eligibility for AGP Rugby Share programme.
(i) Prioritisation for AGP Rugby Turf programme.
(j) Eligibility for non-commercial rates in respect of AGP usage.
(k) Constituent Body PFR funding used for individual grants to clubs.
(l) Any other RFU cash grants or such other loans/grants or other benefits as decided by the RFU.

12. Clubs are only eligible for such benefits if payments to players of their men's first XV do not exceed certain thresholds. For the purposes of this case, the relevant Payment Threshold (as defined by Regulation 7.2.6) is as follows:

7.2.6 ***"Payment Threshold"*** *means:*

(a) For clubs whose men's first XV team plays at Level 3: the threshold is £275,000 of Gross Payments paid or payable to players and including the payment of Player Coaches save that only £12,500 of the costs of each of the first and second Player Coaches will be excluded in calculating whether or not the threshold has been exceeded.

13. Gross Payments is defined as follows:

7.2.4 ***"Gross Payments"*** *means all Material Benefits paid or payable to any third party in respect of playing rugby union (including any payments in respect of England Academy Players and Loan Players) plus all payments payable in respect of such Material Benefit which includes, by way of example, national insurance contributions, income tax and agents fees.*

14. In turn, Material Benefit is defined as follows:

7.2.5 ***"Material Benefit"*** *means money, consideration, gifts or any other benefits whatsoever contracted, promised or given to or by a person or any other individual, body corporate, partnership (or any other entity or body whether incorporated or not) at his/her direction in respect of such person's participation in the Game.*

15. The Panel was told that there are 1,306 clubs to which Regulation 7 applies. In order to administer the RFU Benefits, and to ensure that these clubs have equal access to such assistance, the RFU introduced a system of self-declaration. It is the process of self-declaration which lies at the heart of this case.

16. Regulation 7.4.1 specifies that:

7.4.1 All clubs whose men's first XV team plays at Level 3 and below, and who wish to be entitled to RFU Benefits, will be required to:

(a) submit an annual Declaration every season;
(b) during the submission window commencing 1 March and closing 30 June;
(c) in respect of any Gross Payments of Material Benefits paid or payable between 1 June of the previous year and 31 May of the current season;
(d) by or on behalf of the club (directly or indirectly) to any third party in respect of playing rugby union.

17. A "Declaration" is defined at Regulation 7.2.3 as "the declaration submitted annually by a club via the Game *Management System portal in the form prescribed by the RFU".*

18. Regulation 7 also details the potential consequences of failing to submit an accurate declaration. The relevant excerpts are as follows:

7.4.2 If a club fails to submit an accurate declaration in accordance with 7.4.1 above, or is paying above the Payment Thresholds set out above, the club will no longer be eligible for the RFU Benefits in respect of the entirety of the following season. For the avoidance of doubt, non-submission of a Declaration or clubs accurately declaring to be paying over the Payment Threshold will not constitute of breach of regulations.

…

7.4.6 Upon request of the RFU, all clubs and persons shall cooperate fully, accurately and promptly with and shall provide all necessary assistance to the RFU with respect to any matter pursuant to this Regulation 7 (including in relation to spot checks, auditing, answering the questions of and furnishing the RFU with, all relevant and/or requested documentation and information) and failure to cooperate shall constitute a breach of this Regulation 7.

7.4.7 If any party (including any club or person) is alleged or suspected to be in breach of these Regulations (whether as a result of a single breach or persistent breaches, failure to cooperate or providing false or inaccurate information or declaration or such other breach), such action would be considered as a breach of regulations and dealt with pursuant to Regulation 19.

7.4.8 Any breach, allegation or suspicion of a breach, and such other disciplinary matter arising in relation to this Regulation 7 shall be referred to the RFU Head of Discipline. If the RFU Head of Discipline decides that there is a case to answer and that a charge should be brought against any party, the matter will be dealt with in accordance with RFU Regulation 19. Subject to any right of appeal, the RFU Disciplinary Panel will be entitled to impose such sanctions and penalties against any such party as it deems necessary in respect of any breach of these regulations.

7.4.9 In event that any party (including club or person) is found to have breached these regulations in any way (including the provision of an inaccurate Declaration or information, non-cooperation with the Regulations or such other reason), the RFU has the power to claw back and/or withhold further funding and RFU Benefits. Any failure by any party to pay back any misappropriated RFU Benefits constitutes a regulatory breach of these regulations.

19. The process of self-declaration required the following steps to be completed by each club between 1 March and 30 June 2019 in respect of the 2018/19 season:

    i. The club needed to log into 'GMS', the RFU's Game Management System;
    ii. Within the module called "Club Declaration for Payment of Players", certain questions needed to be completed;
    iii. The form then needed to be printed;
    iv. The printed form had to be signed by relevant individuals;
    v. The signed declaration had then to be uploaded to GMS.

20. The Panel was told by the RFU that once a declaration had been uploaded to GMS by a club and formally submitted, that same club is not able to submit another declaration via GMS. This is of some relevance to the case.

21. Such a declaration requires a club to answer the following two questions on the form:

    a. *"Do any players or Playing Coaches of the Club receive any Material Benefits for playing rugby for the Club, whether directly or via a third party?*

    b. "*Are any players engaged in another non-playing capacity by the Club or third party associated with the Club in return for any Material Benefit?*

22. It is of note that the declaration specifies that it should be read in conjunction with Regulation 7 (which defines the relevant terms) as well as the Frequently Asked Questions (FAQ) document. Further, immediately above the signatory section, the following statement appears on the declaration itself:

    "*THIS DECLARATION MUST BE SIGNED BY ALL INDIVIDUALS REFERENCED BELOW. BY SIGNING THIS DECLARATION, YOU HEREBY CONFIRM THAT, TO THE BEST OF YOUR KNOWLEDGE:*
    (A) THE INFORMATION AND STATEMENTS SET OUT HEREIN ARE TRUE AND ACCURATE;
    (B) FULL AND PROPER ENQUIRIES HAVE BEEN MADE IN RELATION TO THE CONTACT* (sic) *OF THE DECLARATION; AND
    (C) THE CONTENT AND SUBMISSIONS MADE WITHIN THIS DECLARATION HAVE BEEN APPROVED AND MINUTED AT A FORMAL CLUB MEETING.
    ANY FALSE OR MISLEADING DECLARATION MAY CONSTUTITE A BREACH OF RFU REGULATION AND BE SUBJECT TO DISCIPLINARY ACTION IN ACCORDANCE WITH RFU REGULATION 19."

BACKGROUND

23. The following central facts were not in dispute:

    a. In order to be eligible for RFU Benefits, the Club was required to submit an accurate declaration between 1 March and 30 June 2019 for any Gross Payments of Material Benefits paid or payable between 1 June 2018 and 31 May 2019.

b. The Club completed an electronic version of the declaration dated 25 June 2019 in which it answered "No" to the first question and then "Yes" to the second question. The Club ought to have answered "Yes" to the first question.

c. The declaration was printed off and then signed by the following individuals:
   i. Alison Hannaford (Chairman);
   ii. Max Venables (Hon. Treasurer);
   iii. Eleanor Venables (Hon. Secretary);
   iv. Nigel Sparrow.

d. The signed (completed) declaration was then uploaded via GMS on 25 June 2019 ("the Declaration").

e. At 13:13 on 25 June 2019, Max Venables emailed the RFU (to an email address of paymentofplayers@RFU.com) in which he asked the following question:

"*Can you please confirm I have submitted our players pay declaration correctly?*"

f. At 13:47 on 25 June 2019, David Stubley replied in the following terms:

"*Max – I can see that the declaration is submitted and that an attachment has been logged."*

g. David Barnes, RFU Head of Discipline, emailed the Club at 07:59 on 26 June 2019 to request information in support of the Declaration and to notify the Club that he was investigating a potential breach of RFU Regulation 7.4.

h. Following receipt of the email, Mr Venables telephoned Mr Barnes and they discussed the situation.

i. At 10:12 on 25 June 2019, Mr Venables replied to Mr Barnes' email stating:

"*Further to our phone call this morning I am writing to apologise for my misunderstanding with the payment for players declaration. I thought that question one, as it stated 'material' benefits it meant anything outside their wages for the club.*

As you can see attached I did email the address provided by the RFU for questions asking if I had submitted everything correctly. This seems to have all escalated very quickly. I will spend the next few days pulling together the requested information."

j. The Club subsequently sent Mr Barnes the information requested.

RFU EVIDENCE

24. The RFU provided the Panel with three witness statements from David Barnes and one each from Alys Lewis and David Stubley. The Panel also heard live evidence from David Barnes and Alys Lewis. The essential elements of that evidence are referred to below.

Alys Lewis (Head of Legal and Regulation)

25. In her signed statement, Ms Lewis referred to the context within which the payment to player regulations came about. She stated that a project relating to payment of players commenced in 2016 due to concern for club sustainability. A working group was set up to review the situation. The working group identified three primary concerns:

    i. There was an uneven playing field where clubs which had the capacity to pay players disrupted the local league landscape and created a culture of 'journeymen' who move from club to club and undermine club loyalty.

    ii. A lack of sustainability within clubs utilising scarce resources to pay players where those clubs were often unable to maintain and modernise facilities and invest in the wider development for the benefit of all players in the club.

    iii. Clubs were increasing their exposure to employment legislation and HMRC regulations.

26. That working group produced a set of recommendations, summarised as being:

    i. The RFU should make a clear statement that payment for playing rugby in the community game had a detrimental effect on the game.

    ii. Maximum payments should be set for Levels 3-5 while clubs at Levels 6 and below should have a level set a zero (aside from one player coach).

    iii. Clubs would be free to exceed the maximum payment threshold or pay players at level 6 and below, but in so doing would render themselves ineligible for RFU financial support.

    iv. Clubs would be required to submit an annual declaration stating whether they make payments and players and, if so, to what extent. This would be required to be signed by four key personnel from the club to ensure oversight and accountability and to encourage clubs to take their obligations seriously.

27. In her witness statement, Ms Lewis stated that the onus was on the clubs to ensure their declaration was accurate. Once the process was up and running, any decisions that needed to be made pertaining to compliance were made jointly between herself, David Barnes and David Stubley. Ms Lewis stated that if a club purported to have made an error in the completion of the declaration and requested it to be reopened, this would only be permitted if:

    i. The declaration had not yet been fully submitted (i.e. the electronic copy of the declaration had been submitted but the hard copy version had not yet been uploaded);

    ii. An investigation had not yet been commenced; and,

iii. David Barnes, David Stubley and Ms Lewis all approved the declaration process should be reopened.

28. In answer to questions from the Club's representative, Ms Lewis accepted that there were teething problems with the process. These largely fell into two categories: firstly, queries as to what was or was not a material benefit; secondly, operational issues such as obtaining all four signatories. Ms Lewis said that the RFU received over 100 queries, fielded by Mr Stubley as to what was included in 'material benefits'. Ms Lewis accepted that the notion that GMS would 'lock' the declaration process once a declaration had been made was not something clubs had been informed about. She accepted that the rationale behind 'locking' the system was to protect the content of the declaration and the integrity of the signatures. Where a form had been signed by four key individuals to say that it was true and accurate, it was only right that it would be locked down and could not be amended by an administrator. In terms of the criteria by which a declaration could be reopened, Ms Lewis stated that this arose out of discussions between the three individuals concerned because they knew they had to be consistent. For example, she said that if an investigation had commenced, there would come a point when the RFU would contact the club for information and that they did not want a club to have an advantage having been tipped off that there was potentially a problem with its declaration.

29. Ms Lewis accepted that the reason the RFU chose not to wait until the close of the window to scrutinise information was because of the number of declarations it received and the need to get on with the process. She also accepted that if a club like Plymouth Albion stated that it did not pay players that it would raise eyebrows.

David Barnes, Head of Discipline

30. Mr Barnes was also asked questions by the Club's representative. Mr Barnes said that the discussion as to whether declarations should be reopened came about early in the process following clubs asking for their declarations to be reopened. The three-stage process (referred to above) was arrived at, although it was not written down anywhere. He also accepted that nowhere does it state that a declaration, once made, would be locked.

31. Towards the end of the submission window, Mr Barnes stated that he was running reports almost every day to see which clubs had not complied with the Regulations (by submitting their declaration). He said that by 25 June, over 500 clubs had not submitted declarations. As a result, he was giving information to the area managers so that they could let clubs know that there were only a few days in which to complete the declaration or the clubs would lose RFU benefits.

32. On 25 June, probably in the afternoon or evening, Mr Barnes had run a report and had looked at the Club's Declaration. He said that he did not rely on the electronic form but had instead relied on the document uploaded by the Club. Mr Barnes identified that the answer to the first question was "no". He was asked whether it was an obvious error, to which Mr Barnes said that he was not aware of the Club's financial situation. He said that he had an idea as to which clubs pay and which do not and thought the answer was strange, although he had no reason to say that the Club definitely paid its players. When asked whether losing RFU Benefits as a result of a mistake was a just and proper outcome, Mr Barnes said that it was a proper application of the Regulations.

33. Mr Barnes was also asked questions as to the telephone call that took place with Mr Venables on 26 June. Mr Barnes accepted that Mr Venables had told him that he had made an inaccurate declaration and asked to resubmit it. When it was suggested to Mr Barnes that he had not told Mr Venables that GMS was locked, Mr Barnes disagreed. He said that he did not discuss whether there was a discretion to reopen the declaration. Mr Barnes was asked whether he revisited the policy not to reopen the declaration, to which he answered that the discretion was 'simply not there' because that is what had been applied consistently. When it was suggested to Mr Barnes that the policy not to reopen the declaration (which would lead to the loss of RFU Benefits) was unfair, Mr Barnes responded that in terms of fairness, it was a question of fairness to all clubs. By that stage, he said that hundreds of other clubs had submitted declarations and the decision not to reopen the declaration was fair to all clubs.

CLUB'S EVIDENCE

34. The Club provided the Panel with witness statements from the four signatories to the Club's Declaration. The Panel also heard live evidence from those individuals.

Max Venables, Managing Director

35. In his signed statement, Mr Venables describes the essential matters as follows:

"On the 25th June 2019 at I submitted our declaration on an electronic form via the RFU website. This was the first-time declarations had to be submitted electronically so the process was new to me. After submitting the declaration I emailed the address that was provided to me for any help with the form (paymentofplayers@rfu.com), asking if I had completed the form correctly. I was concerned that I may have made a mistake on the form and wanted to check that all the necessary information had been provided. I had a one-line reply stating that the declaration had been made but no comment on whether it was right or not.

At approximately 8:30 the following day David Barnes on behalf of the RFU emailed me saying that I had made a formal declaration that the club didn't pay any players. He asked for a lot of extra information. I immediately telephoned David and explained to him that I had queried whether I had submitted the declaration correctly to the 'help' email address provided.

We discussed the information I had provided with the declaration and it soon became clear that I had misunderstood the meaning of the term 'material benefits' for p11 benefits. I realised during the course of that telephone call that I should have submitted wages information for players with that declaration. I had thought (wrongly I now understand) that 'material benefits' related to any additional benefits the players received ontop of their wages. I apologised for my error and asked David if I could re do the declaration as there was still 3 days until the deadline. He replied 'no' because 'we had now started the process'."

36. Mr Venables accepted from the outset that the Declaration was inaccurate. He described the context within which he had become the person responsible for the declaration. He stated that the declaration became his responsibility when the Club's long-term administrator, Jill Morton, left the Club during the summer of 2019. Mr Venables was asked by the RFU representative as to what, at the time he completed the electronic version of the form, he thought 'material benefits' meant. Mr Venables said that he discussed the matter with Alison Hannaford and Nigel Sparrow and that they all agreed that it related to P11D benefits and that the best course

would be to get everything together and then ask the question of the RFU. Mr Venables accepted that he did not contact the RFU in advance of completing the form. He said that when he submitted the form he thought it was potentially wrong because he had not submitted much information but wanted to submit the form and then have a conversation with the RFU.

37. Mr Venables confirmed that when he submitted the form, he thought 'material benefits' related to benefits in kind (and excluded salary). He was then shown an email in which it was apparent that the Club did pay P11D benefits-in-kind to players. Mr Venables was asked why, given he thought 'material benefits' related to P11D benefits-in-kind, he had still answered the first question "no". Mr Venables answered that the form was incomplete, that he wanted to do an 'example form', submit it, see if it was right and then speak to someone. He added that *"rather than drill into every payment, I wanted to clarify what each question meant; I was unsure what I was doing which is why I wanted to speak to someone at the RFU."*

38. Mr Venables was then asked questions about his email of 25 June (set out above). Mr Venables accepted that he did not request to have a phone call with the RFU in that email but said that he was "*opening up a discussion*" and that normally an email response would carry with it a 'signature strip' with a phone number. Mr Venables added that the email should have been interpreted by the RFU as a request to have a conversation.

39. In terms of the potential effect of losing the entitlement to RFU Benefits, Mr Venables said that the loss of £20,000 would be significant. While the turnover of the Club is substantial, he said that the Club runs at a marginal loss. He accepted that the Club has since registered new players and had hired a new head coach but said that the future of the Club was uncertain. The impact of losing RFU Benefits would be that the Club would not have "*money for luxuries"*, and that some teams might have no kit, less coaching or that food would be provided at cost rather than for free.

Alison Hannaford (Chairman)

40. Ms Hannaford's evidence was that she thought the phrase 'material benefits' related to P11D expenses, such as gym membership, travel expenses over HMRC levels and private healthcare. She said that there had been a discussion about the meaning of the phrase and that she had suggested to Mr Venables that he should get some clarification. Ms Hannaford was asked whether Mr Venables had confirmed that their understanding as to what 'material benefits' meant was right. She responded that she could not remember the exact words used but believed that the information on the form was correct. When asked how she had come to that belief, Ms Hannaford responded that she was only going on what Mr Venables had said. He had filled it in; he said it was right; so she signed it.

41. Ms Hannaford confirmed that she thought the first question was only asking about P11D benefits. It was suggested to her that the Club did pay such benefits to players. Ms Hannaford's response was that the Club was supplying a coach and was paying two other club members to work in the community. She accepted that, in hindsight, the question was answered incorrectly.

42. Ms Hannaford added that she was concerned that the Club had not been given the opportunity to correct the form when it had time to do so. It was suggested to her that the Club could have approached the RFU before

submitting the form, Ms Hannaford's response was that she had understood that Mr Venables had tried to do that.

Eleanor Venables (Hon Secretary)

43. Ms Venables confirmed in her evidence that the four signatories all came to the conclusion that the phrase 'material benefits' meant payments "*over and above PAYE*." She said that when she signed the form, she believed the form to be correct. However, Ms Venables said that she remembered Mr Venables saying that he was going to confirm with the RFU whether it had been sent in correctly.

44. Ms Venables accepted that she was aware that the Club was providing benefits outside PAYE to players. When asked why, in light of that answer, the first question was not answered 'yes', she said she did not know.

Nigel Sparrow (Director of Rugby)

45. Mr Sparrow said that although he was aware of players' contracts and the playing budget, the payment of players declaration was left to Mr Venables to run. He said that he knew Mr Venables was finding the process quite difficult but that he could not be explicit as to what Mr Venables had done in terms of communicating with the RFU. He said that when he signed the declaration, he was comfortable that it was correct. When asked why, he said that he had no reason to think it was not correct. Mr Sparrow accepted that the Club both pays players and provides them with additional benefits. He was asked why, if that was true, the first question had been answered no. Mr Sparrow's response was "*I didn't send in that form."* When it was put to him that he had signed it as accurate, his response was that Mr Venables had been involved in the process and knew far more than him. When asked why, if he knew the Club was paying benefits and that the form said that the Club was not paying benefits, he did not challenge it with Mr Venables, Mr Sparrow said he was not sure.

SUBMISSIONS

RFU

46. The RFU accepted that there was no attempt to deceive on the part of the Club. However, it was said that there was a high level of carelessness. The system had in-built safeguards but the Club had driven through one red light after another. The RFU required four independent officers to sign the declaration and this had to be minuted at a formal club meeting. Before a club fell foul of the Regulations, it would have to ignore all the safeguards and sign a false declaration. The RFU stated that this was not simply an administrative breach, but this was a clear-cut breach of the Regulations.

47. The RFU submitted that there was a regrettable and consistent refusal by the Club to take responsibility for the position in which it finds itself. It was said that the Club should have put its hands up and admitted the breach. Instead, it has criticised the RFU in terms of suggesting that the RFU was heavy handed in its refusal to reopen the Declaration and by its suggestion that the Regulations were not clear and did not state that a declaration could only be submitted once.

48. It was said that what has emerged in the Club's evidence is a contradiction between what was said in the witness statements and what was said before the Panel. The explanation given in Mr Venables' witness

statement was that the Club thought 'material benefits' related to benefits-in-kind. Although this started out as Mr Venables' position before the Panel, that had shifted, and the Club's evidence was that no-one knew whether it was right or wrong and that it had attempted to clarify the position with the RFU.

49. The RFU stated that the position was clear. Regulation 7 requires an annual declaration to be made. If a club fails to submit a declaration, as here, it would not be eligible for RFU Benefits. The Club's position appeared to be that it could (or should) be allowed to amend its declaration provided it does before the 30 June deadline. The RFU submitted that this defence to the charge did not get off the ground. There was no basis in the Regulations for saying that a club should be allowed to amend a declaration, nor do the Regulations give a legitimate expectation of doing so. The RFU stated that the Club would have to establish unreasonableness to the Wednesbury standard as to the way in which the RFU had behaved if it was to avoid the charge. If the Club did not do so, there was no legal doctrine by which the Club could escape the charge given its conduct.

50. During the course of its submissions, the RFU invited the Panel to find that the Club had produced documentary evidence in relation to match cards which was either deliberately misleading or dishonest. These were allegations which had not been put to the Club's witnesses in cross-examination. The Panel has concluded that the documentary evidence alone is not sufficient to establish such a serious allegation in circumstances where the witnesses have not had an opportunity to respond to those allegations directly in oral evidence. The Panel emphasises that it is not making any findings on the point and that whether the RFU wishes to investigate this matter separately is a matter for the RFU.

51. In terms of sanction, the RFU said that if the Club was found to be in breach of the Regulations it would automatically render the Club ineligible for RFU Benefits. This was accepted by the Club. The RFU said that there were similarities with the only other case of this type[1]. Although there was no deliberate attempt to deceive the RFU when submitting the Declaration, the Club had been highly negligent. It had entered a 'not guilty' plea and had taken an unwarranted position in respect of the RFU. On that basis, a 20-point sanction was merited, some of which could be activated in the circumstances.

The Club

52. The Club's position was that the Panel could arrive at a just and fair decision, applying proper principles, and reach a conclusion which found that the Club was not in breach of Regulation 7. It was said that Regulation 7 had to be read in conjunction with Regulation 19.1.6 and that the Panel did not have to conclude that the RFU had acted unlawfully in order to dismiss the charge.

53. It was submitted that the RFU has a role to enforce the Regulations but that it is also there to administer the Regulations fairly. Simply because it chooses to administer the Regulations in a particular way, by seeking to interpret them in a particular way, did not necessarily result in a fair outcome. It was said that the process of administering the Regulations is different from the Regulations themselves.

54. In terms of Regulation 7, it was said that there was some scope for ambiguity. The Regulations should be crystal clear. Instead, it was said that it could be read into the Regulations that there was scope for making more than one declaration. It was submitted that the word 'annually' simply means per year; it does not

[1] RFU v Rams RFC (February 2020)

necessarily mean once per year. It was also said that the phrase 'material benefit' could be drafted with more precision and remove the ambiguity by stating that it included wages or salary. The Club also stated that the Regulations did not make clear that the declaration, once made, was final. It was said that if there was the smallest scope for ambiguity, that should be considered in the Club's favour.

55. The Club submitted that the focus of the Regulations is about helping clubs. However, the way the RFU administered the Regulations was contrary to that principle. It was said that when Mr Barnes noticed that the Club had made a declaration that it did not pay its players that it should have been patently obvious to the RFU that that was not right. There was, it was said, an opportunity for the RFU, through him, to adopt a different approach. Instead, he immediately began an investigation. An alternative approach might have been for Mr Barnes to pick up the phone and ask whether the declaration was accurate and that he could then have given Mr Venables the opportunity to make an accurate declaration within the window.

56. In conclusion, it was said that the Panel should apply its rugby experience to the decision and should look past procedural matters and find that there could have been more clarity in the words of the Regulations, the Guidelines and the FAQs. Thus, it was said the Panel would arrive at the conclusion that the way in which the process was administered resulted in unfairness.

57. In relation to sanction, if the Club was found to be in breach of the Regulations, it was accepted that ineligibility for RFU Benefits follows that decision (although it was said that it was still open to the Panel to make an observation on the point). It was said that the Club had paid a heavy price for the failing and that there would be a financial burden that flows from the withholding of the RFU Benefits that would have an impact on the Club. It was said that this was not a deliberate breach and that any negligence was towards the lower end. The Club did not have many resources and had had to work hard over the past three years to get back from a position of financial difficulty. There was an acceptance that things were done incorrectly and there was remorse. The Club had conducted itself properly following the initiation of the investigation and had supplied the required information within days. It had gained no sporting advantage and would not have exceeded the threshold in any event. The Panel was also invited to take into account the current pandemic and the resulting financial implications for the Club. The Club submitted that the Panel should recognise that the season had finished and there was a considerable delay from the charge to the hearing taking place. It was also said that the case was different from the factual matrix in *RFU v Rams RFC*.

FINDINGS AND CONCLUSIONS

58. The Panel considered all the evidence and submissions it heard and read with care. It made the following findings, and reached the following conclusions, on the balance of probabilities.

    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. The wording of the Regulations, and the finality of the wording on the form itself, do not create a legitimate expectation that a declaration could be made more than once or that, once made, a (signed) declaration could be amended. Instead, 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 <u>all</u> clubs.

59. In the light of the findings above, the Panel have considered the submissions made by the Parties and particularly those from the Club which urged the Panel to reach a conclusion that was fair and just, taking account of the circumstances of the case, including the purported ambiguity of the Regulations and unfair manner in which the RFU have administered the Regulations in this case.

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.

SANCTION

63. This is the second such case that the Panel knows of in Rugby Union, following the decision in *RFU v Rams RFC* earlier this year. This Panel adopts the rationale and sanctioning framework referred to therein much of which applies to this case and can be repeated.

64. The sanction framework contained in Regulation 7 is minimal. Regulation 7.4.8 provides simply that the Disciplinary Panel is "*entitled to impose such sanctions and penalties against any such party as it deems necessary in respect of any breach of these regulations."* The Regulations do not provide further guidance. The Panel's discretion is wide, tempered only by the question of necessity and proportionality.

65. Throughout its deliberations, the Panel considered the question of necessity and proportionality by reference to the factors expounded by the RFU. They are as follows:

    a. The importance of the policy which sits behind these Regulations;

    b. The need for a deterrence; and,

    c. The need to punish a breach of the Regulations.

66. The Panel accepts the overarching principle which led to these Regulations being implemented; the need to protect the community game and to prevent an overwhelming imbalance between clubs where less-wealthy clubs either fall behind on the rugby pitch or falter off it when trying to keep up with those more financially powerful. Consequently, as in *RFU v Rams RFC,* it is the Panel's view that there is a need for a deterrent to ensure clubs self-certify accurately and that there is a need to punish those which do not.

67. In assessing the seriousness and significance of this breach of Regulation 7, the Panel adopted the range of factors set out in *RFU v Rams* RFC. The factors were as follows:

    a. Whether the breach was the product of an act which was deliberate, negligent, or inadvertent.

    b. The culpability of the club in question (including the reason for the failure(s));

    c. The resources available to the club (including size, structure and administrative resources of the club);

    d. The previous conduct of the club;

    e. Whether the club accepted its failure and demonstrated remorse;

    f. The conduct of the club following a purported breach and / or during any investigation;

    g. Any sporting advantage gained by the club in consequence of the breach;

    h. Whether the club exceeded or would have exceeded the Payment Threshold;

    i. The effect of the loss of the RFU Benefits on the club;

    j. Any other factors of relevance.

68. Applying those factors to the circumstances of this case, the Panel's findings are that:

a. For the reasons set out above, this was not a case of deliberate or dishonest behaviour. However, the Panel considers that the Club acted in a highly negligent fashion.

b. The Club was culpable to a significant degree. The Club paid scant regard to the payment to players process and the contents of the Declaration.

c. The Club had adequate resources. However, the Panel recognise that Ms Morton left at some point earlier in 2019 and that matters were passed to Mr Venables at relatively short notice.

d. The Panel treated the Club as having previous good conduct.

e. The Club did not accept the charge and appeared to the Panel to demonstrate little, if any, remorse for its failures. The manner in which the Club approached the disciplinary process appeared to the Panel to attempt to deflect its failings onto the RFU without any reasonable basis for so doing.

f. The Club provided the RFU with the required information within days of the investigation commencing.

g. No sporting advantage was gained by the Club against its competitors.

h. The Club would not have exceeded the Payment Threshold.

i. The Club will inevitably feel the effect of the loss of RFU Benefits, a situation that will be compounded by the Covid-19 pandemic.

j. No other particular factors were identified which would have had a significant impact on the level of sanction that was deemed to be necessary and proportionate.

69. Having had regard to these factors, the Panel then took a step back to consider what sanction and/or penalty was necessary and proportionate with reference to the broader context of the case.

70. The Panel determined that it was both necessary and proportionate to deduct league points from the Club by way of sanction. The imposition of such a sanction is necessary in order to uphold the core values underpinning the Regulations and thereby to serve as both a deterrent and as a punishment for the breach. The Panel considered a 20-point deduction to be a proportionate means by which this could be achieved.

71. There exists no notional yardstick against which to measure how many points should be deducted in any given case. In arriving at its decision as to sanction, the Panel had regard to the fact that a bonus-point win equates to 5 league points. It also had regard to the league tables at this level of rugby over recent seasons. In light of the assessment of seriousness as set out above, the Panel deemed that 25 points would likely be too severe (and thus potentially disproportionate), while 15 points would be insufficient (and thus unlikely to meet the need for a deterrence). Looking at the case holistically, the Panel deemed that a 20-point deduction was appropriate in the circumstances.

72. The Panel then considered whether it was appropriate to suspend some, or all, of the 20-point deduction. The Panel reminded itself that the originating breach was not deliberate and that the Club was not over the Payment Threshold. These factors plainly weighed in favour of suspending some, or all, of the deduction imposed. However, the Panel was acutely aware that the Club had not accepted the charge and had demonstrated little, if any, remorse as to its conduct. As such, the Panel concluded that the wholesale suspension of the 20-point deduction in the particular circumstances of this case would not achieve the objectives underlying the Regulations and would not provide a sufficient, effective deterrent or appropriate punishment for regulatory non-compliance. Taking into account all the circumstances of this case, the Panel concluded that a 5-point deduction was appropriate and that it would take effect at the start of the 2020/21 season.

73. While the outcome is the same as the one reached by the Panel in *RFU v Rams RFC*, the Panel reiterate that this case was decided on its own facts.

74. In reaching its decision, the Panel took into account that by the time the disciplinary hearing concluded the 2019/20 season had already been completed (owing to the Covid-19 pandemic). The Panel recognised that this case has taken a considerable time to be concluded and that much of that delay is through no fault of the Club. However, given that the league season had been completed, the Panel concluded that in order for the consequence to be meaningful, it was appropriate that any points deduction should be imposed at the start of the following season.

CONCLUSION

75. The Panel therefore concluded that the charge was proven on the balance of probabilities and that the necessary and proportionate sanction in this case is 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 this 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 anticipates that the remaining 15-point deduction would be activated. However, any such determination is to be left to the panel dealing with those subsequent matters should such a situation arise.

RIGHT OF APPEAL

76. There is the right of appeal against this decision. In accordance with Regulation 19.12.9, any such appeal must be lodged with the RFU within 14 days of the date upon which this judgment is sent.

COSTS

77. The Club is required to pay the costs of the hearing in the sum of £200.

Gareth Graham
Chairman
30 April 2020