

RUGBY FOOTBALL UNION

DECISION OF THE INDEPENDENT APPEAL PANEL

IN RESPECT OF AN APPEAL BY COCKERMOUTH RUFC

Held at Castle Green Hotel, Kendal, Cumbria

On : 29th November 2017

In respect of : An appeal by Cockermouth RUFC (“the Club”) against the decision (“the decision”) of the Cumbria RFU Disciplinary Committee (Cumbria) following a hearing on 18th October 2017 and particularly against the severity of the sanctions imposed, which were as follows :

Cockermouth RUFC 1st XV be deducted 10 league points (Cumbria 1 League); 5 points to be deducted immediately with the implementation of the other 5 points suspended until the end of the 2017- 2018 season on the condition that there are no further breaches of the regulations.

1. Fined £500.
2. Pay Cumbria RUFC administrative fee of £100 (plus VAT).
3. Pay Cumbria RFUC administrative fee of £50 (plus VAT) incurred by the hearing of the case involving the player (James Robinson).
4. Pay hearing costs of £100 (plus VAT).
5. The total sum of £800 to be paid before 12th November 2017, otherwise the suspended 5 point league deduction will be implemented.
6. Provide the names, addresses, and full contact details of three members of the Cockermouth RUFC discipline committee. These to be sent to the discipline secretary of Cumbria RFU before 12th November 2017. Failure to comply will result in the activation of suspended 5 league point deduction being activated immediately.

1. MEMBERS OF THE APPEAL PANEL (“the Appeal Panel ”)

Antony Davies (Chairman)
John Greenwood
John Downham.

2. PARTIES ATTENDING THE HEARING

Cockermouth RUFC :

Brian Mitchell Hill (Disciplinary Committee Chairman)
Carl Whild (Member of Disciplinary Committee and Management Company)
David Whild (Club Secretary and Safeguarding Officer)

David MacInnes (Member, Cumbria RFU Discipline Committee)

Rebecca Morgan (RFU Disciplinary Hearings Manager)

3. DECISION OF THE APPEAL COMMITTEE

That the original decision of Cumbria RFU be varied in the terms hereafter appearing.

4. GROUNDS OF APPEAL

The appeal was made under DR19.12.6 sub-paragraphs (a), (c) and (d), and in particular:

- i. That the Club did not purposefully absent itself from the hearing on 18th October 2017 so as to cause a lack of support to the Cumbria Disciplinary Committee.
- ii. That the sanction was disproportionate given the circumstances and the submission that the Club was unaware of the hearing at which it was to face a charge of bringing the game into disrepute by breaching the requirements of RFU Regulation 19.1.4 which requires Clubs to co-operate with CB disciplinary investigation or disciplinary proceedings.
- iii. That there were good reasons for officers of the Club failing to attend the meeting.
- iv. Given the absence of the Club from the meeting, the Cumbria Disciplinary Committee should not have proceeded, particularly as they contemplated points deduction, without first adjourning and giving the Club the opportunity of appearing and making submissions. In this respect, it was alleged that the process did not comply with the rules of natural justice.

5. BACKGROUND AND FACTS

- i. On Saturday, 16th September 2017, a Cockermouth player, James Robinson, was sent off by the Referee after being cautioned (two yellow cards). The Player accepted the foul play at the hearing on 18th October 2017. He represented himself. No member of Cockermouth RFC attended that hearing.
- ii. RFU Regulation 19.6.3 requires Club Secretaries to report to their CB within 48 hours after the match all relevant details relating to on-field disciplinary matters. Cockermouth's attempted notification was inadequate and they were asked by the CB Secretary to do better and given an extension to do so. No adequate response was received.
- iii. Cumbria RFU CB Discipline Committee noted that there had been previous and similar delays in dealing with disciplinary matters involving Cockermouth, though Cockermouth disputed the nature and extent of those previous matters.
- iv. The Player had attended the hearing and expressed displeasure with the way the Club had dealt with his matter and that he had had little, or no, contact with Cockermouth Officials since his sending off.
- v. The Cumbria Discipline Committee proceeded to hear the case in the absence of the Club, having first entered a not guilty plea for them. They found that the Club had failed to discharge its responsibilities by failing to report the sending off and that such conduct was prejudicial to the interests of the game and contrary to Rule 5.12 of the Rules of the RFU. No-one from the Club attended and there were no written representations. Cumbria Discipline Committee came to the sanction first before referred to.

6. EXAMINATION OF THE CLUB'S GROUNDS FOR APPEAL

- i. The Club accepted some responsibility for its inadequate attention to disciplinary matters and apologised, assuring the Committee that the administrative systems had now been improved. Their non-compliance was not wilful and they had tried their best to carry out what was required. They submitted evidence corroborating the fact that their Disciplinary Secretary had been away at the time documents were sent to him and, because of the locality and absence of telephone and internet access, had been unable to deal with the requirements, nor arrange for anyone else to do so. The Club felt that they should have been offered the opportunity of answering for their inadequacies before a Panel, particularly as the Panel considered, and subsequently imposed, the deduction of 5 league points immediately and a further 5 suspended. The Club submitted that had they been able to

explain the true nature of the circumstances and put the extent of their inadequacies into some context, then such a draconian sanction would not have been imposed upon them.

7. SUBMISSIONS ON BEHALF OF CUMBRIA DISCIPLINE COMMITTEE

- i. Mr. MacInnes explained the rationale behind the decision. Points were deducted due to the severity of the Club's transgressions and it was felt that the Club needed a "good shake-up". One of his Panel's members was aware of the financial situation of the Club and that was taken into account in coming to the amounts for the fines and costs. This, he said, was the third red card this year at Cockermouth and the previous two had been characterised by inadequate response, with late paperwork.
- ii. When questioned by the Panel, Mr. MacInnes fairly and candidly conceded that had his Panel been in possession of the matters explained by Cockermouth before the Committee, then the decision may well have been different. To this extent, their non-attendance had been held against them. He also conceded that, with the benefit of hindsight, it would have been better to adjourn the case against the Club, giving it one final opportunity to engage with the process and attend to make submissions. They had however assumed that the Club knew about the hearing because its player had attended. Finally, Mr. MacInnes found it difficult to conceive of a situation in which the Player knew of the hearing, but the Club did not know about the separate Rule 5.12 proceedings.

8. DISCUSSION AND DECISION ON APPEAL

- i. Whilst there were some mitigating features for the Club's failures, there was nonetheless a systemic and collective failure by all involved in the Club's disciplinary administration. It was noted that the Club had not held a hearing for the red card, excusing itself by saying that the Player had left and played elsewhere. Nonetheless, a hearing could and should have been held.
- ii. With regard to the points deduction, the Committee felt that the Club's attention to compliance had been woeful and although its failings had subsequently been remedied according to the submissions, it was a serious collective systemic failure, with no resilience in the Club's systems. However, it was the first time the Club had appeared before a Panel on such a matter. The Committee felt that a points deduction was warranted but the Club ought to be given a final opportunity to avoid the immediate imposition of the points deduction by attending to new processes and engaging and complying with the disciplinary regime.
- iii. The Committee found the accounts submitted by the Club to be very confusing and were particularly concerned about the accountancy treatment of a number of items and entries in those accounts. The explanations put forward on behalf of the Club for such entries are best glossed over, to remain a matter between the Club and its Accountants. However, we noted that Cumbria Disciplinary Committee had considered the financial position of the Club based on what it knew at the time and the accounts subsequently turned out to confirm that assessment as reasonably accurate. The Committee is aware of the level at which the Club plays and the submissions made in relation to its financial position, and we feel that the appropriate financial penalty is one of £250.00.
- iv. We found it difficult to reconcile payment of an administration fee and a hearing fee relating to the same proceedings, and the hearing fee will be capped at £100.00, including VAT. The Club will also pay £50.00, including VAT in respect of their failure to report the Player's red card.
- v. The Committee feels that in principle, it is wrong to link the deduction of league points to the payment of financial penalties. Mr. MacInnes had explained that their rationale for this arose from a lack of confidence that the Club would pay the fines.

- vi. The Club shall provide the names, addresses and full contact details of three members of the Club's Discipline Committee to Cumbria Discipline Committee within seven days of receipt of this decision, if they have not already done so.
- vii. As this appeal has been partially successful, the appeal fee of £125.00 is to be returned to the Club.

9. VARIATION OF THE ORIGINAL DECISION

- i. The following decision is to be substituted for the decision of 18th October 2018:
- ii. 5 competition points to be deducted from Cockermouth RUFC 1st XV (Cumbria 1 League), suspended until the end of the 2017/18 season. In the event that the Club admits or is found to have committed further breaches of the disciplinary regulations, they will be imposed immediately in addition to any subsequent penalty found to be appropriate.
- iii. The Club will pay the following financial penalties within 28 days of receipt of invoice :
 - a. A fine of £250.00.
 - b. Costs in respect of failure to report the red card £50.00, including VAT.
 - c. Cumbria Disciplinary Committee hearing fee £100.00, including VAT.
 - d. The Club will provide names, addresses and full contact details of three members of its Disciplinary Committee as set out above.

10. RIGHT OF APPEAL

There is no right of appeal against this decision.

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Antony Davies (Chairman)

John Greenwood

John Downham