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Tackling Issues

Issue 1 May 2006

Welcome... to the first "Tackling Issues" newsletter from Brabners Chaffe Street. The sports law team of James Chapman & Co (which from 1 May 2006 became part of Brabners Chaffe Street) is one of the country's largest teams of sports lawyers. We are renowned for advising international and national federations, bidding cities, event organisers, clubs, sponsors, broadcasters and individuals across a wide range of sports such as football, rugby union, rugby league, motorsport, golf, swimming and athletics.

Tackling Issues will focus on current legal and commercial issues facing the rugby industry.

We hope you enjoy reading Tackling Issues and would welcome any feedback you have. Our contact details can be found overleaf. Please feel free to get in touch if you have any feedback for us, would like additional information or have any queries. We look forward to hearing from you.

Work Permits: Getting It Right

If a foreign player does not satisfy the rugby union work permit criteria, his application for a work permit will automatically fail. Clubs will be aware that there is a right to appeal and depending on the circumstances of the case, and if careful consideration is given to the appeal document, a failed application can be overturned.

All foreign players who need a work permit to play rugby (i.e. all non-EU/EEA players) are required to have obtained a work permit before their application for registration will be accepted. Whilst in the majority of cases this will be a straightforward matter, some cases are less clear-cut.

Whether a player satisfies the work permit criteria or not is simple and depends on his country's IRB ranking and international appearance record. If he satisfies the criteria, he will be granted a work permit (provided that the employer club is in one of the top two divisions in the Union's domestic leagues). If he does not, however, an appeal must be lodged if a club is to acquire that foreign player's registration.

Ultimately, an appeal will only be granted if a club can convince the Home Office and the Union that exceptional circumstances apply to this specific player. Work permits are issued for players of the highest quality, playing at the highest level. It is therefore imperative that all appeals made demonstrate that the player falls within this bracket and that there are special

conditions which merit the Home Office and the Union making an exception. The burden of proof is high and unless it can be satisfied, the appeal will fail. The appeal document and supporting evidence therefore need to be carefully prepared.

The Home Office can be reluctant to allow foreign players into the UK when they do not automatically satisfy the criteria. It is accepted that there must be restrictions on the influx of foreign players to enable development of homegrown players. Restricting it too much, however, could be detrimental to club rugby and perhaps, ironically, to the development of British and Irish players who can gain experience and learn from their non-EU/EEA counterparts. Getting the balance right is therefore crucial to maintaining competition.

It is understood that the rugby union work permit criteria may be made more stringent over the coming seasons. In addition, changes are expected to the UK's whole immigration system following the Home Office's recent announcement that it plans to introduce a new point-based immigration system in an attempt to simplify the process. The new system looks set to have a noticeable effect on UK clubs' recruitment policies, although it is unknown at this stage how this will directly impact on the way work permit applications for non-EU/EEA rugby players are assessed. The Home Office has indicated that the new system will not be in place until mid-2007 at the earliest.

Before proceeding with these changes, however, the Home Office should perhaps address the imbalance that currently exists between Irish clubs and UK clubs in this area. Ireland's immigration laws for sportsmen are more relaxed than the UK's, giving Irish clubs an advantage in the recruitment of foreign players. Such disparity in immigration laws clearly needs addressing, particularly so that Welsh and Scottish clubs in the Celtic League can compete on an equal footing.

Ultimately, whether an overseas player is eligible for a work permit or not is an important issue for clubs when recruiting. If a club has identified a player and he does not automatically qualify for a work permit, in some circumstances clubs can still secure his services.

Careful consideration and preparation should therefore be given to any work permit application and appeal to ensure that any non-EU/EEA player that a club wishes to sign, is granted a permit.

We have extensive experience of sports related immigration matters, and in particular have advised Guinness Premiership and Celtic League clubs on a number of work permit matters and appeals.

If you wish to discuss these issues further, please contact us.



Disciplinary Crackdown Failing to have the Desired Impact

At the beginning of this season's campaign, clubs were bracing themselves for the uncertain impact that the tougher disciplinary rules being brought in would have on the domestic game. As the season draws to a close, it would seem that some of the initial concerns raised about the new regime were justified.

The stringent measures are aimed at cutting violence from the game and improving consistency when dealing with foul play. In theory, such an approach should improve the game and be welcomed. In practice, however, the increased level of punishment and inconsistent implementation of the rules has led to confusion and a series of conflicting decisions.

Whether the increased penalties being imposed can be justified or not is a moot point. Unions, clubs and players throughout the rugby world have had to accept the level of sanctions being introduced. Although arguably the harsher rules could take the edge off the game, they do ultimately act as a deterrent against violent play, which is to be encouraged. Indeed, given that clubs and players can face criminal and civil claims for acts of violent conduct on the pitch, it is imperative that the disciplinary rules in place accommodate this.

The real issue, therefore, which has become the subject of much debate, is whether the rules can be applied consistently worldwide and in every competition. From what we have seen so far, it looks doubtful.

Many of the decisions that have been passed under the new regulations have attracted widespread criticism for going against the guidelines set by the IRB and contradicting each other. Some examples of this are set out below.

Decisions

In November 2005, Cobus Visagie was charged with stamping during a Premiership match against Bath. Under the new regulations Visagie was expected to receive between a three and nine month ban (the maximum sanction being 12 months). In fact, Visagie was suspended for only one week by the RFU disciplinary panel.

Consider also the case of All-Blacks flanker, Jerry Collins, who was only banned for two weeks by the SAZAR for throwing a punch at an opponent in an international match; Lewis Moody, however, was given a nine week suspension by a Six Nations disciplinary panel for a similar offence.

Clearly, each case turns on its own facts but the above decisions, together with various other examples, appear too dissimilar to be defended as a consistent implementation of the rules.

It is bad enough that a particular Union is inconsistent in its own disciplinary judgments but when one considers that other Unions, Associations and competition disciplinary panels decide cases differently, and the implications that this can have on clubs, the current situation seems unfair. This is particularly true for clubs involved in European rugby.

Tackling The Issue

One solution might be to limit disciplinary panels' discretion when deciding cases. Another possibility would be to have just one independent body overseeing all disciplinary hearings. If it would be too great a task for one body to undertake, then maybe all appeals could be referred to one body instead. At least then some consistency could be achieved.

It has also been suggested that the rules should be changed so that players are banned for a number of games rather than a length of time. Perhaps this should go further and suspensions should only apply to a number of matches within the competition in which the offence was committed. Currently, it is inherently unjust that punishments for offences committed on international duty extend to domestic and European matches, ultimately penalising clubs. This raises grave concerns over the fairness and legality of the regulations, not to mention the question of whether Unions should bear the costs of players' salaries in such circumstances, and it should be noted that these issues may be open to challenge by clubs.

It should be a general rule, as in football, that match suspensions only apply in the same

competition. Thus, a player banned for an incident whilst on international duty would only be punished within an international capacity and clubs would not have to suffer as a result. Similarly, suspensions picked up in European competitions would not mean that clubs lose their players for important domestic fixtures. Whether the rugby calendar could accommodate such a system is another matter, but this does, however, seem a fairer way to approach discipline.

Whether violence is so endemic within the game to justify the increased penalties is questionable, but clubs have accepted the harsher regime. All that is required now is consistency in its implementation as it is ultimately the clubs who are affected the most if it is not. Whilst there must be room for deciding each case on its individual circumstances, the feeling remains that the margins of inconsistency at present are too wide to ignore.

The Way Going Forward

If inconsistencies in the implantation of the new rules persist, the matter may have to be referred to the IRB Regulations Committee for clarification. In the meantime, it is vital that clubs take advantage of disciplinary panels' wide discretion to try to maximise their chances to reduce punishments. They can do this by thorough preparation, good case management and strong presentation at hearings. Our sports team has extensive experience in such matters and we would be happy to assist in these areas.

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