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Feigning of blood injuries in rugby union: implications

Harlequins has been fined and its coach, Dean Richards, suspended for feigning a blood injury in order to allow a specialist drop-kicker to return to the field of play during the final few minutes of a Heineken Cup rugby union quarter-final. Stuart Cutting, Head of the sports law unit at Wright Hassall Solicitors, examines the action taken by rugby union authorities, the implications for the game and for wider sport.

Harlequins, who play the union code of rugby, were playing Leinster in the quarter-finals of the Heineken Cup on 12 April. Nick Evans, the Harlequins fly-half who is a specialist kicker, had to leave the field of play shortly after half time due to an injury, having received treatment at half time. He was replaced by Chris Malone, who himself was taken off with just over 10 minutes to go, due to a serious hamstring injury.

At the time, Harlequins were losing 6-5 and Dean Richards, the former iconic England No.8 and Harlequins Director of Rugby, called over Tom Williams to go on to the field of play.

During a subsequent penalty kick, Stephan Brennan came onto the field of play, told Tom Williams to change to the wing and handed him a blood capsule, which Tom Williams put in his sock. Tom Williams says that he was told to go down when he came into contact with the Leinster players. Tom Williams was tackled and went down. He then went back to his position before kneeling down, removing the blood capsule from his sock and placing it in his mouth. When Tom Williams first bit on the blood capsule, it fell out of his mouth and he then put it back in and bit on it.

Stephan Brennan came onto the field of play to assist Tom Williams

and took him off, due to what appeared to be a blood injury. In rugby union where there is a blood injury, the player must leave the field of play and can be replaced by a player even if that player has himself been substituted earlier in the game. This was the opportunity for Nick Evans to be allowed back onto the field of play.

The Leinster bench were protesting as Tom Williams left the field of play, as they felt that this was a fake blood injury. Tom Williams winked in the general direction of Dean Richards as he left the field of play. This was picked up by the TV cameras and commentators at the time. He was immediately taken into the physio room as Chris Malone was being treated in the treatment room.

The club doctor, Wendy Chapman, started to examine Tom Williams. They could hear voices outside in the treatment room, which caused both Tom Williams and Doctor Chapman to panic, as no cut or damage could be found. She started talking about a wobbly tooth, even though Tom Williams had no damage to his teeth. The 5th Official, Kevin Stewart, came into the physio room and wiped Tom Williams leg and commented that this was not blood.

Tom Williams then asked Doctor Chapman to take a scalpel and cut his lip so there was clear evidence of an injury. This she did. The bleeding took time to stop and photos were later taken by Stephan Brennan of the cut as evidence of the injury.

Harlequins did not have a specialist kicker on the field of play as Nick Evans had been substituted, reducing their chances of winning by getting a drop goal. Nick Evans could be brought back onto the field of play if another Harlequins player left the field of play for a blood injury under the 'temporary replacement rule'. Nick

Evans came back onto the field of play and attempted a drop goal, but he failed. If Nick Evans had succeeded, then Harlequins would have proceeded through to the lucrative semi-finals of the Heineken Cup. Fortunately for rugby union, Harlequins lost 6-5.

Matters were then escalated in the days following the game. In a meeting, Dean Richards provided completed statements for Tom Williams, Nick Evans and Stephan Brennan to read and sign.

What disciplinary action has taken place?

The European Rugby Cup Limited (ERC), which administers the Heineken Cup, confirmed that its Disciplinary Committee would be investigating the matter. A hearing was convened on 2, 3 and 20 July. The decision, given on 5 August, was that:

- Tom Williams was suspended for 12 months;
- The cases against Dean Richards, Stephan Brennan and Doctor Chapman were dismissed;
- Harlequins were fined €250,000 with 50% suspended for two years.

This decision was appealed to the ERC Appeal Committee by the both the Disciplinary Officer of ERC and Tom Williams. The Appeal committee heard the Appeal on 17 August and announced its decision:

- Tom Williams' suspension was reduced from 12 month to four months;
- Dean Richards was found to have been the directing mind behind the fake blood injury and the cover-up. He was found to have been complicit in directing four other fake blood injury incidents. He was suspended for three years, with a request that other governing bodies and tournaments give effect to this in their competitions;
- Stephan Brennan was found to have been complicit in the fake

blood injury and the cover-up. They found that he had acted for Dean Richards in four other fake blood injury incidents. He was suspended for three years, with a request that other governing bodies and tournaments give effect to this in their competitions;

- The case against Doctor Chapman was dismissed on the basis that they had no jurisdiction as regards her. She has subsequently been suspended by the General Medical Council, who are investigating her role.
- The fine against Harlequins was increased from €250,000 to €300,000 with half to be paid by middle of September and the remainder to be paid by 1 December.

Action taken by other governing bodies

The International Rugby Board (IRB) announced that the three-year ban imposed on Dean Richards and the two-year ban imposed on Stephan Brennan would apply and be enforced globally.

The Rugby Football Union (RFU), having investigated the matter - particularly the four previous occasions where fake blood capsules were used to fake a blood injury - decided to take no further action against Dean Richards, Stephan Brennan or Harlequins.

The RFU set up its own Image of the Game Task Group to investigate how far the use of fake blood injuries and other forms of cheating extended throughout rugby union. They concluded that the problem of cheating was not 'widespread' or 'systemic'. The Task Group undertook a Players Survey, amongst others, which showed that:

- 12% of players knew of injuries being feigned in international matches rising to 41% in European

Sports governing bodies should be prepared, where the offence is of a serious nature, to apply suspensions or sanctions across the sport globally

and Premiership games;

- 14% of players admitted to knowledge of the use of surveillance methods to spy of their opposition at international level;
- Over 50% of players knew of local anaesthetic being used to mask serious injury in order to play in club games;
- 12% of players had come across players being under the influence of illegal and recreational drugs during games.

Another interpretation of the Task Group Report could be that cheating in its various guises was 'endemic' in the sport.

The RFU Task Group considered that the current regulation on blood injuries was at fault and had allowed effectively the use of fake blood capsules. Their recommendations include:

- Providing guidance on the extent of bleeding or open wound for the referee to allow a player to leave the field of play and be replaced under the 'temporary replacement rule';
- The fourth official confirming the existence of a blood injury;
- The opposing team's doctor being allowed, subject to the player's consent, to inspect the player leaving the field of play for blood injury both during and after the game.

What are the implications for rugby union and wider sport?

It goes without saying that this leaves Dean Richards' career in tatters. Cheating goes against the fundamental principle underlining sport - the principle of fair play.

Whilst the ramifications are profound for rugby union, what is the likelihood of any wider ramifications for sport in general?

It is a fact of life that regrettably cheating goes on in all sports whether it be by the use of performance enhancing drugs or

the feigning of injury or a footballer diving in the penalty box to gain a penalty. Drug cheating has been profound in all sports for many years, as has the feigning of an injury.

Are there any principles or propositions from the 'Harlequins Bloodgate' case that could apply to sport in general? I would say that there are four principles or propositions.

Zero tolerance on cheating to uphold the principle of fair play

This case shows that in order to ensure that the principle of fair play is upheld, sports governing bodies must adopt a zero tolerance approach to cheating.

It is essential that all sports adopt a zero tolerance approach. Sport governing bodies need to look at their own sport to analyse whether there is a real problem with cheating and identify ways of alleviating any form of cheating. This will include practical steps that can be undertaken, reviewing their own rules and regulations and giving guidance to athletes, coaches and officials.

Fresh and new evidence should be permitted on an appeal

It goes without saying that sports governing bodies and appeal tribunals must act procedurally in a fair way to uphold and comply with the principle of natural justice.

This includes ensuring that everyone has a proper opportunity to be heard. All participants in the 'Harlequins Bloodgate' case had a fair and proper opportunity to be heard before the original Disciplinary Committee.

On his Appeal, Tom Williams argued that he had originally submitted his statement and given evidence without receiving independent legal advice and under duress from Dean Richards.

Tom Williams wanted to recant his evidence and introduce new evidence that was factually correct. He was allowed to do so. If he had given evidence on oath, as you do in Court proceedings, would he have lied during the first hearing?

Sports governing bodies must ensure they uphold the principle of natural justice. In circumstances such as ‘Harlequins Bloodgate’ or where there are allegations that justice has been flouted, sports governing bodies should allow the introduction of new evidence at an appeal. Procedurally, it may also assist if witnesses are obliged to give evidence on oath, as this may encourage witnesses to tell the truth.

Severely punish conspiracies to cheat

It is not so commonplace for there to be conspiracy amongst coaches and competitors to cheat and then conspire to cover up the cheating, as in the ‘Harlequins Bloodgate’ case.

In the ‘Harlequins Bloodgate’ case, there were three conspiracies. The first was a conspiracy to cheat by using a fake blood capsule to feign a blood injury, the second to cover up the cheating by slicing the inside of the lip of Tom Williams and the third, the preparation of signed statements to cover up the episode.

Where sports governing bodies uncover conspiracies to cheat and to cover up the cheating they must act severely in punishing the perpetrators.

In the ‘Harlequins Bloodgate’ case, the Appeal Committee acted proportionately in suspending

both Dean Richards and Stephen Brennan for three years and two years respectively. Some commentators say that Dean Richards should have been banned for life. The difficulty with imposing such a penalty is that you then move into the realms restricting trade and a persons ability to work and earn a living. Dean Richards is a rugby union person through and through. A lifetime ban would have restricted his ability to work in and earn a living from rugby union.

It was also proportionate to reduce Tom Williams suspension for effectively giving ‘Queen’s Evidence’. Without his evidence, a wider and far more serious conspiracy would not have been uncovered.

Sports governing bodies should adopt the universality principle

The IRB relied on the universality principle to apply the suspensions for Dean Richards, Stephen Brennan and Tom Williams globally.

Sports governing bodies should be prepared, where the offence is of a serious nature, to apply suspensions or sanctions across the sport globally. It is only by sports governing bodies adopting the universality principle to serious sanctions imposed that the perpetrators of cheating will realise that cheating really does not pay.

Conclusion

Is the outcome of this case likely to have an effect on other sports? It will surely be persuasive under the principles of natural justice and fairness should cheating of this

nature be evident in other sports. What is clear is that this decision and the resulting suspensions are indicative of how sports governing bodies are likely to apply the principles of natural justice and decide what is fair when it comes to cheating in the sporting arena.

Feigning a blood injury is no different to the use of performance enhancing drugs and so, as they say, “the punishment should fit the crime”. It is clear that the culpability behind the cheating in the ‘Harlequins Bloodgate’ case makes this case all the more serious, requiring that a substantial sanction be imposed against the perpetrators.

It is essential that all sports analyse whether there is really a problem with cheating and identify how this could be alleviated. With the role that sport plays both in our society - with the younger generations seeing competitors as role models and with the Olympics coming to this country coming in just under three years - it is essential that sport as a whole gets its house in order to root out all forms of cheating. Sport can have such a positive impact on people’s lives, but likewise it can have such a negative impact as well. It is time for sport governing bodies, sports clubs and sporting individuals to take notice and do all that they can to eliminate cheating from their sport.

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