

DISPUTE BETWEEN **TOMMY TAYLOR**
Applicant

AND **KING'S COLLEGE**
Respondent

**REASONS FOR DECISION OF SPORTS TRIBUNAL
23 June 2023**

Tribunal John Macdonald (Chair)
Warwick Smith (Deputy Chair)
Ruth Aitken DNZM

Representation Thomas Ashley, counsel for the Appellant
Michael Heron KC and Zac Fargher, counsel for the
Respondent
Shan Wilson, Board Chair, King's College

Registrar Helen Gould

1. On 23 June 2023 the Sports Tribunal (the Tribunal) delivered an oral decision in which it made a declaration that Tommy Taylor (Tommy), a Year 13 student at King's College in Auckland (King's), was immediately eligible to be selected for the school's First XV. What follows are the reasons for that decision.
2. At the outset the Tribunal wishes to make it clear that its decision is confined to the parties who brought the dispute to the Tribunal, namely Tommy and King's. The parties had sought urgency with a request that the dispute be determined on the papers. The Tribunal agreed to that and consequently there was no time to seek the views of the principals of the other schools involved in the Auckland 1A Rugby Competition, as to how the Auckland 1A Rugby Code of Practice (the Code) that governed the competition was to be interpreted or applied.
3. The Tribunal has not sought to embark on a detailed review of the Code. It has only considered the Code as required in the context of resolving the dispute.
4. Accordingly, this decision is not intended to be binding in any way on the other schools in the 1A Rugby Competition, except to the extent that it decides that King's is entitled to select Tommy in its First XV if it so chooses. The decision is not intended to create a precedent which binds the other schools in other cases involving different players.

Background

5. King's is a participant in a number of College Sport Auckland (CSA) sports including rugby. King's is also a signatory to the Code which stipulates that students who have transferred from another school and had been in their Rugby Development Programme (RDP) from Year 8 are not permitted to play First XV Rugby for two years after their enrolment.
6. Tommy has been enrolled at King's since 22 March 2022 having previously attended Mount Albert Grammar School (MAGS) between February 2019 and March 2022.
7. Tommy's written statement sets out the background to his involvement in rugby at MAGS and at King's. He states he was not in a First XV programme at MAGS, having only played in the 15B and 1R teams. However, it appears that he was

enrolled in the MAGS 'Sports Academy' (rugby section) in his year 9 and year 10 years.¹ He did not participate in the academy in year 11.

8. Towards the end of 2022, Tommy was considered for the wider training pack for King's First XV in 2023, and he later played as injury cover on a South Island tour.

The dispute

9. The issue in dispute is whether Tommy is eligible for selection in the King's First XV, which in turn comes down to whether, when he transferred from MAGS to King's, he was caught by the Code and therefore not permitted to play for the First XV.
10. From an email exchange between MAGS and King's in April 2023, being part of the documents provided to the Tribunal, it appears that both schools then shared the view that Tommy was caught by the Code because he had been involved in the Rugby Academy at MAGS. However, the chair of MAGS was subsequently reported in the New Zealand Herald as saying that this was not an issue for MAGS, and that it was "up to the Kings headmaster to determine whether the student could play First Fifteen rugby".

The Auckland 1A Rugby Code of Practice

11. At the heart of the dispute between the parties is the proper interpretation of the Code. The Code, a brief one-page document, represents an agreement between the principals of the 12 schools in the 1A rugby division. It is subject to the CSA Rules (the Rules).
12. The primary object of the Code was to stop the "poaching" of top players from other schools. The sentence in focus reads:

Any transferring student who was involved in another Auckland 1A School's Rugby Development Programme from Year 8 will not be permitted to play 1st XV Rugby for a 2 year period from date of enrolment.

¹ For the purposes of this decision we will assume, without deciding, that the MAGS rugby academy was a "rugby development programme" for the purposes of the Code.

13. “Rugby Development Programme” is not defined in the Code. That poses difficulties when trying to ascertain precisely what it means. For example, it is silent on the level of involvement that might be required. It is also curious that the reach of the Code extends into Year 8, the year before secondary school.
14. Mr Ashley, counsel for Tommy, filed written submissions in respect of how an RDP should be interpreted. He submitted that the phrase “involved ... from Year 8’ indicated a continuous involvement.
15. As far as Tommy was concerned, he outlined in his written statement that his involvement in playing rugby at MAGS was not continuous, as it was curtailed by Covid, and he was no longer in the academy. By the time he moved to King’s he was not playing rugby at all.
16. Mr Ashley further submitted that, as the Code was implemented to stop the poaching of top rugby players, an RDP should be interpreted as a programme that targets the development of the top players on a pathway to the first XV. That, of course, would not have caught Tommy because at MAGS he was not regarded as a top player and neither was he on a pathway to the first XV. Without wishing to be unkind, being selected in the U15B team appears to have been his highest achievement.
17. In Tommy’s case his transfer to King’s was not from poaching or King’s offering him a rugby scholarship. Indeed, it had nothing to do with rugby at all and in his written statement he said this:

The main reasons for deciding on King’s were that the school seemed as if it could be a fresh start and that I would have an opportunity to enjoy my last two years of school and make some new friends.

18. Admittedly Tommy hoped to play rugby at King’s, but he did not believe he had any chance of making the first XV, in part because he was not big enough. However, through hard work that changed.

Was Tommy Involved in a Rugby Development Programme and was his involvement continuous?

19. The lack of any definition in the Code of RDP means it was open to MAGS to consider that Tommy’s involvement in the Rugby Academy meant he was involved in an RDP.

20. However, the Tribunal finds compelling Mr Ashley's submission that for the Rugby Academy to be properly regarded as an RDP it must have contemplated continuous involvement on Tommy's part. In this case, Tommy says that he dropped out of the MAGS rugby academy at the end of his Year 10, and it appears that two full rugby seasons passed (in Tommy's years 11 and 12) before he even came into contention for anything, at either school, that might have been described as an RDP under the Code. Tommy did not play rugby while at MAGS in year 12 and his rugby was interrupted by Covid in years 10 and 11.
21. The Tribunal further accepts Mr Ashley's argument that, as the Code was introduced to stop the poaching of top players (including younger players in RDPs) from other schools, it really should only apply to them. It should not apply to players who dropped out of a school's RDP and were not on any first XV 'pathway' long before they transferred schools. Any other view seems to the Tribunal to be capable of producing unfair outcomes for some transferring students.

Was Tommy Caught by the Code?

22. The Tribunal is conscious that there does not appear to be any discretion under the Code to consider the personal circumstances of a transferring student, such as Tommy. It appears there may have been a practice, at least in some schools, that if a student has been involved in an RDP that is the end of the matter, he is caught by the Code.
23. While taking that approach was perfectly understandable, closer scrutiny of Tommy's situation would have revealed the two matters Mr Ashley complained about, that Tommy had not been continuously involved in the Rugby Academy and he was not in the category of players that the Code was designed to protect against poaching. More importantly it would have been readily apparent that his transfer to Kings was for the sake of his personal well-being; it had nothing to do with rugby.
24. Not considering the personal circumstances of a transferring student may put a school at risk of breaching the Guiding Principles set out in the Rules which apply to the 1A Rugby Competition. While the Guiding Principles do not create legal obligations, those subject to the Rules are encouraged to observe them. The Tribunal's view is that it is difficult to think of any reason why they would not be observed.

25. Rule 5.2(b) states:

The overall best interests of the student(s) concerned (including from both an educational and a sporting perspective) must be paramount in all decision-making.

26. In the Tribunal's view, it would be wrong for King's to simply say that, because Tommy has been involved in an RDP at another school for some limited, non-continuous period, he is automatically caught by the Code. In making its selection decisions in a case such as this, King's is in our view entitled to apply the relevant provision of the Code in a way that is consistent with Rule 5.2(b). The Code should therefore be interpreted in a way that takes into account the overall best interests of affected students. After all that is the paramount consideration.

27. The Tribunal is also aware that the signatories to the Code have committed to abide by the CSA By-laws which make provision for eligibility to play in Premier sport teams. It is not clear to the Tribunal how the provisions of the Code were intended to be applied consistently with the eligibility provisions of the By-laws, particularly where the effect of the Code might be seen as effectively adding to or restricting the application of the By-law provisions without any formal amendment of the By-laws.

28. Any assessment as to whether a transferring student is caught by the Code is to be made at the time of transfer but in this case the Tribunal infers that at that time no decision was made as to whether Tommy was caught by the Code because nobody, except perhaps Tommy's father, would have expected him to ever be in line for selection in the first XV.

Conclusion

29. Considering the matter afresh, in the context of (i) Tommy transferring to King's for reasons relating to his personal well-being but which had nothing to do with rugby, (ii) Tommy having dropped out of the MAGS rugby academy over a year before the transfer, and (iii) the need to have due regard to the guiding principles under the Rules, the Tribunal is in no doubt that Tommy should not have been caught by the Code. It means that he therefore would have been eligible for selection in the King's First XV.

Decision

30. For those reasons the Tribunal granted the declaration sought.

Dated: 26 June 2023



**John Macdonald
Chair**



**Warwick Smith
Deputy Chair**



**Ruth Aitken DNZM
Member**