

# DECISION BY THE APPEALS COMMITTEE OF THE WESTERN PROVINCE CRICKET ASSOCIATION

Date & Venue: Thursday, 5 April 2012 at the Media Centre, Sahara Park, Newlands

Quorum: A Wagner (Chairman), S Borwick, F Mguqulwa

## RULING IN THE APPEAL OF GLAMORGAN CRICKET CLUB AGAINST THE DECISION OF THE LOCAL LEAGUES COMMITTEE COMMUNICATED ON 30 MARCH 2012

### BACKGROUND

1. The home club, Glamorgan CC (hereinafter referred to as "**Glamorgan**") played a fixture against UCT CC (hereinafter referred to as "**UCT**") in the 1B League over two consecutive Sundays on 18 and 25 March 2012.
2. After the first day's play UCT complained that there had been a late start due to the fact that the pitch had been wet.
3. The Local Leagues Committee (hereinafter referred to as "**LLC**") first considered this matter on 19 March 2012, when it postponed the matter for further enquiry to 23 March 2012.
4. At the end of the enquiry on 23 March 2012 the LLC representatives concluded that "*Glamorgan is found guilty because they are in breach of by-law 14.5 which states that "in good weather conditions the cover must be removed as early as possible and no later than 8:30am, otherwise removal shall be at the discretion of the curator or ground manager having regard to prevailing weather conditions and may be re-laid if necessary".*"
5. At a special LLC meeting held on Thursday 29 March 2012 members perused and discussed the minute of the enquiry and agreed that Glamorgan was a defaulting club and accordingly it was found guilty of contravening by-law 14.5 and would therefore forfeit all of the points accumulated in the said match and the highest points of the round would be awarded to UCT.
6. An appeal was timeously noted on 3 April 2012 by Glamorgan and it appears that the prescribed security of R1 000.00 was paid.
7. Together with their appeal Glamorgan filed three affidavits. In response thereto, on 5 April 2012, UCT filed two affidavits.
8. Furthermore, the Chairman of the LLC delivered a comprehensive response to the appeal on 4 April 2012.

### **THE APPLICATION OF BY-LAW 14.5**

9. By-law 14.5 (which has been quoted in full hereinabove) imposes an obligation on a home club to remove the cover as early as possible but no later than 8.30am in good weather conditions.
10. This by-law appears to have its roots in both common sense and experience. Whereas in rainy conditions the cover serves to keep water off the surface of the pitch, in sunny conditions the cover will have the opposite effect by protecting any moisture which may have accumulated on the pitch from the drying effects of sunshine and wind.
11. Precedents made available to the Appeals Committee show that by-law 14.5 (and its predecessor with the same wording but different numbering in previous handbooks) has been strictly applied by the LLC.
12. Recent decisions reached by the LLC under similar circumstances include a decision in favour of Primrose CC against Northern Goodwood CC in 2008 and a decision in favour of Glamorgan against Primrose CC in 2009. In both of these circumstances the defaulting home clubs had all of their points deducted and the “innocent” club was awarded the highest points of the round.

### **THE EVIDENCE BEFORE THE LLC ENQUIRY**

13. Glamorgan’s appeal is based solely on the submission that the covers had indeed been removed by 08:30 and that accordingly as a matter of fact it had not contravened by-law 14.5.
14. In UCT’s report dated 19 March 2012 the following is stated:
 

*“The pitch we were supposed to play on was wet on Sunday morning, not sure how and why it got wet as there was no rain on Saturday [...]”*
15. The report by the officiating umpire, Mr Trevor Langenhoven, reads as follows:
 

*“When my partner and I went to inspect the pitch we could see that it was prepared but because of the sweat it was a bit wet. The other strip which was played on the previous day was dry and it was decided that we will play on that pitch after it is rolled for 15 minutes.”*
16. The following is an excerpt of an e-mail dated 19 March 2012 submitted by Rodney Brown, the Glamorgan secretary and a player in the game concerned:
 

*“I was the first person to arrive at the ground at 08h00 and along with a team mate, we removed the covers. There was no overnight rain. The wicket was prepared and playable*

*and posed no danger to any players, except that it was sweating from being covered overnight. What was concerning to us as the home side, was the fact that the pitch was not marked as arranged with the grounds man.”*

17. At the LLC enquiry on 23 March 2012, Glamorgan was represented by its first team coach, Mr Denver Jeneker, and the first team captain, Mr Dino Arries. Representing UCT were Mr Adeeb Joseph, the UCT captain and Mr Ryan Maron, the UCT player/coach. Mr Brown was not present and there was neither an explanation for his absence, not an indication of the existence of any other relevant evidence by the Glamorgan representatives.
18. Both umpires, Mr Trevor Langenhoven and Mr Ryan Langeveldt were also present.
19. Each of the above six parties was specifically asked by the Chairman of the LLC about what time the covers were removed from the pitch.
20. Each one of the aforesaid parties answered specifically that the covers were removed sometime between 08:50 and 09:00.
21. When the UCT captain, Mr Joseph, at one stage stated that the covers had been removed “from the field” at about 08:50, he was immediately corrected by the UCT coach, Mr Maron, who stated that in fact the covers had been removed “from the pitch” at that time. Mr Joseph agreed with this correction and none of the other parties present at the enquiry disputed this or commented thereon.
22. It is common cause that the pitch which had been prepared for the match was wet, whereas the pitch which had been used the previous day was dry but needed to be rolled.
23. The representatives of Glamorgan and UCT as well as the two umpires unanimously agreed that both pitches had been marked.
24. Based on the unanimous evidence of both UCT representatives, both Glamorgan representatives and both umpires, the LLC concluded that the covers had been removed between 08:50 and 09:00, in breach of the by-law.

### **GLAMORGAN’S APPEAL**

25. Glamorgan submitted the following reasons as to why they believed that the LLC’s finding of fact was incorrect:

*“With regards to the club being guilty of contravening by law 14.5 Removing **Covers on Match Days**, we have sworn affidavits by two of our clubs members as well as an independent witness which bears testimony to the timeous removal of the covers from the pitch.”*

26. The following reasons were submitted as to why Glamorgan believed the LLC's decision to be incorrect:

*"At the inquiry held by the Local Leagues Committee on the 23<sup>rd</sup> March 2012 our club was represented by coach Denver Jeneker (coach 1<sup>st</sup> XI) and Dino Arries (1<sup>st</sup> XI captain). They were there to respond to the concern by UCT regarding the non-preparation of the pitch for the match dated 18<sup>th</sup> and 25<sup>th</sup> March 2012. Rodney Brown the club secretary and member of the 1<sup>st</sup> XI who played in the UCT match was unable to attend at the last minute. Neither Mr. Arries nor Mr. Jeneker were given the response by Mr. Rodney Brown as to the concern of UCT where it is stated that he was at the venue at 8:00am and together with a team mate, Ryan James, removed the covers from the pitch before 8:30am. Dino Arries as well as Denver Jeneker arrived at the field at around 8:50am and when asked at the inquiry whether the covers were removed between 8:50 and 9:00 they responded yes. What they did not make clear to the committee was that the covers were removed from the field around that time and not off the pitch. Secondly neither the umpires nor the opponents inspected the pitch before 8:30am and since the covers were lying open next to the pitch, not on it, they too could not see that the pitch was already open. When we received the minutes of the inquiry and it stated that both umpires and the opponents said the covers came off the pitch **specifically** just before 9:00am, we immediately confirmed with our members that the covers were removed from the pitch before 8:30am. To the opponents as well as the umpires it may have looked as if the pitch was still covered when in fact it wasn't."*

27. Three affidavits were attached to Glamorgan's notice of appeal. These affidavits were all deposed to at SAPS Elsie's River between 20:20 and 20:35 on 2 April 2012.

28. Mr Rodney Brown stated the following:

*"I RODNEY BROWN, ARRIVED AT STAN ABBOTT PARK ON 18 MARCH 2012 AT 08H00 AND IMMEDIATELY ASSISTED RYAN JAMES TO REMOVE THE COVERS OFF THE PITCH (PLAYING SQUARE). WE LEFT THE COVERS ON THE SIDE OF THE PITCH AND WAITED FOR OUR TEAM MATES, WHO ARRIVED FROM 08H40 ONWARDS, TO ASSIST US WITH THE REMOVAL THE COVERS OFF THE FIELD. THE PITCH (PLAYING SQUARE) WAS CLEARED OF THE COVERS BEFORE 08H30 AND NO LATER."*

29. The "independent witness" referred to in the notice of appeal, Mr Ridwaan Williams, states the following:

*"I arrived at Stan Abbott Park, Ruyterwacht at 08:00am on the 18 March 2012 with Rodney Brown. Rodney then joined Ryan James to remove the covers from the pitch. I was standing in the parking lot and during that time the umpire, Ryan Langeveldt arrived, at the field, around 8h20am. [...]"*

30. Ryan James states the following:

*“ON THE 18<sup>TH</sup> OF MARCH I ARRIVED AT STAN ABBOTT PARK AT 07H50 AT [sic] STARTED REMOVING THE TYRES AND PLANKS OFF THE COVERS. RODNEY BROWN MY TEAMMATE ARRIVED AT 08H00/08H05 AND ASSISTED ME IN REMOVING THE COVERS FROM THE PITCH. THE COVERS WERE REMOVED FROM THE PITCH BY 08H25 AND WERE PLACED NEXT TO THE WICKET. OUR TEAMMATES ARRIVED BETWEEN 08H40 AND 08H50 AND ASSISTED IN REMOVING THE COVERS FROM THE FIELD.”*

31. Whereas Mr Brown’s e-mail of 19 March 2012 would have formed part of the documentation which lead to the LLC’s decision to hold an enquiry, the three affidavits submitted together with the notice of appeal constitute new evidence which must be dealt with in terms of by-law 9(n) which reads as follows:

*“No new evidence shall be considered on appeal unless the Appeals Committee finds that such evidence was not reasonably available at the original hearing or that there are other compelling reasons to allow such new evidence.”*

32. In the notice of appeal, it is submitted on behalf of Glamorgan that Mr Rodney Brown “was *unable to attend* [the LLC enquiry] *at the last minute*. *Neither* [of the Glamorgan representatives present] *were* [sic] *given the response by Mr. Rodney Brown* [...].

33. No explanation is given why Glamorgan’s representatives had not been instructed to convey Mr Brown’s evidence to the LLC.

34. However, such an instruction would have put Mr Jeneker and Mr Arries in an extremely difficult position since Mr Brown’s evidence that he had removed the covers from the pitch at 08:00 directly contradicts their evidence which was that the covers were removed from the pitch between 08:50 and 09:00.

35. Accordingly we are only left with Mr Brown’s untested statement which is contradicted by UCT’s representatives, the umpires and his own club’s representatives. It is telling that this is not the only aspect in which Mr Brown’s submission is contradicted by everybody else. In his e-mail of 19 March 2012 he states that “*the pitch was not marked*” yet Glamorgan’s representatives, UCT’s representatives and both umpires were unanimous at the enquiry in agreeing that the pitch had in fact been marked.

36. No explanation whatsoever is given as to why the deponents of the other two affidavits, Ridwaan Williams and Ryan James, did not make statements at the LLC enquiry and why their evidence should be admitted now, at the appeal stage.

37. It appears, however, that Ridwaan Williams who arrived at the field “with Rodney Brown” is probably not an “independent” witness as Glamorgan states in the notice of appeal.
38. Furthermore, the affidavit of Ryan James in which he states that he “ARRIVED AT STAN ABBOTT PARK AT 07H50 AT STARTED REMOVING THE TYRES AND PLANKS OFF THE COVERS” contradicts Rodney Brown’s statement of 19 March 2012, where he states that “I was the first person to arrive at the ground at 08h00.”
39. It is further noted that in response to the affidavits filed on behalf of Glamorgan, two affidavits were filed on behalf of UCT by the two delegates who had attended the LLC enquiry, namely the first eleven captain Mr Adeeb Joseph and the player/coach Mr Ryan Maron.
40. Mr Joseph states the following at paragraph 6 of his affidavit:

*“It was clearly visible as at 08h30 that the covers on the pitch had not yet been taken off as required by By Law 14.5. The truck tyres which Glamorgan used to secure the covers on the pitch, were still lying on the covers at the time.”*

41. Mr Joseph goes on to state the following at paragraph 9 of his affidavit:

*“At 08h50 the Glamorgan players started to take the tyres off the covers and the covers from the playing strips. I can therefore positively assert that the covers were removed between 08h50 and 09h00. This was conceded by the Glamorgan coach – Mr Geneker [sic] and Glamorgan’s captain – Mr Arries on 23 March 2012 during the local leagues’ meeting with the LLC Committee, match umpires, Ryan and myself. The two umpires also agreed at this meeting that the covers only came off between 08h50 and 09h00.”*

42. Mr Maron in his supporting affidavit states the following:

*“I, more particularly, confirm Mr Joseph’s affidavit where it states that the covers were only removed between 08h50 and 09h00 and the admissions made on 23 March 2012 by Glamorgan’s coach and captain and the match umpires that the covers came off only between 08h50 and 09h00.”*

43. The affidavits tendered by UCT are, in effect, merely confirmation under oath of the evidence which Mr Joseph and Mr Maron already gave to the LLC enquiry.

### **CONCLUSIONS AND DECISION**

44. The LLC’s finding of fact to the effect that the covers had been removed between 08:50 and 09:00 was based on the unanimous evidence by both UCT representatives, both Glamorgan representatives and both umpires.

45. The LLC was correct in preferring the evidence of the six witnesses who were present at the enquiry to the statement made by Mr Brown in his e-mail of 19 March 2012. Not only did all six of these parties contradict his statement that he removed the covers at 08:00 but they also unanimously disputed his statement that the pitch was not marked.
46. As already stated, Ryan James' affidavit materially contradicts Mr Brown's statement in that conflicting versions are given as to who first arrived at the ground.
47. No explanation has been tendered as to why the evidence of Ryan James and Ridwaan Williams was not available to the original LLC enquiry where it could have been tested and furthermore no compelling reasons have been forwarded as to why this evidence should be allowed at this late stage.
48. In any event, no reason has been put forward as to why the evidence Mr Brown, Mr James and Mr Williams should be preferred above the evidence of the two UCT representatives, the two Glamorgan representatives and the two independent umpires.
49. Accordingly the appeal is wholly dismissed and the decision of the LLC is hereby confirmed.
50. Accordingly UCT will be awarded the highest points of the round and all points accumulated by Glamorgan will be forfeited.

#### **CONSIDERATION ON RETURN OR FORFEITURE OF DEPOSIT**

51. At the LLC's enquiry all parties present, including Glamorgan's two representatives, unanimously confirmed the facts which formed the basis of the LLC's decision.
52. The Appellant attempted to alter this decision by submitting evidence after the fact which evidence should properly have been submitted to the LLC enquiry where it could have been properly tested and considered.
53. The attempt to introduce such evidence after the fact without a substantial explanation is frivolous.
54. Furthermore, attempting to give this new evidence the aura of legitimacy by dressing it up as affidavits cannot be considered anything other than vexatious.
55. It is imperative for clubs to play open cards with the LLC and to present all available evidence and information to the LLC at the time of the enquiry and not to wait until after a decision has been made before attempting to enter such information into evidence.

56. In the light of the above finding the Appellant's deposit of R1 000.00 shall be forfeited to the WPCA in terms of by-law 9(q)a.

DATED AT CAPE TOWN ON THIS THE 11<sup>TH</sup> DAY OF APRIL 2012.



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**A A WAGNER**  
**CHAIRMAN – WPCA APPEALS COMMITTEE**