

## The salary cap in Rugby Union

Off-field aspects of rugby union in England have filled many column inches in the written media in recent months, most notably in respect of the on-going issues relating to participation in European club competition. Domestically, however, the game appears to be strong with a superbly competitive English Premiership and a new television deal leading to half of each week's Premiership games being shown live, generating both revenue and interest. At this stage I should declare my interest as an avid Bath Rugby fan and proud short sponsor of Mat Gilbert at the club.

No doubt increased interest in and support for the sport will be created in 2015 by the staging of the Rugby World Cup in venues across England and at the Millennium Stadium in Cardiff.

A constant theme which emerges at this time of year are the rumours and confirmations of players leaving these shores to pursue their rugby careers overseas, usually in France. Often the debate is linked to the effect this has on the England team and those who may be available for selection for their country. The default position is to blame the drain on the salary cap which was first imposed in the English Premiership as long ago as 1999.

### Financial controls

The salary cap is an essential element in Premiership Rugby and an increase of £500,000 per year (as more fully described below) has just been announced for the 2014/2015 season.

Rugby Union is far from alone in imposing a salary cap. They are a fixture and indeed feature of baseball, basketball, American football and ice-hockey in the United States, but are also applied in other sports in England, such as rugby league and basketball.

Broadly there are three types of cap: Firstly, what is

sometimes called a "hard" cap where a straight financial limit is imposed on all the clubs which are subject to the cap. Secondly, a "soft" cap where the financial limit is calculated by reference to the turnover of the club, the maximum sum that can be expended on salaries being a stated percentage of that turnover. Thirdly, there can be a hybrid cap, where a club is allowed to expend a percentage or a fixed sum whichever shall be the greater.

Rugby Union in England adopts a hard cap, albeit with a couple of softened edges. Such an approach does not discriminate between clubs and ensures that the smaller, less well supported clubs, such as Sale and Newcastle, can compete on a more even playing field with the best supported clubs (in numerical terms), such as Leicester and Harlequins.

Given that last season, the club with the highest number of clicks of its turnstiles, namely Leicester, had almost five times the number of spectators in attendance than that of the lowest supported club, London Welsh, whilst acknowledging that not all revenue is generated from match receipts, the case against a soft cap is compelling.

### The rationale for a salary cap

It is the purpose of a salary cap that the freedom of some clubs, in relation to spending on salaries, are curtailed by regulation in circumstances where they could, if allowed, spend more on salaries. This is justified on the basis of arguments such as those Premiership Rugby identifies on its website as the reasons for the introduction of the salary cap in 1999, namely:

- To ensure the financial viability of all clubs and of the Premiership competition;
- To control inflationary pressures on clubs' costs;
- To provide a level playing field for clubs; and
- To ensure a competitive Premiership.



As a footnote to the last of these reasons, apparently the Premiership has the highest number of games finishing with the teams less than one score apart compared to any other rugby competition in the world.

### The main features of the cap

Premiership Rugby's Salary Capping Regulations, as published on the internet, run to some 56 pages of tightly drafted rules. The important features can, however, be distilled as follows:

- The salary cap year runs from 1st July to 30th June.
- The "Senior Salary Cap" for 2014/2015 will be £4.76 million, rising from the current £4.26 million. The senior salary cap is the ceiling permitted for all "Senior Players", namely those players who do not fall within the definition of "Academy Players" or the "Excluded Player" – as to which see below. There is no restriction on the amount the club can pay any particular player, provided that all the relevant players are collectively within the salary cap. Thus, it is for each club to determine how it composes its wage structure, with the salary cap regulations only providing the upper parameters.
- Each club can claim up to £240,000 in "Academy Credits". As a move to plainly encourage the development of young talent through to the first team, so important for the continued development of the game at both a club and national level, a club is entitled to claim up to eight £30,000 credits for players who joined the club before their 18th birthday, but who are under the age of 24 at the start of the season, and who earn *more* than £30,000. These credits are then applied to the senior salary cap: thus if a player who falls with the aforementioned criteria is paid a salary of £40,000, only £10,000 will be applied to the senior salary cap of £4.76 million (as of next season) with the remainder of his salary being one of the £30,000 "Academy Credits".
- As further encouragement for the development of young talent, each club is also entitled to an "Academy Salary Cap" of £200,000 for the salary cap year. As stated above "Academy Players" fall outside of the senior salary cap. The "Academy Salary Cap" applies to players aged between 16 and 24 whose salary is below £30,000 (otherwise they are senior players for whom the club may be able to claim an Academy Credit if the criteria for such credits are satisfied, but in any event must be taken into account in the calculation of the Senior Salary Cap).
- Each club is entitled to one "Excluded Player" whose salary is not taken into account in the club's salary cap calculations. This move is designed to ensure that so called "marquee signings" can be made to encourage

the best possible world talent to play in the Premiership, if those players can be attracted, as well as seeking to ensure that the best talent stays in the Premiership in so far as possible, rather than being attracted to the riches of other leagues. An "Excluded Player" must be (a) a player who has been at the club for the previous two full salary cap years, prior to the Salary Cap Year in which he is nominated as the Excluded Player (namely a player who the club in question may wish to pay more to retain or prevent being lured overseas); or (b) a player who was selected and included in a national playing squad of any country participating in the Rugby World Cup for 2011; but (c) must not have been a player of any other Premiership Club during the previous Salary Cap year (thereby avoiding one Premiership Club offering untold riches to attract the best talent from a direct competitor). There is no limit on the amount an Excluded Player can be paid.

- Reflecting the reality of the physicality of the game, if a player is injured for 12 weeks or more, a club can apply for an injury replacement, who must play in the same position as the injured player and not be deemed to be more experienced. The injury replacement can be paid a salary comparable to or less than that of the injured player. The salary paid to the injury replacement will not count as part of the club's salary cap calculations, save that a separate £400,000 limit for injury replacement payments is imposed in any given salary cap year.

### Administering the cap

The Regulations are necessarily complex and equally necessarily require a high degree of self-regulation, with each club required to submit to a central salary cap manager appointed by Premier Rugby Limited all copies of playing contracts and non-playing contracts/arrangements (such as image rights contracts) within 28 days of their being made.

Further, in September of each year each club has to certify their spending within the previous salary cap year, together with a forecast of their expected spending in the then current salary cap year. The certification is to be signed by the Chairman, Chief Executive and Finance Director of the Club.

Once the certification is received by Premier League Rugby, or more specifically the salary cap manager, the documents comprising the certification are considered before being passed to independent auditors who will, during October and November, audit each of the clubs in accordance with the Regulations.

What is encompassed within the definition of "salary" is wide ranging. Indeed it forms the entire 1st Schedule to the Regulations which comprises over eight pages of closely typed narrative. Sums included, purely by way of



example, include salary, bonuses, national insurance, accommodation or holiday costs, certain loans, pensions, image rights payments, signing-on fees, payments in kind, payments for off-field activities for the club and agents fees.

### Enforcement regime

It will come as no surprise, given the importance of the aims and objectives of the Regulations, that the potential sanctions for breach of the Regulations are serious.

The salary cap manager has powers to conduct an investigatory audit, whilst there is also a formal whistle blowing policy.

If an alleged breach involves the "Senior Salary Cap" or the "Academy Cap" being exceeded by £20,000 or less then, if the salary-cap manager is of the view that the matter can be dealt with summarily, a special procedure may be adopted where the level of sanction reflects the relative lack of seriousness of the breach.

All other matters, however, are dealt with by a disciplinary panel, comprising three people, appointed by Sports Resolutions where the finding of a breach can lead to significant sanctions including a tiered point deduction, from 4 points for a breach of up to £75,000 increasing to a 40 point deduction if the breach is over £250,000.

Equally fines may be applied which are a multiple of the level of breach over the cap: thus, by way of illustration, if a club has not breached the "Senior Salary Cap" applicable in the previous two Salary Cap Years, then a fine of £3 for every £1 where the cap is exceeded is payable. If, however, it is found the club has breached the "Senior Salary Cap" in each of the two previous Salary Cap Years, then the fine increases to £10 for every £1 of excess.

### Legal enforceability

Is all this legal? Until someone decides to the contrary the answer is yes. The Regulations are a matter of contract as between the clubs and Premier Rugby Limited and compliance is a requirement for those who wish to compete in the Premiership. However, a legal challenge cannot be ruled out. In its 2007 Staff Working Document accompanying the White Paper on Sport, The European Commission identified<sup>1</sup> that "the idea of introducing

salary caps in professional football" was one of its main "pending and undecided issues" relating to the competition provisions in the Treaty. They noted: "that no formal decisions have been taken [on the issue] so far by the community courts or the Commission."

Although the statement was directed at professional football, the same principles will apply to Rugby Union. Furthermore, a challenge to the notion of salary caps in football, such as that which has been made to UEFA's Financial Fair Play Rules, could have unwanted consequences for those other sports which have salary caps, including Rugby Union.

From various angles, most notably the European principles of free movement and competition, it is likely that salary cap regulations would be determined to be a restriction. The point then becomes one of whether they can be justified.

The strength of the Premiership in the context of the aims and objectives of the Salary Cap when it was introduced into English Rugby Union in 1999 suggest that the Premiership's Salary Cap Regulations stand a very respectable chance of being shown to be proportionate and justifiable.

Perhaps the main point of interest will relate to the increasing number of "big money" moves to France and why that happens. Contrary to the belief of many a salary cap does also exist in French Rugby Union. The critical difference is that it is set at a much higher level: currently €10 million (or about £8.6m). This contrasts not only to the cap applicable in the English Premiership but also, for example, to the cap of £3.5m introduced by the Welsh Rugby Union for the 2012–2013 season, although the regions reportedly remain financially stretched, as reflected in the drain of Welsh talent to other leagues.

Ultimately, if a legal challenge is made, the justification for the level at which the salary cap is set is likely to be the most important and fertile area for debate, as distinct from the principle of a salary cap itself. Is it likely that such a challenge will be made? Only time will tell.

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1. In paragraph 2.3 of the 1st Annexure.