

DECISION OF THE INDEPENDENT DISCIPLINARY PANEL
EUROPEAN PROFESSIONAL CLUB RUGBY
Held at Sofitel Heathrow, London on 25 October 2017

In respect of:-

Dave Ward of Harlequins (“the Player”)

and

The citing of the Player in the match played between Wasps v Harlequins on 22 October 2017 at the Ricoh Arena for an alleged act of foul play, namely striking a player with the head contrary to Law 10.4(a) of the Laws of Rugby Union.

Disciplinary Panel appointed to hear the case:

Dr Julian Morris (England) (Chairman)

Philippe Cavalieros (France)

Owain Rhys James (Wales)

Decision of the Disciplinary Panel:

- i. The Player denied committing the act of foul play alleged in the Citing Complaint. However, the Disciplinary Panel found on the balance of probabilities that he had committed an act of foul play contrary to Law 10.4(a) thereby upholding the Complaint.
- ii. The Player is suspended from taking part in the game of Rugby Union for three weeks up to and including 12 November 2017. He is free to play on 13 November 2017.

Introduction

1. The Disciplinary Panel was appointed by Mr Mike Hamlin, Chairman of the EPCR's Independent Disciplinary Panel pursuant to the Disciplinary Rules. The Panel was appointed to consider the citing Complaint against the Player (“the Complaint”) in the match played between Wasps and Harlequins on 22 October 2017 in the European Rugby Champions Cup.
2. Mr Murray Whyte (Ireland) had been appointed as the Independent Citing Commissioner to the match and had cited the Player for an act of foul play namely striking an opponent (Thomas Young, Wasps 7) (“the Opposing Player”) player with the head. This was alleged to be in contravention of law 10.4(a) of the Laws of Rugby Union.

3. Present at the hearing in addition to the Panel was the following persons:-

Mr Liam McTiernan, Disciplinary Officer, EPCR;
Mr Dave Ward (“the Player”);
Mr Sam Jones of Counsel, Counsel for the Player;
Mr Graeme Bowerbank, Head of Operations, Harlequins;
Mr Mike Hamlin, Chairman of the EPCR Disciplinary Panel.

4. For the avoidance of doubt, and as was explained at the beginning of the hearing, Mr Hamlin was present at the hearing solely to observe and played no role in the panel’s deliberations.

Preliminary Matters and Procedures

5. At the commencement of the hearing, the Chairman noted the identities of all present and narrated the Complaint reminding the Player that the Complaint was in respect of an allegation that the Player had committed an act of foul play by striking Thomas Young with the head contrary to Law 10.4(a).

6. The Chairman outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.

7. The Chairman confirmed that there were no preliminary issues that either party wished to raise. Each confirmed there were none.

8. The Chairman noted the terms of the Player’s response to the standing directions. This indicated that the panel would first be required to determine whether there had been an act of foul play; secondly, whether such act of foul play, if any, met the red card test; thirdly, and only if there was a finding that there had been such an act of foul play meeting the red card test, the panel would the proceed to consider matters of aggravation, mitigation and what sanction to be imposed.

The Citing Complaint

9. The Citing Complaint read as follows:-:

“No 7 Red strikes the back of the head of No 7 Black with his head”

10. The evidence presented by the Disciplinary Officer was as follows:

Match Official Reports

11. The report of Referee Mathieu Raynal stated as follows:

“I didn't saw (sic) any infringement or foulplay in this situation on the pitch.”

12. Assistant Referee Laurent Cardona reported the following:

“For my part I have nothing to add.”

13. The other Assistant Referee, Mathieu Noirot, reported:

“For my part I have nothing to add.”

14. Mr McTiernan also drew to the panel's attention a further statement of Murray Whyte, the citing commissioner, in which he stated:

“I received a call from Jo Team Manager harlequins on Sunday after the game saying they wanted to Cite Harlequin's No 7 for repeated head butts to their No 7, I tried to look at it on my DVD but was unable to see on the Hotel PC,

I rang Jo back and asked her if their analyst Luke had the footage, he did and showed it to me in Dai Young's office, I asked him to email the footage to me”

15. It is convenient to deal, at this stage, with a concern raised on behalf of the Player by Mr Jones. Namely, that if reliance were to be placed upon the statement of Mr Whyte then there would be a need for further evidence in support of its contents as the same did not form part of the citing complaint. The Chairman noted that given that the statement seemed to go only to what was said between the citing commissioner and the Wasps team manger it was of limited relevance to the matters in issue between the parties.

16. Mr McTiernan indicated that the evidence largely boiled down to the citing report and the video footage of the incident.

17. In addition to the match official reports, there was evidence from Wasps which included the following:

Statement of Thomas Young (Wasp 7)

“ ...

Around the 47th minute, I was at a ruck competing for a ball, here I clashed with the Harlequins player David Ward, who initially connected with my shoulder and then onto my head.

I did not receive any injuries from this incident and did not need any medical treatment”

18. Mr McTiernan explained to the panel that he had only received a [partial] response to the questions asked of Mr Youngs. In particular Mr Youngs had not provided any information in response to a query about what he had said to the assistant referee at the time of the incident. The panel were told that no response had been received to a further request for information.
19. Finally, Mr McTiernan invited the panel to consider the match footage.
20. This concluded the evidence supporting the Complaint and therefore the Chairman invited the Player to give his evidence concerning the incident in accordance with the match footage.

The Match Footage

21. The match footage produced by the Mr McTiernan provided a single angle of the incident.
22. Mr McTiernan’s analysis of the footage was that it demonstrated the Player making contact with the head of Thomas Youngs on his initial entry into the ruck; before coming into contact for a second time. He then described the Opposing Player getting to his feet and appears to complain to the assistant referee. Mr McTiernan helpfully clarified that it was not part of his case that there were three strikes: he relied upon the two strikes with the head identified.

Player’s Case

23. Mr Jones briefly set out the Players case. The Complaint referred to a single strike: that differed from the two strikes now seemingly relied upon by the Disciplinary Officer. The Player’s case was that initial contact was with the Opposing Player’s shoulder and not head-to-head. The second contact between the players was initially head-to-shoulder though there followed a clash of heads. That accorded with the Opposing Player’s description of a clash of heads. Mr Jones submitted that there was nothing more than a contest for the ball which was no different to earlier incidents in the game.
24. The Player gave his evidence. He described how both he and the Opposing Player were of similar stature: they were both around 5 foot 11 inches in height. The Player knew that in order to be able to effectively clear him out he would have to get his head and shoulders beneath the Opposing Player. He knew the Opposing Player to be efficient at the breakdown and at securing turnovers. He described it as a “good solid contest all day”.

25. Describing the footage, the Player noted that Ben Glynn (Harlequins 20) had failed, initially, to clear out the Opposing Player. As the Player arrived at the ruck, the Opposing Player had his left hand on the ball and was in a strong position. The Player explained that it was his role to clear him out and he sought to do so by getting underneath him to performing a "scooping" motion. That is, to lift the opposing player up and drive him away from the ball. The Player explained that he would not have been able to use his arms to turn the Opposing Player due to his strong position.
26. The Player explained that he sought to place his head underneath the Opposing Player but that he "missed him". That was clarified by the Player to say that he had got the height of impact wrong such that he had failed to get underneath the opposing player. He therefore attempted a second time to get underneath the Opposing Player: that time he succeeded in clearing him out.
27. The Player explained that there was no intention to strike the Opposing Player. He was attempting to clear him out by getting his body underneath the opposing player's. He explained that, in his role as a coach, he educates others in this technique.
28. The Player explained that he heard calls from the Opposing Player for a penalty to be awarded for holding on. There was no complaint of foul play of the type the Complaint related to.
29. In response to questions from the panel, the Player explained that his left arm was attempting to hook the ball from underneath whilst his right arm was along the Opposing Player's flank.
30. Mr Jones provided two further clips for the panel to review. They showed, firstly, contact between the two players at a ruck some 3 minutes into the game. The players were facing each other in that instance and the collision was such that the Player drove the Opposing Player backwards. Mr Jones noted that there was collision between the heads but that it could not, and had not been, classified as foul play. The second video showed a similar incident, a few minutes later, where the Player and the Opposing Player were competing for the ball at a breakdown with the Player's head and shoulders getting beneath those of his opponent and subsequently the Player driving his opponent away from the ball. Mr Jones invited the panel to view the Complaint as a similar rugby incident and not an act of foul play.
31. Mr Jones invited the panel to find that there had been no act of foul play or, alternatively, that the same did not meet the red card test in any event. He submitted that the incident was simply an example of rucking: it was how the players were coached and similar incidents could be seen throughout the course of the game. The Player's actions were at all times controlled and could not be said to have been reckless. There was no intent to strike with the head.
32. Alternatively, if the panel considered an act of foul play to have been committed the red card test had not been met. The burden of demonstrating that it had lay with the Disciplinary Officer. The unchallenged evidence of the Opposing Player was that there was a contest which led to a clash of heads. That supported the Player's account. On that basis the panel would struggle to

find that the incident met the red card test on the basis of the footage alone. If there had been reckless contact then it had been following initial contact being made with the shoulder of the Opposing Player. On the spectrum of possible infringements that would be at the bottom and give rise to a penalty and a yellow card. It did not meet the red card test. It was of some importance that the Assistant Referee was only some 2 metres away, said Mr Jones. Finally, the only evidence before the panel as to the basis for the Opposing Player's complaint after the incident was that he was complaining of holding the ball in the ruck.

33. Mr McTiernan submitted that the footage did not support the Player's account. He submitted that the energy was going one way: from the Player towards the Opposing Player. The Opposing Player was much lower and was moving very little, already being on the ball and in a strong position. There could not have been a reasonable expectation on the part of the Player that he could get underneath him. This incident differed from the others as it was not a head-on collision. By entering as he did the Player was reckless as to what his head would come into contact with.
34. Looking at the second of the alleged strikes it appeared as if the Player dropped his head down directly onto the Opposing Player's head. That was an act of foul play. There was some force in each of the blows sufficient for them to be categorised as strikes and not simply as a coming together of heads.
35. Mr McTiernan dealt with the statement of Thomas Youngs. He noted that it was incomplete in a number of ways and therefore the absence of a reference to a second strike ought to be viewed with caution. The footage clearly indicated that there were two strikes: the panel could be satisfied on the basis of the footage that there had been foul play. Contact had been made with the head and the panel were invited to have regard to World Rugby's increase in the entry point for acts of striking where contact was made with the head. The Complaint referred to one strike but it was open to the panel to make whatever findings they saw appropriate.
36. Mr Jones raised an issue about the Complaint: that referred to a single strike, he said, which differed from the Disciplinary Officer's case. The Chairman noted that the panel could amend the citing if required but, in any event, the Complaint appeared to refer to "strikes", in the plural, so that there was no issue. That issue was reserved for the panel to deliberate.
37. In response to the Disciplinary Officer's Submissions Mr Jones noted that there was no prescribed entry point for contact to the head in cases of striking to the head. Therefore World Rugby's adoption of a prescribed entry point in other cases was of no assistance in the instant case.
38. Finally, the Player sought permission to say a few words. He said that he prides himself on his reputation and after 14 years as a professional rugby player he had never been a "dirty" player. He enjoyed a contest but at no point did he intend to strike Thomas Youngs. His playing career

is nearing its end. He is heavily involved in coaching at Guilford. He seeks to hold himself out in the highest regard and has standards that he plays to.

39. The Chair confirmed that the panel would retire to deliberate. In accordance with the footage and the manner in which the incident had been dealt with the panel would review two alleged strikes. The first questions for the panel to address were whether there had been an act of foul play; and secondly whether such an act met the red card test.

Decision as to whether to uphold the complaint

40. The panel retired in private to consider the evidence and the submissions. It reflected carefully upon all of the evidence before it and analysed in detail the match footage in order to establish whether there had been an act of foul play.
41. The panel considered the footage in line with the presentation of the evidence and submissions: that is of two strikes one after the other. Having carefully evaluated all of the evidence, the panel found, on the balance of probabilities, that whilst the first strike did not amount to an act of foul play the actions of the Player in the second strike did.
42. The panel were of the view that the footage of the incident was determinative. The first strike seemed to be a result of the Player entering the ruck and his head first coming into contact with the Opposing Player's shoulder. There was no act of foul play. The second incident, the panel found, differed. There appeared to be a deliberate movement of the head towards the Opposing Player. Given the relative height of the two players there could not have been a realistic prospect of the Player succeeding in performing the "scooping" action he described. The footage showed his head came into contact with the back of the Opposing Player's head. There was some force to the strike. It amounted to an act of foul play.
43. We were satisfied on the basis of the footage that the second strike amounted to a breach of Law 10.4 (a).
44. The panel were further satisfied that the second strike met the red card test. There was clear contact with the Opposing Player's head; it had some force; it could properly be characterised as a strike.
45. The hearing was reconvened and the Player was informed of the Panel upholding of the complaint.

Sanction

46. Having reconvened, the panel invited submissions as to sanction.
47. Mr McTiernan accepted that the Player had acted recklessly as opposed to intentionally and that the act of foul play was committed in the course of seeking to perform a legitimate act of clearing out the ruck. There was no provocation; there was no effect on the match. Thomas Youngs was vulnerable as he was exposed. However, there was no premeditation. There were no other features of relevance.
48. Mr Jones submitted on behalf of the Player that the action was reckless and that all features indicated a low end entry point was appropriate. Though the Player had not accepted the Complaint he was remorseful for his conduct. It was accepted that Thomas Youngs was vulnerable though he was entirely without defence. The strike was delivered from a short distance, the panel having found that the initial contact was not foul play. Unlike the other offences of striking the panel retained an unfettered discretion as to entry point in the case of striking with the head. Mr Jones invited the panel to exercise their discretion by applying a low end entry point. A Mid-range entry point chosen solely because contact was made with the opponent's head would be harsh, he said.
49. By way of clarification, and helpfully in the panel's view, Mr McTiernan confirmed that he did not propose that contact with the opponents head meant that the panel ought to select a mid-range starting point.
50. Mr Jones submitted that there were no aggravating features.
51. As to mitigation, Mr Jones submitted that though there had been no acknowledgment of culpability within these disciplinary proceedings the Player was undoubtedly sorry that his head had come into contact with the Opposing Player's head. There had been a shake of hands after the match. The Player had a good disciplinary record. There was only one other disciplinary matter which was of some age, Mr Jones invited the panel to accept. It was a dissimilar offence of contact with the boot in 2012 where a suspension of 6 weeks had been imposed. Given his age and seniority, and the passage of time since that suspension, Mr Jones invited the panel to view the Player's disciplinary record as a good one which should attract some credit. He had made over 100 appearances for the Cornish Pirates together with 100 appearances for Harlequins. He had played for England at Under 18 and Under 21 levels together with the England Saxons. He had toured with the England team and, though not full caps, had played for the national team on tour. His conduct at the hearing had been exemplary.
52. Mr Jones invited the panel to consider the written references provided in support of the player together with noting his coaching commitments at Guildford. Mr Jones submitted that a reduction from 4 weeks to 3 weeks was appropriate.

Decision as to Sanction

Entry Point

53. The panel retired in private to consider sanction.
54. In determining entry point, the panel concluded the following:
- a. The offending had been reckless rather than intentional.
 - b. The Player's actions had been moderately grave in that they took place during an attempt at legally clearing out a ruck.
 - c. The impact of the Player had been to the back of the Opposing Player's head, with no extreme force or speed.
 - d. Thankfully, there had been no effect of the Player's actions on the Opposing Player. He had suffered no injury and was able to play on.
 - e. There had been no effect on the match.
 - f. The Opposing Player was somewhat vulnerable given that contact had been made to the back of his head.
 - g. There were no other features of the Player's conduct in relation to or connected to the offending.
55. Taking all matters into account, the panel concluded that the appropriate entry point for this act of foul play was LowEnd which therefore means a starting point of a 4-week suspension.

Aggravating Factors

56. The panel agree with Mr Jones that there were no aggravating features in the instant case. The panel accepted Mr Jones' submission that the Player's previous suspension in 2012 for striking with the boot was of some age. It was a dissimilar incident and was sufficiently historic for the panel to conclude that it did not act as an aggravating feature of the instant act of foul play.

Mitigating Factors

57. As to mitigating factors, the panel accept the submissions made on behalf of the Player.
58. The Player's disciplinary record was, on the whole, very good, save for a suspension in 2012 which the panel accepted as being of some age. The Player was not young nor was he inexperienced. His conduct at the hearing had been very good indeed and he had demonstrated appropriate respect for the process and had given his evidence in an honest manner.

59. The Disciplinary Panel also took into account his good character.
60. The Disciplinary Panel was of the view that the Player's failure to accept the Complaint together with his previous suspension prevented him from receiving maximum mitigation. Accordingly, the Panel did not consider it appropriate to award him 50% off the entry point suspension. The appropriate reduction, therefore, was to reduce the suspension to 3 week.
61. Mr Bowerbank helpfully had Harlequins playing schedule to hand. He indicated that they were to play:
Worcester on 28 October 2017
Saracens on 5 November 2017
Worcester on 12 November 2017
62. Applying the three-week suspension to the Player's pattern he would not be eligible to play in the above matches. Accordingly, the Disciplinary Panel suspended the Player up to and including Sunday, 12 November 2017 which means he is free to play from Monday, 13 November 2017.
63. The Disciplinary Officer did not seek an award for costs and no award was made.

Right of Appeal

64. The Chairman informed Parties of their right to appeal this decision.

Dated: 26 October 2017

Dr Julian Morris

Chairman of the Disciplinary Panel

Philippe Cavalieros

Owain Rhys James