

**EPCR**  
**DECISION OF AN APPEAL COMMITTEE**

**Hearing: 8<sup>th</sup> November 2017**

**IN RESPECT OF:-**

Dimitri Gerasimov (“the Appellant”)

**AND**

An appeal by the Appellant against a decision of the EPCR Disciplinary Committee (“the Committee”) dated 21<sup>st</sup> October 2017 in respect of a citing complaint brought by M. Jean-Claude Lunel, an Independent Citing Commissioner for an alleged infringement of Law 10.4(a) of striking an opponent with the elbow of Dragons No. 7 in the EPCR match played between Enisei-STM –v– Dragons at Slava Stadium, Moscow on 21<sup>st</sup> October 2017 and in finding that the Appellant had committed an act of foul play of striking Dragons No. 7 with the upper arm/shoulder and suspending the Appellant from the game of Rugby Union up to and including 12<sup>th</sup> January 2018 which represented a 9 week suspension.

**Members of the Appeal Committee (“the Appeal Committee”):-**

Simon Thomas (Wales) (Solicitor) (“Chairman”)

Gareth Graham (England) (Barrister)

Frank Hadden (Scotland) (former Scotland Head Coach)

**Present:-**

Mr Stephen Hornsby, Solicitor for the Appellant

Mr Jonathan Cole, Solicitor for the Appellant

Mr Howard Thomas, Head of Strategy and International Representative Rugby Union of Russia <sup>1</sup>

Mr Liam McTiernan EPCR Disciplinary Officer

Mr Max Duthie, Solicitor for EPCR

Mr Adam Thew, Trainee Solicitor at Bird & Bird LLP

### **Decision of the Appeal Committee:**

1. That the Appeal Committee would not conduct a de novo hearing,
2. That the appeal was dismissed.
3. There was no order as to costs.

#### **1. Citing Commissioner's Report**

On 23<sup>rd</sup> October 2017, in citing the Appellant for striking an opponent contrary to Law 10.4(a) of the Laws of Rugby Union, the Citing Commissioner for the Match made a report in the following terms:

“At 22:13 minutes the Appellant brought his elbow and forearm up to the face of Dragons No. 7, Ollie Griffiths, who was in possession of the ball.

I let the referee and both team managers know that the coach, Bernard Jackman (Dragons) at the end of the match referred the incident to me and that the Dragons No.7 had an injury to his jaw following a hit from the elbow by Enisei-STM Appellant around the 20 minutes mark. I said that I had the video of the match and I would review it.”

His report stated that Ollie Griffiths (“Griffiths”) had left the field of play, did not return and had been treated by the doctor. It continued that he was sent to hospital and subsequently returned to Newport with his team and was operated upon on 22<sup>nd</sup> October 2017.

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<sup>1</sup> Prior to the conclusion of the hearing Mr Howard Thomas, who had attended as an observer with no objection from EPCR, spoke about the challenges facing non-English language speaking Russian players when dealing with disciplinary matters.

## **2. Hearing & Decision of Disciplinary Committee**

Following the citing, the hearing before the Committee was convened on 25<sup>th</sup> October 2017 via Skype.

Disciplinary hearings and appeal hearings in EPCR matters are governed by the provisions of the European Professional Club Rugby disciplinary rules found in schedule 4 of the EPCR Participation Agreement for the season 2017/2018 (“the Rules”) by which all clubs and players are required to be bound.

### **Disciplinary Hearing**

The following points were contained within the Committee’s written judgment (“the Judgement”):

- i. When the allegation was put to the Appellant, the Appellant pleaded not guilty to any act of foul play.
- ii. The medical evidence from the Dragons confirmed that Griffiths had suffered a fractured jaw during the match and was taken to the European Medical Centre in Moscow for assessment where a fracture was confirmed.
- iii. The surgery was delayed until Griffiths returned to the UK. The surgery was performed on 22<sup>nd</sup> October 2017 where a plate was inserted to stabilise the jaw fracture.
- iv. It was to be anticipated that it would be several weeks before Griffiths would be fit to return to play.

During the disciplinary hearing the Appellant gave a detailed account of his actions in the incident with the assistance of a translator. He stated that he was expecting to tackle another opposition player and that he had not expected to see Griffiths running towards him with the ball. He had not formed any intent to tackle him and had not wanted to injure him. He said that he did not know how to prevent the tackle and that Griffiths had run straight towards him.

In response to questions from the Committee, the Appellant said that when he had seen that none of his teammates was in a position to tackle Griffiths, he had tried to rearrange to do so but that there had been no time. There had been a collision and that he, the Appellant, had fallen to the ground. When asked why there appeared to have been no attempt to tackle by wrapping his arm around Griffiths he said that he had been afraid to make contact and that if he had brought his arms up he was afraid of hitting his own teammate in the process who was to his left.

Under further questioning he said that he had put up his right arm attempting to wrap this around Griffiths and that another of his team had tackled Griffiths at the same time.

When asked about his impact with Griffiths he said that he had been in a weak position to tackle and that he had fallen to the ground. He stated that there was no "hit involved" and that his right arm had been bent at the elbow.

Griffiths had provided a short written statement which confirmed that he had been carrying the ball "around the corner from a lineout peel" and as he took contact (from a tackle) he felt an impact to his face. He stayed down as he felt pain in his jaw and felt like he needed to check his teeth. He had managed to get up in line when the ball came back towards him. At the next stoppage he was removed from the field of play with a suspected broken jaw. He was initially treated at a local hospital in Moscow but, upon arrival back in Wales, had surgery to fix the broken jaw.

None of the match officials had witnessed the incident.

### **Decision of the Disciplinary Committee**

The decision of the Committee was that all of the witnesses had given sincere accounts of events as they had recalled them. The Committee found that Griffiths had been in possession of the ball and running towards the Appellant slightly sideways across the pitch. The Committee concluded the Appellant had made no attempt to effect a legal tackle. His left arm had remained by the left-hand side of his body and he appeared to turn/rotate to his right whilst his right arm came up. The point of collision, on balance, appeared to have been with the Appellant's left upper arm/shoulder to Griffiths' jaw. He

did not, in the opinion of the Committee, lead with his elbow. As a result, the Committee concluded that although the citing specifically referred to the elbow/forearm, the essence of the citing remained, (i.e. the strike), and “amended the actual strike point from the elbow to his left upper arm/shoulder”.

The Committee considered that the act of foul play had merited a red card.

Having reached its factual conclusions as to liability, the hearing was then reconvened and the decision announced before, in the usual way, submissions were made as to sanction.

When considering sanction, the Committee concluded that the Appellant’s actions were reckless and that the correct entry point, taking all of the evidence into account, was top end. The Judgment recorded that this decision took into account that there was no clear attempt by the Appellant either to move or effect the tackle when Griffiths was running straight at him despite the fact that the Appellant was balanced and in a position to take either of action. The Committee concluded that the appropriate entry point within the top end range of between 8 and 52 weeks was 12 weeks.

The Committee did not conclude there were any off field aggravating factors which would increase the sanction.

In considering the existence of any mitigating factors, the Committee found that the Appellant was entitled to a 3 week reduction from the entry point with a resultant sanction of 9 weeks. This meant a suspension up to and including 12<sup>th</sup> January 2018.

### **3. Grounds of Appeal**

The notice of appeal prepared by Mr Hornsby is annexed to this judgment. The essence of the appeal was as follows:

- i. That the Committee had amended the offence for which the Appellant was cited and erred in doing so because it was contrary to the Rules and to the principles of natural justice. This was because it had been done without notice

to the Appellant which meant that he had, in effect, been found not guilty of the original citing and that the finding and the proceedings should be quashed on the basis that the act of foul play for which he was found guilty was not one which was open to the Committee to have adjudicated upon. Alternatively, that the appeal proceed by way of a *de novo* hearing.

- ii. The second ground of appeal was that (in the event the Committee did not quash the proceedings or conclude the appeal should proceed by way of *de novo hearing*) the Committee had erred in concluding that the Appellant had been guilty of foul play which warranted a top end entry point.
- iii. The third ground of appeal was that the top end entry point was excessive and that the act of foul play for which the Appellant had been sanctioned was not one which was prescribed under the Rules and that, accordingly, in determining the appropriate level of sanction the Committee should have taken into account salient factors and imposed a much lower level of sanction than that which it had imposed.
- iv. The fourth ground of the appeal alleged that the Committee had erred by acting contrary to the Rules in regarding the injury to Dragons No. 7 as an aggravating factor thus increasing the entry point sanction by four weeks (i.e. from 8 to 12 weeks).
- i. Ground 5 of the appeal was that the Committee had erred in failing to apply sufficient discount by way of mitigation for the Appellant, particularly in not taking into account his acknowledgement that he had committed a bad tackle and his remorse. It was advanced that that Committee should have afforded the maximum mitigation permissible by the Rules (i.e. 50% of the entry point).

#### **4. Functions of the Appeal Committee**

Paragraph 8.4 of the Rules provides that except where an appeal proceeds as a *de novo* hearing the Appellant shall have the burden of proving that the decision being challenged (a) was in error and (b) should be overturned or varied. The Appellant may make a request

for a de novo hearing, but an appeal committee may only determine to proceed with an appeal as a de novo hearing if it is shown that the circumstances are (i) exceptional and (ii) that there are compelling reasons why the appeal committee should hear the case de novo.

It is also a well-established principle in rugby union disciplinary cases that appeal committees in conventional (i.e. non de novo) appeals are required to afford a margin of appreciation to the factual findings and exercises of discretion or judgment of disciplinary committees. This is because, unlike appeal committees, disciplinary committee will have the benefit of seeing and hearing the witnesses at first hand and are ordinarily in a much better position to make their assessments on such matters. (See the appeal decisions Tincu (ERC) & Bergamasco (Six Nations))

## **5. Preliminary Matters of the Appeal**

The Chairman raised with Mr Hornsby the fact that the Appellant was not in attendance and asked whether it was his intention to appear by way of telephone or Skype so as to participate in the hearing. Mr Hornsby confirmed that he did not require the Appellant to participate in the hearing. The Chairman asked Mr Hornsby whether he had full instructions in relation to the appeal. Mr Hornsby confirmed that he did but added that if he felt that it necessary for the Appellant to participate then he would be contacted.

The Chairman established that all parties had received the evidential material and other documents which were to be considered. This material comprised the following:

- i. The notice of appeal which appended photographs.
- ii. The statement of the Appellant.
- iii. The Judgment of the Committee.
- iv. The EPCR official press release arising out of the disciplinary hearing.
- v. The Citing Commissioner's report.
- vi. The Appellant's response to the standing directions.
- vii. A copy of the judgment in the case of Andrei Ermakov.
- viii. The Disciplinary Officer's response to the Appellant's response to standing directions.

- ix. The cases of Tincu & Bergamasco.
- x. Various emails circulated prior to the appeal.
- xi. The original papers before the Committee.
- xii. The footage of the incident from several angles.

Mr Hornsby and Mr Duthie confirmed that there was no other evidential material for consideration.

Another preliminary matter arose relating to an email sent at 18:54h on 7<sup>th</sup> November 2017 by Mr Duthie on behalf of the Disciplinary Officer to the Appeal Committee which was stated to be in response to an email from Mr Hornsby's assistant, Mr Jonathan Cole, on 7<sup>th</sup> November 2017 timed at 12:37.

Mr Hornsby confirmed that he intended to object to the admissibility of Mr Duthie's email on the basis that it was late. He stated that Mr Duthie had plenty of time to provide responses before 7<sup>th</sup> November 2017 and that there was no evidence before the Appeal Committee with any satisfactory explanation for the lateness. It should, he said, be disregarded.

In response, Mr Duthie stated that the email was precipitated by an email sent by the Appellant's representative earlier that day and was merely an attempt to narrow the issues in advance of the hearing. He stated that there was no prejudice in the document being admitted and that on the basis that it contained submissions, it would hamper the appeal process if the document was not admitted because he could simply read out its contents when making oral submissions to the Appeal Committee.

The Appeal Committee retired in private to consider the matter. It considered that Mr Duthie's email was in response to an email which, itself, was outside the time limit provided by the Rules for the Appellant to provide its written responses in accordance with the standing directions. It was in the form of written submissions on the approach which the Appeal Committee should take rather than evidential issues which the Appellant's representative would have difficulty in challenging or rebutting.

Taking these matters into account, the Appeal Committee determined that the email from Mr Duthie would not be disregarded due to lateness.

The Chairman explained that the first question was to determine the basis of the appeal, i.e. whether it should proceed as a *de novo* or as a conventional appeal. The parties agreed that that would be the appropriate way to begin.

The Chairman asked Mr Hornsby to clarify what he was seeking under Ground 1 as he appeared to suggest that if the Appeal Committee accepted that there had been a fundamental error of procedure, not only should the appeal be allowed but the proceedings quashed on the basis that the citing window (48 hours after the conclusion of the match) had long passed. He was asked whether he was aware of any previous cases in rugby disciplinary where this had occurred rather than the appeal committee proceeding to re-hear the case upon the original papers and evidence. Mr Hornsby acknowledged that it was open to the Appeal Committee to make such a determination and whilst he was unable to refer to any previous rugby case where this had occurred, he suggested that the Appeal Committee was entitled to "make law".

Mr Hornsby was therefore invited to expand upon Ground 1 of his appeal.

### **Ground 1**

The thrust of his argument was that there were good grounds for quashing the decision or allowing a *de novo* hearing because the failure of the Committee to notify the Appellant of an amendment to the charge prior to or during the hearing. The Appellant was entitled to be able to understand and know the charge against him. This failure, he said, was such a fundamental error that the Committee's decision should be set aside. He said that quashing decisions happened in judicial cases "all of the time". He also relied upon the fact that the Appellant had already, in effect, been suspended for 5 weeks as a consequence of missing selection for a tour for which he otherwise would have been selected for had he not been suspended by the Committee.

In addressing the correct procedure for amendments under the Rules, Mr Hornsby referred to Paragraph 9.8 which provides that "*Disciplinary Committees and Appeal*

*Committees, prior to or any stage during a hearing may amend the offence for which the club, person or player was (as appropriate) shown a red card, cited, made the subject of a misconduct complaint or an allegation of anti-doping offence, or had a fixed fine penalty imposed, unless having regard to the circumstances of the case, such amendment cannot be made without causing injustice”.*

Mr Hornsby referred to the fact that the Appellant had been charged with and had prepared himself to defend an allegation that he had struck an opponent with an elbow whereas, without notice to him, upon its deliberations the Committee had determined that the Appellant had not struck Griffiths with his elbow but had struck him with his upper arm/shoulder. Mr Hornsby stated that no one had told the Appellant that the charge was to be striking with the arm.

He referred to the statement prepared by the Appellant in advance of the appeal hearing which confirmed that he did not speak English and at the hearing all communications were made through a translator. He stated that he had no recollection of being informed that the citing was to be amended at any point during the hearing and if it was communicated to him, he did not understand the nature of the amendment so as to respond to the citing. He also said he was not asked at the hearing whether he was guilty of any amended citing.

Mr Hornsby then referred to the press release which made no mention of any amended charge being put to the Appellant and this therefore provided good evidence that the Appellant was correct in his recollection of events.

In summary, Mr Hornsby's position was that contrary to the Rules the Committee had substantively amended the charge. It had not been a mere technical error and it had caused injustice to the Appellant.

In response, the Disciplinary Officer stated that the test for a *de novo* hearing is deliberately high. Such hearings are exceptions, not the norm, and reasons for allowing one to proceed must to be compelling. In response to the suggestion that the charge had been amended improperly, he disputed this and stated that the charge had not been amended at all nor did it need to be amended. The act of foul play had always been the striking of a player contrary to Law 10.4 (a). The narrative of the 10.4 (a) reads: “A *player*

*must not strike an opponent with the fist or arm, including the elbow, shoulder, head or knee(s).*

He argued that the Committee merely determined that, when striking his opponent with his arm, the Appellant had used a different part of his arm (i.e. the upper arm/shoulder) from the one that the Citing Commissioner had particularised in his citing complaint (i.e. the forearm/elbow).

He went on to state that such a finding did not require an amendment to the charge and therefore no notice needed to be given to the Appellant.

Alternatively, he stated that if the Committee had, indeed, made any amendment of the offence for which the Appellant had been cited, the Committee would have been able to make that amendment. This was on the basis that the Appellant had provided detailed evidence on the nature of the contact and that as he had denied having committed *any* act of foul play even if he had been advised of the view of the Committee as to the point of impact, his position would have been the same. Accordingly, no injustice had been caused.

Furthermore, Mr Duthie stated that even if the Appellant had felt that he had been taken by surprise when the finding of liability /guilt had been announced, it was open to him, at that stage, to have raised some objection to this and to have made his position clear in relation to the so called amended offence. He had, however, said nothing.

Mr Duthie also noted that there was no indication on the part of Mr Hornsby that the Appellant's plea would have been any different had he been charged with an allegation of striking an opponent with the arm or shoulder.

Taking these matters into account, Mr Duthie argued that the Appeal Committee should not grant a *de novo* hearing because the circumstances were neither exceptional nor were there compelling reasons to do so.

After Mr Hornsby had been permitted to respond to Mr Duthie's submissions, and as Mr Hornsby had previously confirmed that he had full instructions from the Appellant, the

Chairman asked him to confirm what the Appellant's position would have been in relation to any amended charge, had it been put to him. Mr Hornsby was equivocal and said that the Appellant might have taken a different view. However, he did not go so far as to say that the Appellant would have admitted committing an act of foul play of striking an opponent with his arm or shoulder.

The Appeal Committee retired to consider its decision on Ground 1

### **Decision as to Ground 1**

The Appeal Committee considered the provisions of Paragraph 9.8 of the Rules and asked itself whether, in fact, there had been an amendment to the charge which the Appellant had faced.

The Appeal Committee reminded itself that the law under which the Appellant had been charged was Law 10.4(a) which reads "*a Appellant must not strike an opponent with the first or arm, including the elbow, shoulder, head or knee(s).*"

In the view of the Appeal Committee, the Appellant had been charged with an offence, contrary to Law 10.4(a) and had been found guilty of committing an act of foul play contrary to Law 10.4(a). There had been no amendment to the Law. The particulars of the act of striking found by the Committee were different to that contained in the citing complaint. The Appeal Committee concluded, however, that the facts were not so dissimilar so as to have taken the Appellant by surprise such that they ought to have required any formal amendment to the allegation. It is commonplace in rugby disciplinary cases that a player acknowledges that he has been guilty of an act of foul play contrary to the relevant law but states that whilst he accepts that he has committed an act of foul play, his version of events is slightly different to the particulars contained in the referee's report or the citing complaint.

The Appeal Committee noted that in this instance, the Appellant had stated to the Committee that he denied committing *any* act of foul play. The Appeal Committee also noted that when asked directly whether the Appellant would have pleaded guilty on the

basis of the facts in respect of which he had been found guilty by the Committee, Mr Hornsby did not confirm that he would have done so.

Accordingly, the Appeal Committee found that the facts of this appeal were neither exceptional nor were there compelling reasons to hold a de novo hearing. In coming to this conclusion, the Appeal Committee took into account that the Appellant did not speak English but was nevertheless satisfied from the detail of what was recorded as having been said by him in the Judgment that he had been able to fully participate in the hearing.

On that basis, the request for a de novo hearing was refused and the appeal would proceed in a conventional form.

The Appeal Committee then turned its attention to the remaining grounds of the appeal which were as follows:

## **Ground 2**

Ground 2 alleged that the Committee had erred in failing to consider all of the features referred to in Clause 7.8.32 of the Disciplinary Rules when making the assessment of seriousness of the Appellant's conduct.

In particular, it was alleged that the Committee had failed to take into account that the Appellant's conduct had not been intentional or deliberate. Secondly, that the level of his participation was low and that the victim player was not vulnerable. Thirdly, the Appellant's actions had little effect on the match and that the surface on which the incident had occurred had been slippery.

The match footage was shown and the still photographs appended to the Appeal Notice were referred to, so as to illustrate what the Appellant's representatives said were the mechanics of the incident.

In response to the oral submissions made by the Appellant's representative, the Disciplinary Officer responded by stating that the Committee's written decision evidenced that it had taken into account that the Appellant had not intended to strike the opponent.

In respect of the other matters complained of, there was no evidence that the Appellant had made submissions in respect of issues of participation, vulnerability, the effect on the match or the slippery surface. Accordingly, the Committee could not have erred in not taking into account matters that were not presented to them.

The Disciplinary Officer stated that in any event, as the strike had been to Griffiths' head, the Committee was bound by the Rules to impose at least a mid-range entry point under the sanctioning table and that in circumstances where there had been a broken jaw requiring hospitalisation, maxillofacial surgery and a period of several weeks away from Rugby Union it could not be said, taking into account the margin of appreciation afforded to disciplinary committees in such exercises of judgement and discretion, that the Committee had erred.

The other matters which had been raised by the Appellant, namely that it was difficult to strike with a collarbone or shoulder and that the absence of reaction by other players indicating that the act was not an act of foul play were of little relevance to the facts of the case and the decision of the Committee.

### **Decision of the Appeal Committee in respect of Ground 2**

The Appeal Committee considered the representations made by both the Appellant and the Disciplinary Officer and its members were unanimous in concluding that in circumstances where there had been a strike to the head causing a fractured jaw resulting in hospitalisation and surgery, notwithstanding the lack of intent on the part of the Appellant, and noting the factors taken into account by the Disciplinary Committee, it could not be said that the Disciplinary Committee had erred in finding that the act of foul play had merited a top end sanction. Accordingly, Ground 2 of appeal would be dismissed.

### **Ground 3**

Ground 3 repeated that the Disciplinary Committee had erred in finding that the act of foul play had merited a top end entry point as that, the application of the top end entry point in accordance with the sanctions table contained within the Appendix 1 of Regulation 17 or

Appendix 3 of the Rules was a misapplication on the basis that there is no prescribed sanction for striking with a shoulder/collarbone.

Accordingly, the Appellant advanced that the Appeal Committee should therefore not have imposed a top end level sanction in circumstances where there had been a genuine attempt to tackle the Appellant which was evidenced from photographs marked 2 to 9 which had been produced by the Appellant.

In response, the Disciplinary Officer stated that the Appellant had not been found by the Committee to have struck with his shoulder or collarbone and that the application of the sanctioning table was entirely in accordance with the Rules.

### **Decision as to Ground 3**

The Appeal Committee agreed with the Disciplinary Officer's submissions and rejected the submissions of the Appellant. The Committee had clearly found that the Appellant had struck with his upper arm or shoulder and that the application of the top end entry point of 8 to 52 weeks which included striking another Appellant *with hand, arm or fist*, was engaged and that they had appropriately applied the sanctioning table found under Appendix 3 of the Rules.

### **Ground 4**

Ground 4 of the Appellant's appeal was that the Committee had incorrectly considered the extent of the injury to Griffiths when assessing aggravating factors so as to increase the sanction by 4 weeks. Mr Hornsby stated that Rule 7.8.34 does not permit the Committee to apply the extent of injury caused when considering aggravating factors.

The Disciplinary Officer's response was that the Appellant had misunderstood how the Committee had taken the injury into account. As the Committee had found that the act of foul play had merited a top end point, which contains a range of between 8 and 52 weeks, it had revisited the on-field circumstances of the incident when determining that the entry point should be 12 weeks and in so doing, had regard to the serious injury sustained by Griffiths.

There had therefore been no misapplication of the injury when applying aggravating factors under DR 7.8.32. as the injury was considered at the first stage of the sanctioning process (i.e. entry point).

#### **Decision of the Disciplinary Committee as to Ground 4**

The Appeal Committee agreed with the analysis of the Disciplinary Officer. The Committee at Paragraph 34 and 35 of the Judgment dealt with the position in the following way:

*“34 A top end entry point gives a range of tariff from 8 plus weeks to 52.*

*35 The panel therefore re-evaluated the evidence and took into account the severity of the injury caused to his jaw requiring emergency surgery and the insertion of a metal plate and therefore added a further 4 weeks, giving an overall entry point of 12 weeks”.*

Furthermore Paragraph 36 of the Judgment stated, *“the panel saw no need to add any additional aggravating factors”.*

Whilst the word “added” in paragraph 35 of the Judgment meant that the Committee’s approach was perhaps capable of being misunderstood, it is abundantly clear from the Committee’s decision that it had dealt correctly with the first and second stages of the sanctioning process by understanding that the top end entry point contains a range and that a committee is tasked with determining the number of weeks’ suspension within that range. The Committee is required to consider the “on field” factors when determining the entry point which it had done by taking into account the serious injury sustained by Griffiths.

It is also clear from Paragraph 36 of the Judgment that at the second stage of the sanctioning process, it did not consider that there were any aggravating factors under Rule 7.8.32.

#### **Ground 5**

Ground 5 was advanced by the Appellant on the basis that the Committee had failed to take into account the presence of any acknowledgement of culpability by the Appellant. The Appellant had acknowledged that he had made a bad tackle and had explained in detail how it had arisen. It was said that the Appellant's explanation was accepted by the Committee but when applying mitigation, the Committee had concentrated only on his failure to plead guilty to the original cited offence.

Furthermore, it was submitted that the Committee had not taken into account the Appellant's remorse for his conduct nor his exemplary disciplinary record. The Appellant's position was, therefore, that the Committee had erred in failing to afford him 50% mitigation from the entry point. It had only afforded him 25%.

The Disciplinary Officer's response was that, in accordance with DR 7.8.36, the Committee is required to apply mitigation by starting at 0% and working up to a maximum of 50%. As the Appellant had pleaded not guilty, it was perfectly open to the Committee to have arrived at a reduction of less than 50% of the overall entitlement.

Furthermore, in circumstances where the Appellant had pleaded not guilty, it was certainly open for the Committee to have afforded relatively little (or no) significance to the fact that the Appellant had acknowledged he had made a bad tackle and explained how the situation had arisen.

The Disciplinary Officer further stated that the Committee had, in fact, taken into account the Appellant's remorse which could be seen from paragraph 30 of the Judgement which recorded that he had been very upset and had wanted to extend his apologies to the injured player.

### **Decision as to Ground 5**

The Appeal Committee considered that, bearing in mind the margin of appreciation afforded to disciplinary committees in the exercise of its discretion and the fact that the Appellant had denied committing *any* act of foul play, it was well within the discretion of

the Committee to have afforded him 25% mitigation on the basis of his remorse at the injury caused to Griffiths and his exemplary disciplinary record.

Accordingly, Ground 5 of the appeal was also dismissed.

The Committee reconvened to announce its decision in dismissing the appeal

Dated: the 8<sup>th</sup> of December 2017

SIMON THOMAS

Chairman