DECISION OF THE INDEPENDENT JUDICIAL OFFICER

ERC
Held at Huguenot House St Stephens Green, Dublin 2
on Thursday the 1st day of March 2012

In respect of

Chris Hala'ufia of London Irish Rugby Club ("The Player")

and

A citing in respect of Law 10.4(e) Dangerous Tackling, (a tackle around the opponents neck or head is dangerous play).

The Judicial Officer appointed to hear the case:
Mark McParland, IRFU ("The Judicial Officer")

Decision of the Judicial Officer:

(i) The Player accepted that the citing complaint was a true and accurate account of the incident that resulted in the citing as set out in the citing complaint and that the act warranted a red card.
(ii) The Player is suspended from taking part in the game of Rugby up to and including Wednesday the 16th May 2012. This represents an eleven week suspension commencing on the 1st day of March 2012.
(iii) ERC did not seek an Order in respect of costs and no such Order was made.

Introduction

The Judicial Officer was appointed by Professor Lorne D. Crerar, Chairman of the ERC's Independent Disciplinary Panel, pursuant to the Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2011/2012. The Judicial Officer was appointed to consider the citing complaint ("the complaint") against the Player in a match played between Racing Metro 92 v. London Irish on the 10th day of December 2011 in the Heineken Cup 2011/2012.

Gordon Black was appointed as Citing Commissioner to the this match and had cited the Player for a dangerous tackle contrary to Law 10.4(e).

The Hearing of this citing complaint was initially fixed for Monday the 15th December 2011. The Player, through his Club, had requested the Hearing might take place by teleconference as the Player had sustained a serious injury in the incident giving rise to the citing and was unable to travel. Having regard to the nature of the offence, the Judicial Officer refused the Player's application having regard to DR 6.5.4(d), which clearly provides that the Player be required to attend the Hearing in person. The Judicial Officer directed that medical evidence as to the

Player's injury be provided and indicated that he would monitor such medical evidence and fix a date for the Hearing at a time when the Player would be in a position to attend in person. Having received a medical report dated the 24th January 2012, the Judicial Officer notified the Disciplinary Officer and the Player's representatives that he would continue to monitor the Player's injury and requested the Player's Club to provide further medical evidence following the Player having undergone a scheduled x ray on the 7th February 2012. The Player's Club provided a further Medical Report from Dr Mike Rossiter on the 9th February 2012, which indicated that the Player was to undergo a further x ray on the 27th February 2012.

Following a scheduled conference call between the parties on Tuesday the 21st February, The Judicial Officer directed the reconvened Hearing of the citing complaint proceed on Thursday the 1st March 2012 at 12 noon in the offices of the ERC at St Stephen's Green, Dublin 2.

Present at the reconvened hearing in addition to the Judicial Officer were the following persons:

- Roger O'Connor, Disciplinary Officer ERC
- Liam McTiernan, Regulations Executive ERC
- Chris Hala'ufia, The Player
- Kieran McCarthy, Team Manager London Irish
- Neal Hatley, Forwards Coach London Irish

Preliminary matters and procedure

At the commencement of the hearing the Judicial Officer noted the identities of all present and narrated the complaint, reminding the Player that the complaint was respect of an allegation that the Player had been cited for a dangerous tackle under Law 10.4(e).

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2011/2012 ("the Disciplinary Rules" and "DR" in the singular) would apply. The Judicial Officer outlined the procedure to be followed to determine the matter and the Player and all present agreed to proceed on that basis.

Evidence

The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired as to whether all present had received same in good time. The evidence for consideration was as follows;

a) The Citing Complaint Form.
b) The letter from Roger O'Connor to Professor Lorne Crerar dated the 12th December 2011 requesting the appointment of a Disciplinary Committee to hear the citing complaint.
c) The Reports from the Match Officials.
d) Medical Report and translation from Dr Yoann Bohu of Racing Metro 92.

e) Witness Statement of the Player dated the 16th December 2011, which was treated as the formal response to Standing Directions.
f) Response of the Disciplinary Officer to Standing Directions.
g) The IRB Memorandum dated the 21st January 2011 on Dangerous Tackles (High Tackles).
h) IRB Amended Memorandum dated the 4th August 2011 re (inter alia) Dangerous Tackles (High Tackles).
i) A Submission of High Tackle case law since the publication of the IRB Memorandum of the 21st January 2011.
j) Medical Reports of Dr Mike Rossiter, Consultant in Sport and Exercise Medicine, relating the Player dated the 24th January 2012 and 9th February 2012.

It was clear from the Player's response to Standing Directions that he accepted the citing complaint as being a true and accurate account of the incident that resulted in the citing as set out in the citing complaint and that the act warranted for a red card. It was also clear from such Witness Statement that the Player did not wish to argue any preliminary matters.

The Judicial Officer invited the Player to confirm his stance as set out in his Witness Statement of the 16th December 2011 and the Player confirmed his acceptance of the citing.

In such circumstances and pursuant to DR 6.7.23, the Judicial Officer requested the Disciplinary Officer to present the relevant evidence then unheard/unseen before proceeding to hear submissions as to the sanction to be imposed.

The Disciplinary Officer opened the citing complaint of Gordon Black and narrated the details therein as follows:

"The Racing Metro (RM) 15 took a pass 5 metres inside in his own half from one of his own players and moves forward onto the half way line. The London Irish No. 8 comes from the right of the RM player and strikes the RM 15's face/head area with his right arm in a dangerous tackle. The RM player falls to the ground, lays the ball back and RM are awarded a penalty for a London Irish player going off his feet at the subsequent ruck.

The RM 15 stays on the ground and receives a lengthy period of treatment, but is able to continue player. The London Irish No. 8 leaves the field injured holding his right arm which, I understand, may be fractured in two places.

I therefore cite London Irish No. 8, Chris Hala'ufia, for a dangerous tackle under Law 10.4(e)."

The Disciplinary Officer referred to the Medical Report of Yoann Bohu to the effect that the RM No. 15 suffered a slight frontal trauma during the match.

It was noted that the Match Officials did not see the incident.

A detailed viewing of the video evidence available confirmed the accuracy of the Citing Commissioner's Report.

The Disciplinary Officer submitted that the Player's actions were most definitely reckless. The RM No. 15 had been hit at eye height by the Player's swinging right arm and at a time when the Player's left arm did not appear to form any part of a tackle.

Player's Defence

The Player was asked to give his version of the events as shown on the video evidence. He made reference to RM engaging in an offloading game and that in the lead up to the match, the primary objective was to stop the offload. In this incident, he was the only one outside the RM No. 15 and believing the RM No. 15 was going to offload, he stretched his arm to stop the ball.

Mr Hala'ufia stated that he did not know that his arm had landed in the face of the RM No. 15 and that his immediate concern following the contact was for his injured right arm.

Mr Hatley pointed to the fact that the Player's head was poorly positioned in that he was not looking where he was tackling. He displayed poor technique. He confirmed the Club's concern to prevent RM play their offloading game and how the players had been encouraged to block off the ball at chest height.

Mr Hatley stated that if the Player had been in the correct position, his feet would have been closer to the RM No. 15 and as this incident unfolded, the Player was too far away and never got in front of the RM No. 15. At the point of contact, the Player was nearly past the RM No. 15 and could not complete the tackle. The Player displayed poor technique in that he was not looking at what he was doing.

Mr Hatley stated that if the RM No. 15 had stayed upright, the contact from the Player would have been at chest or at very best top of shoulders level, but as the tackle unfolded, the RM adopted a duck and tuck technique. It was accepted that while the RM No. 15 dropped his height in such manoeuvre, he did not do massively and that the contact by the Player's right arms with the RM No. 15 was across his forehead, just above his eye level, when the RM player was clearly using both arms to retain possession of the ball.

The Judicial Officer was told that in the incident, the Player broke his right forearm and left the field with such injury. He was unable to play for eleven weeks while recovering from the injury and Mr McCarthy stated that clear medical evidence had been furnished by the Club confirming that the Player had suffered a comminuted fracture of his right midshaft radius.

Submissions by Disciplinary Officer

The Judicial Officer requested the Disciplinary Officer to make his submissions in accordance with DR 6.7.32. The Disciplinary Officer referred to Appendix 1 in Regulation 17 and noted that the recommended sanction for an offence contrary to

Law 10.4(e) was two weeks at low end, six weeks at mid range and ten weeks plus at top range with a maximum of fifty two weeks. In commenting specifically on DR 6.7.32, the Disciplinary Officer stated that it was for Judicial Officer to make a decision on whether or not the offending was intentional or reckless. The nature of the offence was a heavy strike to the head with the forearm, in a situation where there had been no provocation. After the heavy blow was struck, the Racing Metro No. 15 was in a position to continue the match following lengthy treatment. In the incident he was somewhat vulnerable.

In relation to DR 6.7.34 on the issue of remorse, the Disciplinary Officer noted that the Player had his own injuries to deal with.

The Disciplinary Officer then produced the Player's Disciplinary Record. His playing record was acknowledged by the Player and his representatives as being true and accurate. The Player's record recorded six separate offences in respect of which suspensions had been imposed in the past seven years. Six of such offences related to the offence of dangerous tackling. Four of the offences had occurred since the 1st February 2010 and three of such citings related to dangerous high tackles. The Player most recent period of suspension for the same offence, the subject matter of the citing in this case, ended less than two weeks prior to the citing complaint the subject matter of the Hearing.

The Disciplinary Officer referred to the IRB Memorandum of the 21st January 2011 and the Amended Memorandum of the 4th August 2011 regarding dangerous tackles (high tackles) and noted that an IRB Medical Seminar held in November 2010 concluded that most injuries in Rugby in the elite game were now occurring as a result of high tackles and the participants generally recognised that tackles above the line of the shoulders had the potential to cause serious injury and noted that a trend had emerged whereby players responsible for such tackles had not been adequately sanctioned. The Disciplinary Officer submitted that the IRB Memorandum should be considered as an aggravating factor in considering sanction.

In relation to the Player's injury, the Disciplinary Officer referred to DR 6.7.44, which reads:

"In determining the length of any period of suspension, the Disciplinary Committee shall take into consideration all playing consequences of such a suspension and exclude.... any periods in which the Player is not fit, available and expected to the play so as to ensure that the suspension is effective".

In mitigation, the Disciplinary Officer noted the acceptance of the citing by the Player. The Disciplinary Officer submitted that the acceptance of the citing complaint enabled the disciplinary procedure to be brought to an early conclusion.

The Disciplinary Officer addressed the Judicial Officer's attention to DR 6.7.36 whereby the penalty imposed in an act of foul play categorised at low end on the scale of seriousness could not be reduced further unless there were no aggravating factors and there were compelling mitigating factors. The Disciplinary Officer noted the aggravating factors in this case, namely the Player's status as an offender and

the need for a deterrent as prescribed by the IRB Memorandum effectively prevented any reduced in the sanction applied, should the offence be categorised at low end.

In conclusion, the Disciplinary Officer confirmed that the ERC made no application for costs and thanked the Player and London Irish Rugby Club for the honesty in their approach to the citing complaint.

Submissions on behalf of the Player

Kieran McCarthy, on the Player's behalf, submitted that the Player was attempting to effect a tackle on the RM No. 15, but being out of position, his action was clumsy and reckless arising from poor technique. He noted that the RM No. 15 crouched and ducked immediately before the point of contact and that the Player's action did not result in the RM No. 15 being unable to continue the game. As he was approaching contact, the RM No. 15 would have been aware of probable contact and would be bracing himself for such contact and, accordingly, would not be vulnerable.

Mr McCarthy suggested that the offence should be dealt with at the low entry point of seriousness or mid range at most. He pointed to the Decisions in the Rasmussen case, where the opposing player had been knocked out and in the Stankovich case, in which the opposing player had been unable to continue, both of which were dealt with at the low entry level of seriousness. In the case of Stankovich, no suspension was imposed. In referring to the Shingler case, there was precedent for applying any aggravating circumstances arising from the IRB Memorandum only after the entry point had been decided.

Mr McCarthy informed the Judicial Officer that the RM No. 15 had come over to the Player after the game and sat with him in the dugout and expressed sympathy in relation to the Player's injury. He said that the RM No. 15 had suffered no lasting injury and that he able to continue after a short period of treatment. He also stated that the incident derived no reaction from the RM team.

It was also submitted that the "old style swinging arm tackle" was not the type of dangerous tackles (high tackles) referred to in the IRB Memoranda. He also directed the Judicial Officer attention to the Decision in the case of Joe Marler, wherein it was found that an aggravating feature should not have the effect of doubling the starting point period, which in that case was two weeks.

Quoting from the Decision, Mr McCarthy referred to the Judgement of Gareth Rees Q.C. stating; "It would be a disproportionate increase and as a matter of principle is too great. Therefore, I limit the increase for aggravating features to one week".

It was submitted that harsher sentences do not act as a deterrent and that as persons engaged in sport, a different attitude was required to those involved in criminal matters.

In mitigation, it was submitted that the Player had admitted the citing complaint and acknowledged his guilt at the first opportunity. He was of good character,

being a family man, with two children and of religious disposition. He is 33 years of age and had been playing in the Premiership for some six years. He was in his fourth season with London Irish and played over eighty games for the Club and was a Tongan International with twenty four caps, the last of which was awarded in 2009. He was highly regarded by his teammates and is involved in the Clubs mini rugby on Sunday mornings. He was highly remorseful of his actions.

Mr McCarthy informed the Hearing that on the 16th December 2012, an internal Disciplinary Hearing had been held by London Irish involving himself and the CEO of the Club when a six week ban was imposed on the Player. While it appreciated that the Player was injured and unable to play, the ban did have other repercussions, including financial penalties for the Player.

In conclusion, Mr McCarthy pointed to the fact that the Player had sustained a serious injury in the incident, the subject matter of the citing on the 10th December 2011. As a result of this injury, the Player had been unable to play rugby for eleven weeks and that this was a particular mitigating factor that the Judicial Officer should consider relevant and appropriate.

Decision as to disposal

As the citing complaint had been accepted by the Player, it was unnecessary for the Judicial Officer to consider whether or not the citing complaint should be upheld and having retired to deliberate in private in respect of what, if any, sanction would be appropriate to the circumstances, the Judicial Officer considered the terms of Disciplinary Rules, including DR 6.9.27 through to DR 6.7.44 and was of the opinion that this was an offence for which a suspension should be imposed. Having noted that the offence of dangerous tackling contrary to Law 10.4(e) was listed within the IRB recommended sanctions for offences, the Judicial Officer having assessed the seriousness of the Player's conduct with particular reference to the following on field issues:

(1) The gross recklessness of the Player's action.
(2) The fact that the action was committed with such force as to fracture the Player's right midshaft radius.
(3) That the RM No. 15 had acted exactly as he would have been expected and in accordance with what the London Irish mentors would have coached their players.
(4) While the RM No. 15 may have adopted a duck and tuck technique, he had not dropped his height to anything other than what would have been expected.
(5) The point of contact was to the RM No. 15's forehead above eye level result, albeit a minor injury and also taking into account the limited effect of the Player's action on the RM No. 15 or the game as a whole.
(6) The vulnerability of the RM No. 15 must be considered in the context of he expecting contact and would have been braced for contact.

determine that the appropriate entry point for this offence was six weeks, being mid range on the level of seriousness as determined in the IRB recommended sanctions for offences within the playing enclosure.

The Judicial Officer then considered the off field issues and in doing so looked at whether there were any "aggravating" or "mitigating" factors.

The Judicial Officer considered that following off field aggravating factors must be taken into account in determining the appropriate period of suspension:

a) The Player's status as a offender against the Laws of the game.
b) The need for a deterrent to combat a pattern of offending.

In consider the Player's status as an offender against the Laws of the game and, in particular, the full terms of DR 6.7.34, the Judicial Officer noted the Decisions of the Disciplinary Committees given on the 10th October 2011 and the 8th February 2011 in respect of the Player for precisely the same offence.

In the Decision of the 8th February 2011 a finding of mid range on the scale of seriousness was made and increased such entry point by two weeks having regard to the Player's record and a further two weeks to give effect to the IRB's intention to deter offending of this nature. In such Decision it was noted that the previous suspension for the same offence had been imposed nine months early.

In the Judgement of the Disciplinary Panel of the Rugby Football Union arising from the citing of the Player as a result of an incident on the 1st October 2011, the Player received a suspension of seven weeks for the same offence. The Committee assessed the offending as being at the mid range on the scale of seriousness and decided the Player's record warranted an increase of three weeks. In so deciding, the Disciplinary Committee noted, with regret, that the two weeks added to the Player's last suspension to reflect the need to address the Player's poor Disciplinary Record had not deterred him from further and similar offending. Indeed, in playing terms taking into account the close season, this offence had occurred within two months of his last suspension having expired.

The citing, the subject matter of the present complaint, occurred on the 10th December 2011, twelve days after the Player's previous seven week suspension had expired.

Having regard to the dangerous tackling (high tackle) offences committed by the Player, within less than twenty months of the current citing, the Judicial Officer determined that a period of six weeks should be added to the entry point sanction to take into account the Player's status as an offender against the Laws of the game.

Having regard to the IRB Memoranda on dangerous tackling (high tackles), the Judicial Officer determined that a further two weeks should be added to such a period of suspension, making a total of fourteen weeks.

The Judicial Officer consider that the following off field mitigating factors should be taken into account in determining the appropriate period of suspension:

a) The internal sanctions imposed by the Player's Club.

b) The clear and early acknowledgement of guilt.
c) The Player's expression of remorse.
d) The Player's conduct at the hearing.
e) The seriousness of the injury which the Player had sustained in committing the act, the subject matter of the citing and which had resulted in him not being in a position to engage in playing rugby for some ten weeks prior to the hearing.

Having considered these matters and, in particular, the seriousness of the injury sustained by the Player and the consequences of such injury, the Judicial Officer determined that a period of three weeks was to be deducted.

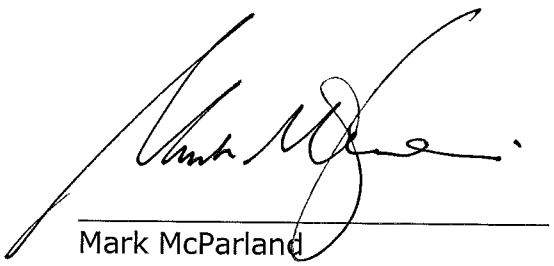
In deducting such a period, the Player should realise that this is the maximum deduction to which he could be entitled and was only afforded to him in the exceptional circumstances of the serious injury sustained by him in the act of committing the offence.

In all of the circumstances, the Judicial Officer determined that an appropriate sanction was the imposition of a period of suspension of eleven weeks commencing on the 1st day of March 2012 and ending on the 16th day of May 2012 (inclusive).

The Player and Disciplinary Officer are reminded that DR 7.1.1 provides for a right of appeal against this Decision.

Costs

No ward of costs was made, ERC having declined to make an application for same.



Mark McParland

Date: 13th March 2012