EUROPEAN RUGBY CUP

DECISION OF DISCIPLINE COMMITTEE

HELD AT BUSWELLS HOTEL, DUBLIN, IRELAND

8TH November 2006 – 14.00

IN RESPECT OF:-

Owen Finegan ("the Player")

AND

A citing complaint brought by John Byett, the independent Citing Commissioner in respect of an infringement of Law 10.4(b) in the Heineken Cup match between Edinburgh and Leinster Rugby on the 29th of October 2006 at Murrayfield, Edinburgh.

MEMBERS OF THE DISCIPLINE COMMITTEE:- (*"the Committee"*)

Christopher Quinlan (Chairman) (RFU)
Anthony Davies (RFU)
Roger Morris (WRU)

DECISION OF THE COMMITTEE:

(i) The Committee found that the Player committed an act of Foul Play which merited a Red Card (Ordering Off).

(ii) The Player is suspended from taking part in the game of rugby union up to and including 29th November 2006. This represents a three week suspension commencing on 9th November 2006.

(iii) The Committee made an award of reasonably and sufficiently vouched costs against Player.

INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the *ERC* Discipline Panel pursuant to the discipline regulations of ERC in respect of a citing complaint made by Mr John Byett, the independent Citing Commissioner. The citing complaint concerned the conduct of the Player during a second round Heineken Cup match played between Edinburgh and Leinster Rugby on 29th October 2006 in Edinburgh, Scotland. The citing complaint alleged that the Player stamped on the left leg of the Edinburgh No. 4.

Present at the hearing on 8th November 2006, in addition to the members of the Committee were:-

Roger O'Connor ERC Disciplinary Officer
David Martin, Solicitor instructed by ERC

The Player
Ciaran Callan, Solicitor, representing the Player
Michael Dawson, Chief Executive, Leinster Rugby

HEARING

Introduction and Preliminaries

At the commencement of the hearing the Chairman confirmed the identities of all present and established that the Player was before the Committee to answer a citing complaint. The Chairman outlined the procedure to be adopted by the Committee for the hearing and that the provisions of the ERC Heineken Cup Disciplinary Rules 2006/07 ("the Rules") would apply. The Player and all present agreed to proceeding on that basis.

The Chairman established that the evidence to be placed before the Committee (and which had been received prior to the hearing) comprised

- video footage of the incident (from "Sky")

- letter from Roger O'Connor to Professor Crerar (dated 31 October 2006) together with written Citing Commissioner's report and
- a written (unsigned) statement from Matt Mustchin (Edinburgh No., 4).

The Player had received the same in good time. The Chairman then confirmed that no additional evidence was to be presented before the Committee, save for the Player's account.

Prior to the commencement of the formal hearing the Chairman invited the Player and his representative to confirm that they wished to raise no preliminary issues. There was none; specifically no issue was taken as to the procedural requirements in relation to the bringing of the citing complaint. In addition, no objection was taken to the composition of the Disciplinary Committee.

David Martin then narrated the terms of the citing complaint. The Chairman asked the Player how he wished to plead in relation to the citing complaint and the allegation that he had committed an act of Foul Play. The Player denied that he had committed an act of Foul Play.

Citing Complaint

Evidence & Submissions

In his written citing report Mr Byett described the incident thus:

> "The Edinburgh (No. 4) was tackled by No.13 of Leinster. They both went to ground with the Leinster No.13 following on top and laying across Edinburgh No.4's leg. The Leinster No. 18 coming in from the back of the ruck arrived close to the Edinburgh No.4 legs. The Lenister player raised his right leg and stamped on the Edinburgh player's left leg above the ankle nowhere near the ball contrary to Law 10.4(b). The Edinburgh player got up and continued playing."

David Martin, acting on behalf of the Disciplinary Officer, then took the Committee through the video footage (without sound) provided by the broadcaster "Sky". The incident occurred in the fourth minute of the second half of the said match. An Edinburgh player attempted to tackle the ball carrier, Gordon D'Arcy. He did not complete the tackle and Gordon D'Arcy

stumbled forward before falling onto his hands and knees (still holding the ball). As he went to ground, the Edinburgh No.4 (Matt Mustchin) landed on him. Thereafter, and as Gordon D'Arcy scrambles from beneath the Edinburgh No4, the Leinster No.13 (Brian O'Driscoll) engaged with and drove Edinburgh No.4 onto his back. No ruck formed at that point; Gordon D'Arcy moved with the ball beyond Brian O'Driscoll and the Edinburgh No.4 and became engaged with another Edinburgh player. The Player approached, from behind O'Driscoll who was lying across Matt Mustchin's body, leaving his lower legs exposed. Mr Martin submitted that the Player then stamped on the No 4's left leg. He then jumped over Brian O'Driscoll and the Edinburgh No.4, and tried to "clean out" the player engaged with Gordon D'Arcy. At that point, the referee blew his whistle and can be seen to award a penalty, not for the Player's conduct, but for an offence by Gordon D'Arcy.

Mr Martin then proposed to read the unsigned statement from the Edinburgh No 4 Matt Mustchin, dated 1 November 2006. There was no objection from Mr Callan and he was permitted to do so. The brief statement read as follows -

> "I went in to complete a tackle on Gordon Darcy (*sic*) (No 12), was on the ground and some Leinster players went over me and I felt a stamp on my left leg. I looked up to see Owen Finegan going over the top of me. I suffered some discomfort at the time of the incident and significant bruising come out afterwards. That's all I can recall."

That was the ERC's case. Mr Martin agreed it could accurately be summarised as follows: a single deliberate act of stamping on an exposed limb.

The Committee decided that a *prima facie* case of Foul Play had been established (*per* Rule 7.6.10) and invited the Player to present his case.

Ciaran Callan, Solicitor, opened the Player's case by asking the Player to give his account of the incident. The Player gave us his account and then took us through the video. He said he could remember the incident and recalled approaching the tackle area. As he arrived at what he described as a ruck, he tried to jump over the players on the ground, namely the Leinster No. 13 and the Edinburgh No. 4. His intention was to get to Gordon D'Arcy and there "clean out" an Edinburgh player. He accepted his foot landed on the leg of the Edinburgh No 4, but

said it was all part and parcel of his attempt to jump over that player. It was not a stamp, he said. Mr Callan and the Player described the contact made, as "careless" "awkward" and on more than one occasion "reckless". He said that after the incident the Edinburgh No 4 accused him of stamping on his leg; he said he apologised to him.

Mr Callan invited us to conclude from the video footage that the referee must have seen the incident and to note that he did not think it merited a penalty, let alone for example a yellow card. Asked by the Committee whether he had approached the referee, he said that he had not. Asked why, he said he chose not to, assuming we would have a report. We had no such report.

The Committee questioned the Player. As he approached the players on the ground he said he could see them and Gordon D'Arcy ahead of the pair. He could see he had the ball and his intention was to support him, by cleaning out the Edinburgh player engaged with him. Jumping the players on the ground was, he thought at the time, the "quickest route from A to B". He maintained that he did not stamp on the Edinburgh No.4; contact was made but it was accidental. He accepted using the word "reckless" to describe his conduct, but said he could "use many adjectives" to describe it and that was simply one he had adopted from his representative. As he put it, "if I had my own adjective, it might have been something else". He said "in hindsight" his conduct was "careless".

Once all evidence had been heard Mr Martin and the Player and his representative were given the opportunity to make final submissions. Mr Martin submitted that even if the referee had seen the incident (and that was far from clear), his opinion mattered not: it was for the Committee to makes its own assessment of the incident. Mr Callan repeated his submission that this was case of carelessness or "awkwardness". The contact was made during what he described as a single "fluid" movement as the Player jumped those on the ground. Further, if there was Foul Play, and he submitted that there was not, it did not merit a red card.

Decision

The Committee retired to deliberate in private in respect of whether the Player had committed an act of Foul Play. The Committee considered all of the evidence and submissions summarised above. We concluded on the balance of probabilities that -

(1) As the Player approached the tackle area he was looking at the Edinburgh No. 4 and Leinster No.13, both of whom were on the ground.
(2) He could not have failed to see the Edinburgh No.4 legs, which were lying clear of the bodies and plainly visible.
(3) As he reached those players, he slowed down, if not to a stop, then all but.
(4) He planted his left leg very close to the players on the ground
(5) Then, and standing over the Edinburgh No. 4, he raised his right leg such that his thigh was horizontal and parallel to the ground
(6) He then brought it down vertically onto the lower left leg of the Edinburgh No. 4.
(7) It was a stamp.

If it is not clear from the above, we rejected the Player's case that this was part and parcel of the process of jumping over the players. As to that, we observe that once he stamped on leg of the Edinburgh No. 4 he did not use that leg, his right, to support his subsequent jump. He again raised his right leg and used his left as the supporting leg. If his intention was to jump, he need not have put down his right leg at all; he needed simply to plant his left leg (which he did) and then raise his right leg as he attempted to clear the players on the ground. Further, he was subsequently able to jump over those players apparently without making contact with either one of them.

As to his contention that it was reckless, we rejected that. In our assessment, the video footage clearly shows him looking down at the Edinburgh No. 4 before raising and bringing down his leg. We were driven to conclude and did conclude it was a deliberate stamp contrary to Law 10(4)(b) and accordingly upheld the citing complaint.

As the Committee found (on the balance of probabilities) that the Player had committed an act of Foul Play, namely stamping contrary to Law 10(4)(b) we were required to consider whether any sanction should be imposed. In this regard the Committee reconvened and heard from the Player and his representative as to sanction.

Sanction

Mr Martin reminded us of the relevant entry point as provided in Appendix 3 to the Rules and submitted this was not a case meriting a "top end" entry point. Further than that he did not think it appropriate to go.

Mr Callan submitted that the conduct merited no more than a penalty or "at most" and only if the Player had hitherto been warned, a yellow card. It did not warrant a red card. He told us (and Mr Finegan confirmed) and we accepted, that he had played the game at the highest level (Australian International, Super 12, English Premiership and Magners League) for over twelve years. He volunteered that he had received only one red card, some seven years ago, for a high tackle.

The Committee must consider what, if any, sanction would be appropriate in the circumstances. In this regard the Committee took into account the evidence and submissions and considered the terms of Rules 7.6.22, 7.6.23 and 7.6.32. The regulations provide for three entry points based on the seriousness of the player's offending. These are as follows –

- 1 month - lower end
- 3 months - mid range
- 9 months - top end

In assessing the seriousness of the Foul Play we considered the provisions of Rule 7.6.24. and concluded that

(1) It was a deliberate and gratuitous act
(2) It caused some injury, though did not result in the injured player's removal from the game
(3) The victim was vulnerable in that he could not see what was coming nor was he in a position to defend himself
(4) It was stamp on an exposed, unprotected lower limb

In light of our finding that this was a deliberate stamp on an exposed limb we unanimously rejected the submission that the act of Foul Play did not merit a red card. In our judgment, it did, and plainly so. It need hardly be said that a deliberate stamp on an exposed limb can cause serious and long term injury. We gave anxious consideration as to whether this case merited a mid range entry point. Had the injury been more serious we would, unhesitatingly, have concluded that it did. However, here the victim was able to play on for the remainder of the game, the conduct was relatively spontaneous and had no effect on the game. In those circumstances we concluded that the appropriate entry point was one of one month, taken to be a period of four weeks, namely the lower end (*per* Rule 7.6.25).

The Committee considered there were no aggravating circumstances (*per* Rule 7.6.26). Thereafter the Committee considered the following the mitigating circumstances

(1) His good (not exemplary) record
(2) His good character
(3) The fact he has played the game at the highest level with distinction for a number of years
(4) His conduct at the hearing
(5) He told us he apologised at the time

His previous sending off is somewhat stale, and he was entitled in our judgment to advance himself as having a good record; we treated him as such. We resolved that he was entitled to some credit for his character and record and career and fixed the appropriate discount at one week.

In all the circumstances the Committee determined that an appropriate sanction was the imposition of a period of suspension of three weeks. Unsurprisingly given that he contested the case, he had not been suspended by Leinster and so the suspension commences with immediate effect. The Committee imposes a period of suspension from playing rugby union of three weeks (twenty-one days) commencing on 9th November 2006 and ending on 29th November 2006 (inclusive).

The Disciplinary Officer made an application for costs, though could not provide the Committee with a figure. We made an order that the Player pay the reasonably and sufficiently vouched costs of the holding of this hearing.

The Parties are reminded that Rule 8 provides for a right of appeal against this decision.

Christopher Quinlan

9 November 2006

Christopher Quinlan
Chairman
Discipline Committee