

**RUGBY FOOTBALL UNION**  
**DISCIPLINARY HEARING**

**At:** Holiday Inn, Filton, Bristol  
**On:** Wednesday 28 November 2007  
**Player:** Drew Hickey                      **Club:** Worcester RFC  
  
**Match:** Newcastle RFC v Worcester RFC  
**Venue:** Newcastle  
**Date of Match:** 19 November 2007  
**Panel:** Christopher Quinlan (Chairman) and John Doubleday  
**Secretary:** Liam McTiernan  
**Attending:** Drew Hickey ('the Player')  
Mike Ruddock, Director of Rugby

**Preliminaries**

1. The player did not object to the composition of the Panel.
2. The player raised no preliminary issue.

**Charge and Plea**

3. The Player admitted receiving two yellow cards, both for acts of foul play during the Guinness 'A' League match between Newcastle RFC v Worcester RFC played on 19 November 2007. However, he disputed that the tackle which resulted in the second yellow card was dangerous.

**The Facts**

**First Yellow Card**

4. The incident occurred in the 17<sup>th</sup> minute of the first half. The referee's report recorded the act of foul play which resulted in the first yellow card thus:

*“Newcastle were throwing into a lineout on the Worcester 5m line. As the Newcastle players lifted their jumper I clearly saw Mr Hickey push the Newcastle rear lifter. This caused the player he was lifting to fall dangerously to the ground. I sent Mr Hickey to the sin bin and restarted play with a penalty to Newcastle.”*

5. We viewed the DVD recording of the incident. We did so at full speed and frame by frame. It provided a single camera angle of the incident and from what we could see was materially consistent with the referee’s description. It is worth noting that the jumper landed heavily on his back his fall apparently unbroken. A melee involving some players from both sides followed the incident.

#### Second Yellow Card

6. This incident occurred in the 24<sup>th</sup> minute of the second half. The referee’s report recorded the act of foul play which resulted in the second yellow card thus:

*“Newcastle were in possession attacking towards the Worcester 10m. The Newcastle No2 ran towards Mr Hickey. Mr Hickey grabbed hold of Newcastle No2 and lifted him off the ground such that the No2’s head was lower than his hips and his body beyond the horizontal. Mr Hickey then drove the Newcastle No2 dangerously into the ground with the No2 landing on his neck and shoulder. A fight involving most players of both players ensued. Once I had broken the fight up I told Mr Hickey that the tackle was dangerous, showed him a second yellow card and dismissed him from the field by showing him a red card.”*

7. We viewed the DVD recording of the incident. We did so at full speed and frame by frame. The referee was in a good position to see the incident and reacted immediately. However, having viewed the incident many times, in slow motion, and repeatedly, we came to the conclusion his description was not entirely accurate.

8. The Newcastle No 2 ran towards the Player who was in a crouched position with bent legs. He took hold of both of the backs hooker's legs in the classic head-on tackling position: 'cheek to cheek'. In engaging the hooker in that way, he stopped him in his tracks. He then drove him back, in the course of which he rose from the crouched position. As he drove and rose, so he lifted him vertically, such that his feet were off the ground. The hooker then turned his upper body and head through 90 degrees one way, and then 180 degrees back in the other direction. He did so, as though seeking to avoid going straight to ground on his back. The tackled player then went to ground. The Player retained his hold as he too went to ground, on top of him.
9. The referee's report records that both players "did not require prolonged treatment and could continue playing". Mr Hickey and Mr Ruddock told us neither 'victim player' received treatment and both continued playing.

### **Player's Case**

10. In relation to the first incident, he accepted making contact with the rear support player. he said he did so with no malice or intent, but rather mis-timed his move. He accepted contact like that was dangerous, but said the situation was exacerbated by one of his own players (tight head prop) not grabbing or in any way supporting the jumper as he came down. In fact he thought that prop moved in such a way so as to contribute to the jumper crashing to ground in the manner he did.
11. As for the tackle, the Player's case was that this was a legitimate tackle. It was not dangerous. He got into the perfect position to effect what Mr Ruddock described as a 'north south' tackle. Contact stopped the player going forward; he drove him back and their combined momentum caused him to go up. He did not lift him. The tackled player then twisted himself one way then the other and was responsible for taking or causing himself to go to ground. He did not twist him, nor did he tip him or drive him to ground. He did not let go of the tackled player.

12. He told us he has been playing rugby for 16 years. He played Super 12 rugby (as it then was) and has been a professional in England (with Worcester RFC) for the last four years. He told us that so far as foul play is concerned, he has been suspended once before, for five weeks, for what he described as a 'rucking incident' when he was 20/21 years of age (he is now 29). Mr McTiernan brought to our attention nothing to the contrary.

### **Factual Findings**

13. We were quite satisfied the first incident warranted a yellow card. The Player's case that this was simply an error of timing is no defence and we do not think Mr Hickey seriously advanced it as such.

14. The award of the yellow card for the tackle was the subject of dispute. Having considered the evidence and submissions with care, we concluded that the referee's decision was entirely appropriate. In executing the tackle, we were satisfied the Player did lift the Newcastle hooker. However, his action in doing so was part and parcel of his driving the hooker back. That is an important consideration: it is not one of those cases where the tackled player was simply lifted into the air. We were not satisfied to the requisite standard that he twisted or tipped him. We were not satisfied that he drove him to ground. We therefore approach the case (as we are bound to) upon the basis that he did not. Those factual findings distinguish this from the type of incident often called a 'spear tackle'.

15. However, we were also satisfied that this was a dangerous tackle. Once the tackled player is lifted, the tackler owes to him a duty of care: there is clear obligation upon the tackler to bring him to ground with proper care. The way in which this tackle was executed, including as it did the lifting of the player in the way that he was, led us to conclude it was dangerous.

## Sanction

16. *Appendix 1*, entitled “*Yellow Cards*” addresses ‘totting up’ and the situation where a player appeals against one of two yellow cards. Our decision to uphold both yellow cards means *Appendix 1* has no application to this case.

17. *Regulation 8.2.3* provides

*“When dealing with a sending off or citing, Disciplinary Panels shall apply the recommended penalties set out in Appendix 2.”*

In the instance case, we have to deal with two acts of foul play, which cumulatively were deemed by the referee to merit a red card (i.e. two yellow cards).

18. *Regulation 8.2.4* provides

*“Disciplinary Panels shall undertake an assessment of the seriousness of the Player’s conduct which constitutes the offending and shall categorise the offence as being at the lower end, mid range or top end of the scale of seriousness in order to identify the appropriate entry point for consideration of a particular incident(s), which such incident(s) is expressly covered by Appendix 2”*

19. In so far as is material *Appendix 2* reads

<i>“10(4)(k) 2 yellow in one match [sic]</i>	<i>LE - SOS</i>
	<i>TE – the lower end of the range for the most serious of the yellow card offences”</i>

20. On our reading of those provisions, we are required to determine the entry point by reference to the total offending, that is to say, by an assessment of both acts of foul play. It is only by so doing that we can arrive at an

assessment of the seriousness “*of the Player’s conduct which constitutes the offending*”. *Regulation 8.2.5* twice caters specifically for the possibility of multiple offending (“*incidents*”). *Appendix 2* provides for entry points for two yellow cards; it envisages an entry point determined by cumulative offending.

21. Applying *RFU Regulation 8.2.5* and considering together both acts of foul play we concluded thus:

- a. Both were reckless acts of foul play
- b. Both acts were inherently dangerous.
- c. The victim player in each case was vulnerable.
- d. That neither suffered any injury of note is a matter of good fortune.
- e. Both resulted in melees involving a number of players on both sides.
- f. In both incidents, the offending was complete.
- g. There were no other relevant features.

22. In short, the case involved two acts of foul play each of which was in its own way significant. Taken together, we concluded they merited a top end entry point.

23. *Appendix 2* requires us to take the lower end of the range for the most serious of the yellow card offences. The line out incident might well have been charged contrary to law 10(4)(f). The lower end of the range for offences contrary to Law 10(4)(e) and 10(4)(f) is two weeks. Therefore, it matters not which we select as the most serious in this case: the lower end of the range is two weeks.

24. We concluded there were no aggravating factors within *RFU Regulation 8.2.7*.

25. We considered whether there was any mitigation within *RFU Regulation 8.2.8*. The Player did not admit both yellow cards and does not have an entirely clean record, though his previous suspension is now of some age. He also behaved well before us and is a player of some experience, who has played the game at a high level for some years.

26. In the circumstances we had to determine whether he was entitled to some credit for those factors. In our judgment, such credit as he derived was not such as to merit a departure from the starting point of two weeks.
27. We were told he has not played for his club since the date of the match, namely 19 November. We were told in consequence he was not selected for the Premiership fixture against Sale on Friday 23 November nor an 'A' game on Monday 26 November. In light of his non-selection (as it was described) we resolved to start the suspension from 20 November.
28. Therefore, the Player is suspended from playing rugby union for a period of two weeks commencing on 20 November 2007, up to and including 3 December 2007. He is free to play on 4 December 2007.

#### **Costs**

29. The Player will pay the costs of £250.

#### **Appeal**

30. The Player was informed of his right of appeal.

*Christopher Quinlan*

Christopher Quinlan

Chairman

29 November 2007