

legs. As he stood from that crouching position he lifted Mr Johnston clear off the ground. Mr Johnston was lifted in such a way that his left leg remained pointing towards the ground; his right leg was out at 90 degrees to his body and in line with the Player's left shoulder. The Player is 5'7" tall.

6. Once in that position, the Player then twisted Mr Johnston to his, the player's right, turning his head and body through 180 degrees. In effect, he picked him up and then dumped him to the ground. The two then went to ground; the player falling head-first. The press photograph we have seen shows the moment of impact or thereabouts: the injured player is upside down, legs, waist and body in the air, his shoulders, neck and the back of his head are on the ground; his head is bent forward, chin on his chest. He is still holding the ball.
7. The Player was sent off.
8. The referee, A D Taylorson and Dr Orritt, Blaydon RFC club doctor both provided statements setting out in detail the treatment Mr Johnston received on the pitch. Play stopped for twenty minutes whilst he was treated. Dr Orritt together with the club physiotherapist attended the injured player, who was lying on his back, clearly in pain. A rigid cervical collar was applied on the pitch and he was strapped onto a spinal board, head held in place by blocks. He was placed into an ambulance and taken to the Accident and Emergency Department of Queen Elizabeth hospital.
9. He required and received regular doses of morphine. X-ray and CT scans revealed a fracture to the eighth thoracic vertebrae. He was then transferred to the regional neurological unit at the Newcastle General hospital. He was confined to bed and catheterised.

Medical Evidence

10. We were anxious to receive the best and most up-to-date evidence of Mr Johnston's condition. Prior to the hearing I made several requests for details and further and better particulars of what I was being told. The injured player was and remains under the care of a consultant neurosurgeon, Mr Todd.
11. By email of 31 October, timed at 14.54 Dr Orritt provided further medical evidence. Therein he reported that he suffered a fracture of the eighth thoracic vertebra, which fracture was said to be stable.
12. In a further email dated 2 November sent at 22.30 he reported that he believed the "healing process for the fracture" to be at least four weeks. At that time, Mr Johnston remained flat on his back in hospital. He was still catheterised and receiving regular analgesia. He was to be fitted with a brace for his back and torso. He was mobile to this extent only: he was allowed to raise his bed some twenty degrees or so, which

provided flexion at the hip. He did not know when Mr Johnston might be discharged.

13. Of course, Dr Orritt was doing no more than reporting what he had learned from Mr Todd. Therefore, during the hearing and by conference call we heard evidence from Mr Todd. He told us that he expects the fracture to heal and should not necessarily leave a “weak spot”. Mercifully there is no underlying nerve damage, but the risk of spinal cord injury had been significant. He would remain in hospital for two-four weeks and then be discharged with a brace, which will be fitted only when he is mobile. Presently his mobility is limited by pain and he is able to sit up to about twenty-three degrees.
14. Asked about prognosis he said his best assessment was that Mr Johnston will be pain free and out of the brace and, as he (colourfully) put it, “thinking about standing at a bar with his mates” in about three months. If all goes well, he will not be able to resume training before April 2008; he will not play contact rugby before next season. If the fracture heals in its present position, as he believes it will, Mr Johnston will be one centimetre shorter than when he started the game.
15. He emphasised that in his opinion, this was a serious injury. There remains a risk, which he assessed at ten per cent, that the fracture will collapse. That might occur during or over the next six to twelve months. If it does, Mr Johnston will require major surgery (through his chest) and will never play rugby again.
16. In light of that material there seemed to us little merit in adjourning the hearing to await further medical developments. The Player and his representative wished to proceed.

Player’s Case

17. The Player told us that he did not hear the whistle. He executed the tackle, lifting the player up. He said he then turned him slightly and let go. He did not intend to cause injury and regretted his actions, he said. Asked by the Panel to explain just why he executed a tackle of this kind, he could provide no explanation.
18. Mr Penberthy said the player was a model clubman who had played for Redruth RFC since he was five years of age. He has represented Cornwall at all levels and is plainly very well thought of by his club. We were told he has never been sent off before and has received two yellow cards, neither of which was for a dangerous tackle. He is “devastated” by the incident and we were told has sent an apology to Mr Johnston, through his club Blaydon.
19. His club suspended him the Monday after the game, namely 29 October 2007.

Sanction

Context

20. It was only a matter of time before a case as grave as this would fall to be considered by a disciplinary panel in some part of the rugby world. For some time now those handing down decisions such as have counselled of the dangers of a tackle such as this. Every decision has spoken of the inherent danger of such a tackle, carrying with it the attendant risk of very serious injury. Now, sadly yet inevitably, it has come to pass.

21. As long ago as 2005 the International Rugby Board in Ruling 5:2005 stated:

“The act of lifting a player off his feet in a tackle and dropping or ‘spearing’ that player so that his head and/or upper body comes into contact with the ground first, is a dangerous tackle”

22. HHJ Blackett (RFU Disciplinary Officer) in the decision of *Stuart Abbott*, 12 September 2006, said this

“Medical advice from the IRB¹ suggests that the risk of significant injury clearly exists where a player is driven head first into the ground (the classic spear tackle) but it also exists where a player is simply dropped head first onto the ground and, as Dr O’Driscoll states, “gravity will do the rest”. As the risk of catastrophic injury flowing from such action is high, a Player who turns an opponent upside down has an obligation to ensure that he lands safely by controlling his descent. (emphasis added)

He continued

“The policy of the IRB is to deter this sort of tackling and the RFU supports that policy.”

23. With those sentiments we entirely concur. Presciently, he warned, *“this type of tackle is inherently dangerous and it must be deterred before catastrophic injury occurs”*.

24. In relation to the assessment of seriousness he said

“It is important that this sort of tackling is dealt with severely and, although there was no injury, a tackle which allows a victim to drop head first into the ground from some height is inherently a more serious form of dangerous tackling. The IRB ranges for dangerous tackling includes all forms of such activity including high, late and spear tackling. Any dangerous tackle which puts the victim head first into the

¹ Practice Note from Dr Barry O’Driscoll, Medical Advisor to the IRB

ground is, therefore, either Mid Range or Top End on the scale of seriousness because of the real risk of catastrophic injury". (emphasis added)

25. Students of rugby discipline will recall that the decision in *Abbott* was the first of three high profile cases arising out of games played in the early part of the English Premiership 2006-2007 season. HHJ Blackett presided over each and in the subsequent cases of *Hodgson*, 19th September 2006 and *Rasmussen*, 23 October 2006 he repeated in almost identical terms his trenchant comments.

Seriousness

26. Applying *RFU Regulation 8.2.5* we concluded thus:

- a. There was in fact no need to execute any sort of tackle, still less a tackle of this nature. It was wholly gratuitous. Not only was it late, but in our assessment it was dangerous and intentionally so.
- b. Once he lifted up Mr Johnston, there were a number of things he could and should have done to bring him safely to ground. That was his duty. Instead, for some reason or reasons known only to him, he chose deliberately to turn and in effect to dump him, head-first to the ground.
- c. Once in the air, Mr Johnson was extremely vulnerable. He was the ball carrier, and once up was unable to protect himself from the force and direction of the tackle.
- d. The effects of the Player's actions on the victim were extremely serious. There is no need to repeat here the medical evidence set out in detail above. Self-evidently, Mr Johnson suffered very serious injuries.
- e. Players witnessing the incident showed great restraint, not shared by some sections of the crowd.
- f. The Player had a choice in relation to the tackling methodology he employed and to that extent his actions were premeditated.
- g. The offending was complete.
- h. There were no other relevant features,

27. It took us no time at all to arrive at the unanimous conclusion that this offence merited (and frankly on any sensible view could only merit) a top end entry point. In reaching that decision we are fortified that during the Rugby World Cup 2007, two very experienced and highly respected Judicial Officers arrived at identical conclusions in two separate cases

each of which involved a similar to the instant (*Emerick*, 11 September 2007² and *Eloshvili*, 2 October 2007).

28. The top end entry point for dangerous tackling is 10+ weeks suspension (Appendix 2).
29. We then carried out the exercise required by *RFU Regulation 8.2.6* namely a further assessment of where the starting point should be within the prescribed range (10-52 weeks). In doing so we applied the criteria in *RFU Regulation 8.2.5* and the guidance (as it is expressly described to be) in the RFU Practice Note 1/07, paragraph 4 of which reads

“In assessing the entry point within the range disciplinary panels are likely to give significant weight to Regulations 8.2.5(a), 8.2.5(d) and 8.2.5(e) as follows:

8.2.5(a) – intent. If the panel concludes that the offending player intended to commit the offence and he intended to injure the victim then the entry point would move higher up the range.

8.2.5(d) – effect on the victim. If the player needs no treatment and continues to play the entry point will be towards the bottom of the range. The point will move higher up the range depending on the level of treatment on the pitch, whether he continues to play and the extent of any injury. The more severe the injury the higher up the range will be the starting point.”

30. On our findings, this was an intentionally dangerous tackle. The deliberate lifting to a not inconsiderable height, then twisting and subsequent dumping of the player were the most serious aspects of the offending. In our judgment the Player had no consideration for the safety of the opposition player and took no responsibility in that regard.
31. As for the effect on the victim, the medical evidence speaks for itself. Mr Todd put it, succinctly and graphically, “it is an act of God” that Mr Johnston is not permanently confined to a wheelchair. It was not an act of God that he was injured in the way he was. We don’t for a moment suggest, still less did we find that the Player intended to cause such injuries. We were satisfied that he did not. However, he created a situation where the opposing winger was put in danger and he must take responsibly for the consequences of his actions. He is responsible for the injuries sustained, as we pointed out to him in robust terms.
32. The injuries suffered, when viewed in combination with other relevant factors, make this a grave case. We noted that we were in fact not

² upheld on appeal

constrained to the apparent limit of 52 weeks; in certain circumstances a disciplinary panel is permitted to exceed that³.

33. *RFU Regulation 8.2.6* involves an exercise of judgment, based on the application of established criteria and our collective rugby experience, rather than the application of some esoteric arithmetic formula. Having regard to the grave injuries caused and the deliberate nature of the offending, we concluded that the appropriate starting point was a period of suspension of 45 weeks.

Aggravating and Mitigating Factors

34. As for aggravating factors (*RFU Regulation 8.2.7*) we gave anxious consideration as to whether this type of tackle is one which needs a deterrent. We note the words of HHJ Blackett in *Abbott*, namely “*the policy of the IRB is to deter this sort of tackling and the RFU supports that policy.*” Further in *Rasmussen* he observed

“There is a real need to deter this sort of offending to drive it out of the game...The RFU has a duty to do everything in its power to lessen the risk of serious injury to players.”

35. We note however, that in not one of the three named RFU cases did the disciplinary panel determine the need to impose an additional period of suspension as a deterrent. In neither case heard during the Rugby World Cup 2007, was an additional period added. At this stage of the season we discern no *pattern* of such offending. It may well come, but we decided not to impose a further period of suspension. There were no aggravating factors.

36. We assessed the relevant mitigation (*RFU Regulation 8.2.8*) to be

- a. The Player's acknowledgment of guilt indicated in advance of the hearing.
- b. His good disciplinary record and good character
- c. His conduct before us, which was good
- d. His remorse, which we accepted as genuine

37. In all the circumstances we determined he was entitled to credit for those factors. In our judgment, we assessed the appropriate period to be one of fifteen weeks for his guilty plea and a further four weeks for the other factors. That amounts a total period of nineteen weeks. Accordingly we concluded that the appropriate sanction is the imposition of a period of suspension of twenty-six weeks (i.e. forty-five minus nineteen).

³ the offence is mid or top end and it had the potential to or in fact resulted in serious/gross consequences on the health of the victim

38. Therefore, the Player is suspended from playing rugby union for a period of twenty-six weeks commencing on 29 October 2006, up to and including 27 April 2008. He is free to play on 28 April 2008.

Costs

39. The Player will pay the costs of £150.

Appeal

40. The Player was informed of his right of appeal, which must be lodged with the RFU Disciplinary Manager within 14 days of the receipt of this judgment.

Conclusion

41. We conclude by expressing our gratitude to Mr Todd and Dr Orritt. The former kindly made himself available to us, notwithstanding his being out of the country. The latter provided us with a number of up-to-date reports, answering the questions I posed with an expedition and a thoroughness to be commended. Together, their evidence was decisive in our being able to hear the case when we did.

42. Finally, we wish Mr Johnston well. It is a matter of pure chance that he will walk again.

Christopher Quinlan

Christopher Quinlan
Chairman
8 November 2007