

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

At: Holiday Inn, Coventry, M6 Junction 2  
On: Thursday, 7<sup>th</sup> May 2009

**JUDGMENT**

**Player:** Olivier Azam (“the Player”)  
**Club:** Gloucester Rugby  
**Match:** Gloucester Rugby v Cardiff Blues  
**Venue :** Twickenham  
**Date of Match:** 18<sup>th</sup> April 2009  
**Panel:** Antony Davies (Chairman), John Brennan and Bob Taylor  
**Secretariat :** Bruce Reece-Russel, RFU Disciplinary Manager  
**In attendance:** Olivier Azam (“the Player”)  
Dean Ryan, Director of Rugby, Gloucester Rugby  
Ian Dixey, Counsel for the Player  
  
Mike Rafter, Match Citing Officer

**Preliminaries**

1. There was no objection to the composition of the Panel.
  
2. It was explained that the Panel had been convened to consider a Rule 5.12 charge against the Player resulting from a review by H.H.J. Jeff Blackett of the judgment and DVD footage in respect of an earlier citing of the Player. This earlier citing had resulted in a judgment by a Panel Chaired by Christopher Quinlan at Bristol on 27<sup>th</sup> April 2009. That Panel had found itself unable to determine the merits of the citing. The Disciplinary Officer felt there to be a prima facie case of foul play which ought to be determined on its merits.
  
3. Whilst the previous Panel were unable to proceed for reasons set out in their

judgment, it had heard evidence, but had, crucially, made no determination on the merits of the citing complaint. None of the current Panel members had had any involvement with the previous Panel or its deliberations or decisions and for those reasons determined to hear the matter de novo.

### **Charge and Plea**

4. The Player was charged with conduct prejudicial to the interests of the Union and/or the Game, contrary to Rule 5.12 of the Rules of the Rugby Football Union 2008/2009, the particulars being that on 18<sup>th</sup> April 2009 the player made contact with the eye or eye area of an opponent (Jamie Roberts) during (10<sup>th</sup> minute of the second half) the EDF Cup Final Cardiff v Gloucester.

5. The Player pleaded not guilty to that allegation and by way of clarification of the basis of his plea accepted his finger made contact with the victim player's eye, but denied such contact was intentional or reckless: it was an accident.

### **Jurisdiction**

6. The game was played pursuant to the Regulations of the EDF Energy Cup Final and the Disciplinary Regulations set out therein. However, those Regulations do not concern this Panel as the Player now appeared pursuant to Rule 5.12(e) of the Rules of the Rugby Football Union 2008/2009. Mr. Dixey, on behalf of the Player, took no issue with the Panel's jurisdiction and competency to hear the matter.

### **Evidence of Mike Rafter in Support of the Charge**

7. Mr. Rafter had been the nominated Citing Officer for the game. The terms of his written citing report were as follows :

Details of offence: Jamie Roberts (C12) and Olivier Azam (G2) were contesting a loose ball. As C12 put his hands on the ball to pick it up, G2 reaches C12 and attempts to grasp C12. As C12 picks the ball up and attempts to pull away from the clutches of G12, the arms of G2 ride up the body of C12, forming a "loop" around the left arm, shoulder and head of C12. As C12 begins to shrug off G2 with the ball in his hands, the fingers of G2 curl round into a bowling ball-type

grip are then dragged up the face of C12 until they meet the brow, at which point C12 drops the ball and jerks away from G2 in obvious discomfort.

I spoke to Jamie Roberts in the changing room 30 minutes after the game had finished, who remembered the incident in question. He admitted something had come into contact with his eyes, but had closed them tightly for protection, so he had no idea what it was that caused the discomfort. He recalled panicking a little at something attempting to get at his eyes and pulled away as quickly as he could. On viewing the DVD, Roberts was in no doubt that the incident he was viewing showed clearly the contact he experienced with his eyes and/or eye area. He was also satisfied that it had been the fingers of Olivier Azam which had found their way to his eyes and/or eye area.

The contact was fleeting, and apart from an immediate feeling of discomfort, Jamie Roberts was not injured and did not receive any treatment. He continued to play the rest of the match with no ill-effects. When I asked how he was in the tunnel after the game, he made no complaints.

Action, if any taken by the referee: The referee was close to the incident, but looking at the ball on the ground and his view of the face of Jamie Roberts was obscured by the bodies of the two players, who were both facing away from the Referee.

Provide details of discussion with the referee/touch judge (mandatory):  
Alain Rolland and his assistant referees confirm that they did not see the incident and were looking at the ball.

Date: 20<sup>th</sup> April 2009                      Time : 1310hrs.

8. For the reasons set out in the judgment of the Panel of 27<sup>th</sup> April 2009, there had been no determination of the citing complaint.

9. Mr. Rafter expanded upon his report. He watched the game live and took contemporaneous notes of things he wished to investigate further when watching the DVD after the game. 15 minutes after the game finished, he approached the coaches. Mr. Ryan did not wish to bring any incidents to his attention. Mr. Norster told him there was an incident involving Jamie Roberts ("C12"). He was told that there was DVD evidence. He spoke with the match officials but they had nothing to report. He went to the BBC van. They had not finished the match DVD for him, but they did have the incident involving C12 to hand, which they brought to his attention. He was shown a slow motion version. Having seen that, he went to speak to C12. C12 recalled the incident and said he had played on and told Mr. Rafter that he was fine. He had had some treatment on the pitch to his eyes, but had not made any complaint whilst on the

pitch and there appeared to be no immediate reaction from him. He was however adamant that there had been contact with his eyes. Mr. Rafter took C12 and Mr. Norster to the BBC van and C12 confirmed that the footage showed the incident where contact had been made with his eyes.

10. Mr. Rafter then drew our attention to a DVD of the incident. This showed three views. The first was in real time and taken from about halfway in the west stand. This showed C12 bend to pick up a loose ball as the Player ran towards him. There was contact between the two but it was fleeting and nothing further could be discerned from this view.

11. The second view was taken from the try line area at the south stand end of the ground. It was a close-up of the contact between the players. There was a third view from the same point in super slow motion.

12. Mr. Rafter explained the contact between the two players. C12 is bending down to pick up the loose ball on the ground, when the Player runs towards him at pace with his arms out approximately 45° on each side to make a tackle on C12. The Player's left arm comes over C12's left shoulder and his right forearm comes into contact with the right hand side of C12's face. The Player appears to be attempting to link his arms, but succeeds in taking hold of C12's left arm with his left hand. His right hand is approximately 6 inches below the Player's face at this point.

13. Mr. Rafter then demonstrated how the Player's right hand came up into the face of C12. His palm went from being flat to forming a claw and the right index finger is seen to move towards C12's eyes and make contact. He acknowledged the contact was fleeting but maintained it was real and entirely consistent with what he had been told by C12 about feeling a hand in his eye followed by discomfort.

14. When questioned by Mr. Dixey, Mr. Rafter maintained that he did not believe the contact to have been accidental. He would have expected the right hand to grip the arms rather than the face and he was also concerned about the "bowling ball grip" of the Player's right hand and the crooked finger. He confirmed that C12 had been treated immediately after the incident, but had played on for the rest of the game. He also

confirmed it appeared a good tempered game and that he had not seen anything at the time. Particularly, he had not seen any on-pitch reaction either from the victim player or any other members of the team. It was his experience that players did tend to react immediately to eye gouging.

15. When further questioned, Mr. Rafter accepted that allegations of gouging were normally made immediately and tended to happen more often in a static situation rather than in animated play at speed. He conceded that the contact with the eye was fleeting and that C12 was attempting to twist out of the tackle. As to the suggestion that it would be legitimate for the Player to grab hold of the shirt of C12 in these circumstances, he agreed and accepted that the action of the Player's right hand could be consistent with trying to grab hold of C12's shirt. He also conceded that, given the fleeting nature of the contact, the Player's reaction could have been instinctive. He may have been attempting to take a firmer contact with C12 than he did. The action of C12's twisting body had the result that he appeared to lose a firm grip and he had ended up on the floor 2 metres behind C12, having gone past him to his right as C12 fell to ground behind the Player.

### **The Defence Case**

16. The Player gave evidence. The Player told us that he is 34 and joined Gloucester in 2000. Apart from the occasional yellow card for technical matters, he had never been disciplined with a yellow or red card for foul play. He has 10 caps for France, the last being in 2004/2005. He has been acting Captain of Gloucester in the absence of Mike Tindall and voted Player of the Season by the season ticket holders. The game against Cardiff was a very hard game. They were well beaten. It was however not a rough game. He knows Jamie Roberts socially and has no issues with him. He did not remember the incident at the time. He only heard that there was a problem four days after the game. He could therefore only talk about what he saw on the DVD. The incident had occurred on 62 minutes, when Gloucester were already 22 – 5 down, though it was not shown until some 3 minutes later as a slow motion replay. The ball was kicked out of a ruck and he tried to charge after it. C12 was first to the ball and he decided to tackle him. He committed himself 100% to the tackle and had no intention of putting his hand in the vicinity of C12's face. He did however accept that his hand did make contact with the face, but he had not realised that it was a possibility that that

might occur.

17. The Player explained his intention in making the tackle. It was to hit C12 in a different way to that which occurred. Essentially, he missed the grip he had intended because of his speed. He had gone on to “flip” over the player and to his side. As he went past him he tried to grab him. He had never felt in control of C12. He did not have sufficient time to form any intention to make contact with the face or eyes, though he accepted the DVD showed such contact as occurring. He had grabbed at whatever was there whilst he was running flat out. He conceded that he was not the most “nimble” of players.

18. When questioned, the Player confirmed that he had no independent recollection of what went through his mind at the time. He was very surprised to have been cited four days later. He accepted that a face did feel different to a shirt and that his right hand did linger in the vicinity of C12’s face, that his fingers became crooked and that as C12’s face moves away from his hand, his hand (now in a claw) follows it. He maintained that his intention was to flatten C12 and to assist in this he needed to get a grip of him once he realised that he had mistimed his contact and was not going to be able to keep hold. It was the action of C12 in twisting that meant he had not got hold of him where he wanted. He was running flat out and immediately realised he hadn’t got the grip he anticipated he grabbed at anything he could with his right hand. He had ended up on the ground some way in front of C12.

### **Evidence of Dean Ryan**

19. We next heard from Dean Ryan who was able to establish the timeline for the incident. The contact between hand and face was about one third of a second and therefore could not, he maintained, have been intentional or premeditated. Once the Player had realised he was not going to get the grip he expected and instead go past and beyond C12, he would not have had time to change his intention to make contact with the eye area deliberately.

20. In closing submissions, Mr. Dixey maintained that C12 stayed on his feet and was in control, whereas the Player was off balance and fell over. Whilst the DVD

looked highly suspicious, we should regard the slow motion as being subject to foreshortening and distortion and properly analysed should not bear the weight placed upon it in this case. The Player had stated that he had no intention of causing injury and there was no evidence to the contrary. C12 did not complain until he had been shown the DVD. He reminded us that Mr. Rafter had quite fairly acknowledged that we could have seen the action of a hand being used to grab at clothing in one third of a second or so and we could not in all the circumstances be satisfied that there was any deliberate gouging in this case. As to whether the contact could have been reckless, he maintained that there was insufficient time to recognise a risk and that it was the action of the twisting body of C12 which had put the Player's hand in the vicinity of the victim player's face.

### **Decision**

21. We find the case against the Player proved to the standard we require, having regard to Disciplinary Regulation 6.5.2, for the following reasons :

- (i) The tackle and intent which originally accompanied it started out perfectly legitimately. We do not find any evidence of deliberate intent to make contact with the eye area – there was insufficient time.
- (ii) The Player's original intention could not be achieved because of the twisting position of C12's body.
- (iii) The Player's right hand moves from being in the open palm position to forming a claw in close proximity to the face of C12. In these circumstances, the Player should reasonably have known that there was a risk of contact with the eye area of the opponent and therefore a risk of committing an act of foul play, even though the period of time in question was extremely brief.
- (iv) There is no other adequate evidence or explanation as to how the Player's finger came into contact with C12's eye. At no point did the Player ever dispute that his finger had come into such contact and that as a result the player needed treatment on the field for an eye injury. We do not believe in these circumstances that it was accidental as pleaded by the Player.

### Entry Point and Sanction

22. We find the following features of relevance :

- The offending was reckless in that the Player knew, or should have known, there was a risk of committing the act of foul play.
- Given the speed of closure of the two protagonists, the contact had been momentary and fleeting, though nonetheless real.
- The victim player had received some treatment on the field but had continued to play the rest of the game and did not complain of injury afterwards.
- The incident had no effect upon the game. The victim player made no complaint at the time, it was not seen by the match officials and there was no reaction from the crowd or any other player on the field.
- The victim player was vulnerable to the extent that contact was made from behind as he was looking at the ball and, given the manner in which he was held, would not have been able to take avoiding action.

23. Having considered all the evidence before us, including all of the submissions made, we determine that the appropriate entry point in this case is **LOWER END** and applying the sanctions set out in Appendix 2 Disciplinary Regulations under Section 10(4)(k) contact with eyes or eye area, the appropriate entry point is one of 12 weeks.

24. We do not find any aggravating factors under DR 8.2.7 and having heard the mitigation presented on behalf of the Player, including his good record and character, age and experience, conduct at the hearing and the manner in which he is regarded in the game generally, we determine the appropriate reduction on account of mitigating factors to be one of 3 weeks, giving a period of suspension of 9 weeks.

### Suspension

25. The Player is suspended from Friday, 8<sup>th</sup> May 2009, until Thursday, 17<sup>th</sup> September 2009, (a period of 19 weeks, to include the agreed 10 week summer break). He may play again on Friday, 18<sup>th</sup> September 2009.

26. Mr. Dixey submitted to us that there was some inconsistency between DR 8.2.13 and 8.2.14. The latter makes it clear that we have a discretion to suspend the sanction, which is specifically precluded by the former in cases of illegal and/or foul play. Having considered the matter, we do not think it appropriate to suspend any part of our sanction as this is a case involving illegal and/or foul play, though brought pursuant to the provisions of Rule 5.12.

#### **Costs**

27. The Player will pay the costs of £250.00.

#### **Appeal**

28. The Player was advised of his rights of appeal as set out in the Disciplinary Regulations.

*Antony Davies*

Antony Davies,

Chairman

13<sup>th</sup> May 2009