

## **RUGBY FOOTBALL UNION**

### **DISCIPLINARY HEARING**

**At:** Offices of the Judge Advocate General, 81 Chancery Lane, LONDON

**On:** Tuesday 30 September 2008

### **JUDGMENT.**

**Player:** Neil BEST                      **Club:** Northampton Saints

**Match:** Northampton Saints v London Wasps

**Venue:** Franklin's Gardens      **Date of match:** 20 September 2008

**Panel:** Jeff Blackett (Chairman), Jeff Probyn and Peter Budge

**Secretariat:** Bruce Reece-Russel  
Liam McTiernan

**Usher:** Mojgan Jamalipour

**Attending:** The Player.  
Ray Tully – Counsel for the Player  
Jim Mallinder – Director Northampton Saints  
Alan Solomons – Witness as to character

James Haskell – London Wasps – to give evidence  
James Segan – Blackstone Chambers

### **The Citing Complaint**

1. The Panel convened to consider a citing complaint by GP Citing Officer Ken Pattinson against the Player who admitted one offence of making contact with the eye or eye area of an opponent contrary to Law 10(4)(k) (acts contrary to good sportsmanship).

2. The citing complaint stated

*The ball was returned from deep in the Northampton half of the field after a Wasps kick ahead. The ball was carried into the Wasps half by the Northampton number 15 who was tackled by the Wasps number 12 (R Flutey) at which point players and ball went to ground. The Wasps number 7 (J Haskell) joins the ruck from his own side and was followed into it by the Northampton number 6 (N Best) who came in from his right of the ruck.*

*At this point the blue scrum cap of the Wasps number 7 becomes visible, having been pulled upwards, away from the tackle area by the left arm of Northampton*

*6 whose elbow raises by about the same amount as Wasps 7's head. It is clear to see the left hand of Northampton 6 is in the face of the Wasps 7 with the fingers of the left hand bent in a clawing position. It is also clear that contact is made to the head of the injured player in the region of the eyes. On tape one can see the head movement of Haskell and the grimace which are clear indicators of pain over and above the normal felt in physical contact.*

*As the Wasps number 7 yields to the contact round his face and falls away to the right of the tackle area the ball emerges at the feet of the acting scrum half for Northampton who passes the ball away from the ruck. Haskell is left on the ground holding his face and needing the treatment he receives.*

*From the video tape in slow motion and from stills taken from this tape it is clear that illegal contact was made in the region of the eyes of J Haskell.”*

### **Preliminary Issue**

3. The Player admitted the offence but submitted a written basis of plea. This stated that the Player admits the charge “on the basis that he was reckless when seeking to lawfully remove James Haskell from a ruck. He denies that he deliberately sought to make contact with the eye or eyes of James Haskell. He nonetheless admits being reckless in the manner in which he sought to remove James Haskell from the ruck and thereby causing injury to his eye.”

4. As the appropriate level of sanction would depend on whether the offending was reckless or intentional, the Panel decided to review all the evidence, including oral testimony from both Haskell and the Player, to determine this issue.

5. The Panel watched the video recording of the incident which corroborated the citing report. It showed a Northampton player being tackled and going to ground. Players from both sides arrived at the breakdown which quickly became a ruck. Haskell joined the back left hand side of the ruck and was then obscured from camera view by other players. Shortly after the Player arrived and joined the back right of the Northampton side of the ruck (the same side as Haskell) and was also partially obscured from camera view. The Player tried to drive forward but the ruck became static. As the Player attempted to drive forward his body went past Haskell's to his left side and the Player's left hand trailed behind him. At this stage, although most of his body was obscured from the camera, his left arm could be clearly seen at right angles. His arm lifted and fell twice before lifting up again and there was then a clear view that his hand was pulling Haskell's face upwards. The Player's hand was hooked and his fingers were clearly in contact with Haskell's right eye – in effect he was pulling Haskell's head upwards by his eye. The grimace on Haskell's face indicated that he was in pain and as the Player's hand moved away from contact Haskell and the Player fell to the floor – Haskell clutched his eye with his hands.

6. The Panel also viewed still photographs taken at the time of the incident. They showed a snapshot of the events just before contact finished. The Player was in an almost upright position with his left arm cocked at right angles with his clawed fingers in or around Haskell's eye socket. Haskell was grimacing.

7. James Haskell gave evidence before the panel. He said that approximately eight minutes before half time he entered a ruck in a position to compete for the ball from the left hand side of the tackle area. He said he was able to get his hands on the ball and was in the process of stealing it when a Northampton player came in and tried to clear him out. He did not know who the Northampton player was at that moment. He wasn't able to get underneath the ball and, Haskell said, the Player's hand found its way to his right eye. He said that he did not think that the Player was searching for his eye, but it alighted on it very quickly. He said the fingers remained in the eye and he confirmed the written statement he had made after the game that the Player "gratuitously commenced to gouge at [his] eye with increasing intensity as he did not release the ball. Eventually the force increased to such strength that it pulled him up out of the ruck." He said that he instantly noticed his vision had become extremely blurred and he was in excruciating pain. Haskell said that following the incident he tried to play on but his eye was so badly injured that he could not see and he felt physically sick because of the soreness. He was treated on the pitch by the physiotherapist after play broke down two phases later. At that time he was aware that a member of the opposition had come over to him to apologise, but he could not remember the detail. He accepted that this was the Player. He continued to play but his vision was blurred and the pain became utterly unbearable. At half time he was treated and continued to play, but he eventually had to come off the pitch. He was not sure how long he had continued to play during the second half.

8. It was suggested to Haskell by counsel for the Player that the contact had been fleeting as the Player had move his hand across his face in an attempt to grab hold of his scrum cap. Haskell said that the fingers "stayed in his eye, stayed in his eye and then pulled his head up by his eye". He emphasised the duration of the contact by repeating the phrase "stayed in the eye". He also said that his scrum cap was old and loose and would have come away from his head had someone tried to pull it upwards. Haskell also said that he knows when his fingers come into contact with someone else's eye because it feels "squidgy" – these fingers, he said, remained in his eye.

9. Doctor Ben Gillfeather was at the match and later took Haskell to Northampton General Hospital where he was seen by an ophthalmologist who diagnosed a corneal abrasion and prescribed antibiotic drops. On 24 September he was seen by ophthalmic consultant Mr Vaughan Tanner. He reported that there was no evidence of persistent corneal erosion which would fit with his symptoms getting better over the previous 24 hours or so. Dilated fundoscopy did not reveal any major structural damage but Mr Tanner expressed himself to be a little worried that Haskell's vision was down. He hoped that this was simply due to residual swelling and inflammation which should pick up over the next few days. Mr Tanner prescribed chloramphenicol ointment twice a day to keep his eye comfortable and one lacrilube at night to prevent any further corneal erosions. He advised Haskell against contact situations until he had seen Mr Tanner again in a week or so. Haskell told the Panel that he had seen Mr Tanner a few hours before the hearing. His eye was much better, although still slightly swollen, and his vision was still slightly blurred, although the Panel did not observe any outward signs of injury. Mr Tanner advised him that he would probably be fit to play the day following the hearing.

10. Photographs taken of the injured right eye on 21 September, the day following the injury, showed significant swelling around a closed bruised eye. There was a

scratch on the upper eyelid, about 1 centimetre across, consistent with contact with a finger nail. A close up photograph of the eye showed significant bruising, swelling and reddening with bloody broken skin.

11. The Player gave oral testimony and repeated that he acted recklessly and not deliberately. He said that he joined the ruck with a poor body position. He drove into Haskell but did not move him away and he moved past him. He said that as he did so he used his trailing arm to grab hold of Haskell in a further attempt to clear him out. He said he intended to grab him by the face and as his hand moved across his face he was intending to pull him back by his scrum cap. He accepted that his hand came into contact with Haskell's eye as his hand moved up across his face but he was not aware that his finger went into Haskell's eye. He said that contact must have been fleeting – he said that he must only have “caught his eye for a millisecond” and he actually pulled Haskell's head up by his forehead or scrum cap. He said that the whole incident was over very quickly and in the dynamic situation he did not realise what had happened. He vehemently denied that he deliberately sought to make contact with the eye or eyes or cause any injury to a fellow professional player. When play stopped shortly after the incident he saw Haskell on the ground and realised that he must have made contact with his eye – he “put two and two together” and immediately went over to him to apologise. He re-iterated that it was never his intention to injure a fellow professional and the injury which occurred as a result of his actions was without malice or intent.

12. Mr Tully asked the Panel to consider evidence as to the Player's character when assessing the credibility of his evidence. He presented a number of written testimonials. Jim Mallinder, Director of Rugby at Northampton, re-iterated orally that the Player as highly respected and renowned for his physicality and fairness on the field of play which has gained him previous international honours. He said he is a model professional on and off the field and was absolutely mortified that the incident is deemed anything other than accidental. Dorian West, the forwards coach at Northampton, corroborated Jim Mallinder's opinion. He reported that he spoke to the Player after the incident and found him to be very distressed about causing an injury to Haskell. He is also very concerned that he would be perceived as a player who would cause deliberate injury to a fellow professional. Alan Solomons, director of coaching at Ulster from 2001/2 – 2004/5 when the Player played there, also attended to give oral evidence. He described the Player as outstanding, but more importantly a highly principled, intelligent young man whose integrity is beyond reproach. He has good, solid, core values and is an asset to any team he represents. He further stated that the Player was a pleasure to coach and that he always plays the game in a hard but fair manner.

13. Mr Tully submitted that the incident occurred in a fast flowing and fluid situation. The video supports the Player's contention that his hand went up and over Haskell's face and that his account can be relied upon. He said that in view of the injury sustained Haskell may have perceived the contact to have been longer than it actually was.

### **Determination of the Preliminary Issue**

14. The Panel reminded itself that the standard of proof is the balance of probabilities, but that this is a sliding scale in which the more serious the allegation the less likely it is that the event occurred. In this case the Panel decided that it must be sure before rejecting the Player's explanation and finding against him. The Panel noted that the whole incident from the time the Player's hand was in the vicinity of Haskell's head to the time his hand moved away from his head was about 1 second. It accepted that the Player had not intentionally searched for Haskell's eye but had tried to grab somewhere on his head to pull him up and backwards. Initial contact with his eye was, therefore, reckless. However, the Panel does not accept the Player's account that contact with the eye was "fleeting". Haskell's evidence was very clear and compelling that the fingers had been in his eye for more than fleeting contact. His explanation that he felt the finger in his eyes pulling him upward was consistent with observations of the video, and the injuries described were not consistent with fleeting contact for a millisecond. The Panel, therefore, determined that after the Player's finger went into Haskell's eye he must have known where it was because the feel of an eye is unique. **He then deliberately maintained contact with the eye area to force Haskell to release the ball and move backwards and he pulled Haskell's head upwards by the eye socket.** The Panel also accepted that the incident occurred very quickly and although the Player deliberately maintained contact with the eye area to pull Haskell there was no intention to cause serious injury. The Panel also believed that his immediate apology was consistent with its conclusion that the Player knew that he had made contact with Haskell's eye.

#### Mitigation

15. The Player is 29 years old and has played professional rugby for six seasons with Ulster before he joined Northampton at the beginning of this season. He has played over 150 professional games and has never been cited or ordered off the field. He has played for Ireland 18 times and, although not currently in the international squad, he understands that he may be in the frame for future international honours. He became a professional after gaining a Bachelor of Engineering and a Masters degree from Queen's University. He is currently studying for a degree in insurance since he intends to follow a career in Financial Services when finishes "retires" from professional rugby. He said that deliberate eye gouging is deplorable and he would never intentionally injure a fellow professional. He expressed sincere remorse for the injury caused to Haskell and had apologised both immediately after the incident and through his Counsel at the hearing. He was advised by (Mr Mallinder) not to make personal contact with Haskell before the hearing. Mr Tully prayed in aid the evidence as to character already submitted. He suggested that the Panel were entitled to give maximum credit to the Player and, since it was clear that the Player did not intend any injury the entry point should be towards the lower end.

#### Sanction

16. The Panel reminded itself of the statement of principle established in the *Hartley* case in April 2007 (Panel Jeff Blackett, Jeff Probyn and Jeremy Summers)

*Contact with an opponent's eye or eye area is a serious offence because of the vulnerability of an eye and the risk of permanent injury. It is often the result of*

*an insidious act and is one of the offences most abhorred by rugby players. Serious offences of this sort – and particularly those known colloquially as “eye gouging” must be dealt with severely to protect players, to deter others from such activity and to remove offenders from the game to ensure that they learn the appropriate lesson. Clearly “contact” encompasses a wide range of activity from applying pressure with an open hand to a finger intentionally inserted into the eye socket intending to cause injury. Offences which would properly be classified as at the Lower End of the scale of seriousness would include, but not be limited to, wiping with an open palm or fist without any real force or intent and causing no injury. In certain circumstances it might also include reckless contact with a finger into the eye area. Offences which would properly be classified as at the Top End of the scale of seriousness would include, but not be limited to, an intentional act designed to cause serious discomfort or injury to the eye or area around the eye of an opponent. The most serious offences in this category would be where permanent damage is caused.*

17. Against this background the panel undertook an assessment of the seriousness of the Player’s conduct.

- a. The Panel had already determined that, although initial contact with the eye was reckless, the continuing contact was deliberate. We accept, however, that the Player did not intend to inflict serious injury to Haskell although he intended to apply sufficient discomfort to move Haskell out of the way and release the ball.
- b. The nature of the Player’s actions was grave. Placing fingers in and around opponent’s eyes constitutes one of the most serious offences in the Game because of the risk of permanent career-ending damage.
- c. Contact was clearly painful and caused significant injury, continuing distress and some mental anguish to Haskell who initially feared first for his sight and subsequently that he may not be able to play again. The Panel concluded that, given the dynamic situation at the ruck and the force applied, the Player was fortunate that the injuries were not even more serious.
- d. Haskell was vulnerable in that he had been participating in a contest for the ball on the ground and would neither have expected this sort of contact nor been able to protect himself from it.
- e. The offence was not premeditated but it was completed and Haskell was rendered unfit to play.

18. In these circumstances the Panel adjudged that this was at the **Top End of the scale of seriousness**. Having made that assessment the Panel then considered the appropriate entry point in accordance with RFU Disciplinary Regulation 8.2.6 and Practice Note 3. The entry range for the Top End for contact with the eye or eye area is 24 weeks to 156 weeks (3 years). This was a serious case because the Player, having realised that he had contact with the eye area, clearly intended to apply leverage to Haskell to pull him upwards. Although we accept he did not intend to

cause this injury it was the inevitable result of his actions. Had there been evidence that he did intend to injure Haskell then the entry point would have been towards the upper end of the entry range. Nevertheless, this sort of offending must be marked with a substantial sanction not only to punish the Player but to mark the Game's abhorrence for this type of offending and to deter others from similar offences. **The entry point in this case is, therefore, 36 weeks.** This is higher than the entry point in the case of Hartley who was found guilty of two offences of contact with the eye or eye area in the same match: in that case one of the incidents involved deliberate insertion of fingers into an opponent's eyes, but there was only superficial injury.

19. There were no off field aggravating features (the deterrent element being included in the calculation of the entry point) but significant mitigating factors. The Player immediately acknowledged that he had caused the injury and indicated that he would admit the offence well before the hearing. As a result Northampton did not select him to play for the next league match after this game. The Player has an excellent record and is highly respected by those who have spoken on his behalf. The Panel were particularly impressed by the evidence of Alan Solomons, who thought so highly of the Player that, on hearing of the incident, volunteered to give evidence on his behalf. His conduct prior to and at the hearing was impeccable and his remorse was genuine and sincere. In those circumstances the Player deserves the maximum possible credit of 50% from the entry point. **The appropriate sanction is, therefore, a suspension of 18 weeks.** In reaching this conclusion the Panel has taken into consideration the fact that this offence was entirely out of character and will be a significant blemish on his record. We also took into account the damaging effect this will have on the Player's club and international playing career and the risk that he will suffer financial loss. The Panel is satisfied that this is commensurate and proportionate with the seriousness of the offence.

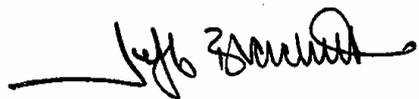
20. **The Player is therefore suspended from 24 September 2008 (the date of the citing) to 27 January 2009. He may play again on 28 January 2009.**

#### Costs

21. Costs of £250.00 are awarded against the Player/club.

#### Right of Appeal

22. There is a right of appeal against the decision and this should be lodged with the RFU Discipline Department by 1200 hrs on Thursday 2 October 2008.



Signed: **Jeff Blackett**  
**Chairman**

Date: **30 September 2008**