

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

VENUE: Holiday Inn, Bloomsbury, London

DATE: 5 January 2009

Player: Tom DUNSMORE

Club: Old Whitgiftians RFC

Match: OWRFC v Surrey President's XV

Venue: OWRFC

Date of match: 23 November 2008

Panel: Jeremy Summers (Chairman) John Doubleday and Dr Julian Morris ("the Panel")

Secretary: Bruce Reece-Russel

In attendance:

OWRFC

Tom Dunsmore - The Player

James Segan – Counsel for the Player

Andy Glyn – Disciplinary Officer – OWRFC

Surrey RFU

Gerard McEvilly – Counsel for Surrey

Malcolm Caird – Chairman Surrey RFU

PRELIMINARIES

1. The Panel convened to consider a citing complaint by Surrey RFU alleging that the Player was guilty of dangerous scrummaging contrary to Law 10(4) (i). The alleged incident occurred in the 10^h minute of the 2nd half. The Player denied the offence.
2. The Player did not object to the composition of the Panel.
3. At the request of the Panel Mr McEvilly indicated that Surrey RFU relied upon the first limb of the offence as prescribed by Law 10.4 (i) namely that the Player, being in the front row of the scrum, had rushed against his opponents.¹ No other preliminary issues were raised.
4. The Panel considered:-
 - a) The Citing Complaint dated 4 December 2008
 - b) The statement of John Vale

¹ Laws of the Game 2008

- c) The statement of Charlie Ellis dated 7 December 2008
 - d) The statement of Robert Park dated 5 December 2008
 - e) The injury report completed by the Referee dated 26 November 2008
 - f) Written submissions from Mr McEvilly dated 4 January 2008
 - g) Oral evidence as set out below
5. At the commencement of the hearing Mr Segan submitted written statements from the Player, Tom Hipsey the OWRFC captain and a Mr Bunn the OWRFC tight head prop. For the reasons given below it was not necessary to consider these statements in detail.

THE CITING

6. The Citing Compliant recorded as follows:

“Presidents XV hooker Rob Park played first half. During this time he had complained to the Referee at the angle at which Tom Dunsmore was coming into the scrum. Tom Dunsmore was lining up slightly to the right so his head was clashing with the opponent hooker; thus he was trying to force his head downwards.

Approximately 5 minutes into second half 6 substitutions were made to the Presidents XV including hooker. When he was substituted Rob Park warned the incoming hooker, Charlie Ellis, that this was happening. After approximately 15 minutes, at a scrum Tom Dunsmore used his head to bend Charlie Ellis’ head onto his chest causing damage to his neck.

Charlie Ellis was basically unable to move. He was taken to hospital where it was found that he had a displaced 6th vertebrae and possible residual damage to spinal cord.”

7. Mr McEvilly referred the Panel to his written submissions that had helpfully been provided in advance of the hearing. He noted that Mr Ellis had suffered a serious injury in that his C5 vertebra had been dislocated and that this had required surgical correction. In the view of Surrey the injury had been caused deliberately or, at best, recklessly. The Player’s conduct was not considered accidental; he had scrummaged in a dangerous manner against both hookers who had taken the field. Further, even after the injury had been sustained by Mr Ellis, the Player continued in a similar fashion against Mr Park who had been required to come back on as a result of the injury.
8. Mr McEvilly then called the following evidence:
- Mr John Vale
9. Mr Vale is the President of Surrey RFU. He explained that he had been invited to select a XV to play a Memorial match in honour of the late Martin Turner, former President of OWRFC, Blackheath, England and the Barbarians. A bar was also dedicated in Mr Turner’s memory after the game.
10. Whilst expecting the game to be competitive, Mr Vale had anticipated that it would be played in a spirit befitting the occasion. He had therefore been surprised by the ferocity of the game and the amount of “niggle” that had been generated. As team

manager he had selected a squad of 23 for a Sunday game and it was understood that all players would come on in the 2nd half. This included Mr Ellis who was to replace Mr Park who started the game as the Surrey hooker.

11. He confirmed that he was aware that Mr Ellis had only played 4 previous games at hooker and that he had not seen the incident that led to Mr Ellis's injury.

Mr Robert Park

12. Mr Park was 38 at the time of the game and has been playing rugby for 27 years, a substantial part of which has been as hooker (he is also an experienced back row forward).
13. He had played in one previous President's game which had been tough but fun. He had expected this game to have been played in a similar manner but felt it had been totally different and very rough.
14. He accepted that confrontation is an important part of front row play. As he put it "we are picked there to be a bit nasty". He stated that the Player had tried to impose himself at the first scrum and accepted that he had repaid the compliment at the next scrum.
15. He went on to explain that, in his view, the Player was scrummaging in a way that was deliberately making illegal contact using his (the Player's) head. He was lining up directly in front of Mr Park's head and thereby not allowing him to engage properly. He was then applying pressure to Mr Park's head that caused severe pain down his neck and back. This was caused by the Player either pushing against Mr Park, temple to temple or forehead to forehead and on occasion by placing his forehead on the top of Mr Park's head and pushing down.
16. He stated that he had never experienced anything like this before. He had spoken to the Referee about this, and whilst the behaviour initially stopped it then carried on. He confirmed that the Referee had been robust in ensuring that he could see "6 shoulders" before the engage, but thought that he had not then seen what the Player was doing.
17. He had spoken to Mr Ellis at half time and warned him about what was happening ahead of being replaced by Mr Ellis in the 2nd half. He did not however see the scrum that led to Mr Ellis's injury.
18. On questioning Mr Park however indicated that the Player was only applying this pressure at and before the "crouch" command and that he was then scrummaging normally when the Referee called "engage". He also went on to say that he had thought the Player to have been very good and, significantly, in the Panel's view that had it not been for the incident involving Mr Ellis, he would "*not have had thought any more of it*" [the Player's play at the scrum].
19. In general the front row for both sides was solid and experienced. He normally now plays in Surrey 2, and noted that the front rows were of a higher level than he would at present normally encounter.

Mr Charlie Ellis

20. Mr Ellis was 18 at the time of the game. His statement recorded that most of his youth rugby had been played in the backs before moving to the back row. At 15 he suffered a broken ankle which affected his pace and hence he “moved up” to the front row at about 16. However, he confirmed that he had only played 4 previous games as hooker and that he was the lightest (and it was presumed youngest) player in the front row that day. He was 19 in December.
21. He recalled being warned by Mr Park about the Player’s actions at half time and was certain that there had been two scrums before the scrum which led to his injury. He too claimed that the Player had used his head to apply pressure on his head at both these scrums.
22. At the third scrum the Player had placed his head on top of his head and pushed down. He heard three clicks before the Player’s head slid off into a normal scrum position. His arms however went numb and he collapsed to the floor.
23. It was common ground that he was taken to hospital from the ground. He was diagnosed with a dislocated C5 vertebra and some compression of the spinal cord. He required surgery to straighten the vertebrae and had a wire inserted that will remain with him for life. He is still in a neck brace and is uncertain as to when it will be removed. It is also unclear whether he will ever play rugby again, but he has been told that whatever happens he will not be able to play in the front row.
24. Mr McEvilly did not refer the Panel to the Referee’s report and no criticism is intended in this respect. The report noted that Surrey had the stronger scrum and that conditions were slippery. There had however only been one collapsed scrum (in the 1st half) prior to the incident which was reset without problem. He confirmed that Mr Park had complained about the Player’s actions on 2 occasions (one of which he felt was without merit), that the Player was spoken to after each complaint and that the problems did not then reoccur.
25. The Referee recorded that the incident had occurred at the first scrum of the 2nd half and that he had paid particular attention to the position of the replacement front row (Mr Ellis and a prop) before the scrum set. It was a Surrey scrum and the ball was won quickly before being distributed to the backs. He only became aware of the injury to Mr Ellis at the next breakdown. There were no further problems with scrums thereafter.

FINDING

26. Having regard to the gravity of the injuries sustained the Panel very carefully considered all the evidence and submissions. It had no hesitation in concluding that it was entirely correct to bring the citing and commend Surrey for the thorough and professional way in which it was presented.
27. The Disciplinary Regulations nevertheless require that it is for the citing party to prove the citing to the standard required being the balance of probabilities. Mr McEvilly had indicated that the citing was put on the basis that the Player had illegally rushed at his opponents. On the evidence presented, the Panel could only conclude that there was no case for the Player to answer on the charge as laid.

28. Owing to the seriousness of the injuries the Panel however went on to give lengthy consideration as to whether there was evidence sufficient to necessitate the Panel exercising its power to amend the charge to one under Law 10.4 (k) – acts contrary to good sportsmanship.
29. The Panel had the benefit of, and was greatly assisted by, the expertise of Mr Doubleday who played many games of first class rugby at prop for Bristol and played in that position in the club's cup winning side of 1983.
30. However, on the basis of the evidence available, the Panel was nevertheless unable to be satisfied, to the standard required, that an act of foul play had occurred under that law and accordingly the citing was not upheld.
31. The Panel though hopes that the Player will reflect very carefully indeed on the events of that day. He is a player that it is hoped has a considerable playing future ahead of him and he has already represented England at Under 19 level. Mr Ellis was younger, lighter and less experienced. Whilst the Player cannot be faulted for playing in a competitive manner, it appears clear that this competitiveness was pushed to its fullest. In a game which it had been hoped would be played in a Barbarian spirit in memory of a great servant of the game, it is a matter of deep regret that an injury of this nature should have occurred in these circumstances.
32. The Panel wishes Mr Ellis a full and speedy recovery and expresses the fervent hope that he will be able to play again in the future.

COSTS

33. There is no order as to costs.

Jeremy Summers

Chairman

9 January 2009