

the level of Diggins lower back. The impact causes Diggins to topple over while in the air and he falls heavily to ground, the first point of contact being in the upper back/lower neck/shoulder region. His legs are vertical in the air above him when contact with the ground is made. He is injured by this impact and is attended to immediately. After a period of treatment he is able to resume playing.”

3. The Panel viewed the DVD footage of the incident which was consistent with the citing complaint. The referee appeared to consider that both players had been competing for a high ball and that the incident was accidental. He awarded a scrum to Northampton to restart the match. Diggins suffered no significant injury and was fit to train and play in the Guinness Premiership match the following week.

4. The Player said that he saw the box kick from the Northampton 9 and ran forward to compete for the ball. His focus was only on the ball and he kept his eye on the ball as he ran forward. He jumped at the appropriate time and then realised that Diggins would get there before him. He thought a collision was then inevitable and waited for it. He realised that what occurred was very dangerous and said he would not have wished it to happen to him. However he did not mean to “take the opposition player out” and did not act with any malicious intent.

Mitigation

5. Richard Hill said that the Player has been with Bristol for 4 years. He is not malicious – indeed he is a real gentleman who simply enjoys playing the game. He has over 20 caps for Samoa and is a man of impeccable character who has never appeared before a disciplinary panel in the past or received any sanction. Mr Hill opined that this was a “clumsy” incident and although meriting some action because of the risk of causing serious injury, he was not sure whether the Player could have done anything to avoid contact once he was in the air. He also said that as soon as the citing complaint was received by the club they decided to impose a sanction and suspended the Player for 2 weeks on 8 January.

6. The Player expressed genuine remorse for doing something which could have caused a significant injury. He said that he immediately apologised to Diggins after the match. This whole affair had caused him significant embarrassment and had received significant media attention in Samoa, much to the consternation of his family.

Sanction

7. The panel undertook an assessment of the seriousness of the Player’s conduct¹.

- a. The Panel considered whether contact had been accidental or whether the Player could have taken any action to reduce the risk of injury. We believe that if contact was inevitable the Player was under a duty to seek to

¹ As required by RFU Regulation 8.2.5 (IRB Regulation 17.14.2)

minimise potential damage and in this case he could have wrapped Diggins with his arms (admittedly committing an offence for which a penalty would have been awarded) so that both players would have fallen to the ground but neither head first. The Panel therefore decided that the offending was reckless rather than deliberate² on the basis that the Player initially intended to compete for the ball in the air. However, as soon as he took off he realised that Diggins was going to catch the ball before he was able to compete. He had then instantly realised that a collision was inevitable but made no effort to minimise the risk of injury to Diggins. There was no malicious intent in this action, it was made in the heat of the moment, and the Player immediately knew the seriousness of what had occurred.

- b. The action was serious because of the high risk of potential injury. A player who falls to ground head first is in jeopardy of very serious catastrophic injury. This particular case, where two players were initially competing for a ball in the air, is an example of a very difficult area because the difference between lawful competition in the air and dangerous tackling is minute and may depend on a split second of timing in an extremely dynamic situation. Nevertheless, players must be aware of the risks and take particular care to ensure they do all that is possible to minimise the risk of injury.
- c. Diggins was shaken and winded but was not injured significantly and, after about a minute of attention from the physiotherapist stood up and was ready to resume. He was, however, extremely vulnerable in that he was concentrating on catching the high ball and had no control of his descent having been taken off balance by the illegal tackle.
- d. There was minimal reaction from other Northampton players who briefly remonstrated with the Player but quickly moved away from any conflict.
- e. There was no premeditation and the incident happened spontaneously.

7. Although the risk of catastrophic injury is as high in this sort of case as it is in a dump or spear tackle, the culpability of the offender is lower where legitimate competition for the ball changes at the last second to an illegal challenge. Nevertheless it is equally important that this sort of tackling is dealt with severely not least to bring to the attention of other players the potential risks. Although there was no injury, a tackle which causes a victim to drop head first into the ground from some height is inherently a more serious form of dangerous tackling. This is an area of the game where there is a real risk of catastrophic injury caused when two or more players jump into the air to compete for a high ball. It is dynamic and exciting, and requires great skill from players, but a player must be aware that as soon as he realises he is going to be beaten to the ball he must then take every possible action to minimise the risk of injury – even if that means he has to commit a technical offence.

² As defined by RFU Practice Note 1/06 (RFU Disciplinary Regulations Appendix 9)

8. Any offending which causes an opposition player to land on his head or shoulders would normally be classified as at least mid range or top end in the scale of seriousness. However, in this case the Panel concluded that this could properly be classified as at the lower end of the scale because of the very short time it took to change from competition for a high ball to an illegal challenge and the other matters listed in paragraph 6 above.

9. The LOW END entry point for dangerous tackling is 2 weeks suspension. The panel assessed that there was one aggravating factors and that is the need to deter this type of offending.³ This is not purporting to deter lawful competition for a high ball but to deter players from taking no action to ensure they take action to safeguard opposition players in such circumstances. All of the relevant mitigating factors⁴ were present: the Player accepted that he had committed an act of foul play from the outset, he has an impeccable record, he has been playing at the top level for a long time without having appeared before a disciplinary panel, his conduct prior to and at the hearing was outstanding and he showed genuine remorse. In all the circumstances, therefore, the panel concluded that any increase in sanction to reflect the aggravating factor should be discounted to reflect the mitigation.

10. The Panel therefore judged the appropriate sanction to be 2 weeks suspension. The Player is suspended from 8 January 2009 (the date when Bristol suspended him) until 21 January 2009. He may play again on 22 January 2009.

11. The Panel commend Bristol RFC for their prompt and responsible action in dealing with this case.

Costs

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

Right of Appeal

13. There is a right of appeal against the decision and this should be lodged with the RFU Discipline Department by 1700 by Thursday 15th January 2009.

Signed: **Jeff Blackett**
Chairman

Date: **13th January 2009**

³ RFU Regulation 8.2.6(c) (IRB Regulation 17.14.3(c))

⁴ RFU Regulation 8.2.7 (IRB Regulation 17.14.4)