

**RUGBY FOOTBALL UNION**

**APPEAL PANEL HEARING**

**Venue:** Holiday Inn, Haydock

**Date:** 28<sup>th</sup> October 2008

**Player:** **CARL DRISCOLL**                      **Club:** St. Edwards Old Boys

**Match:** St. Edwards Old Boys v Trentham

**Date of Match:** 1<sup>st</sup> March 2008

**Panel:** Antony Davies (Chairman), John Brennan and  
John Loughton

**Secretariat:** Bruce Reece-Russel, Brenda Parkinson (RFU Disciplinary  
Department)

**Attending:**                      **Trentham RUFC :**

Graham Lewis (Secretary)  
Michael Duncan (Honorary VP)

Witnesses :  
Michael Bezus (Trentham player and witness)  
James Dono  
Dawn Bezus  
Aaron Barker

**St. Edwards Old Boys:**

Carl Driscoll (6.9.70) (“the Player”)  
Lionel Greig (Solicitor representing the Player)

Witnesses:  
David Moran (Chairman, SEOB),  
Michael Naylor  
Kris Farrell  
Michael Driscoll  
Vickie Driscoll

**Observers:** Michael Procter (Vice Chairman/Chair of Discipline,  
Trentham RUFC)  
Clif Barker (Lancashire County CB Disciplinary Chairman)

1. Decision of Lancashire County CB Disciplinary Panel dated 25<sup>th</sup> September 2008, under which a citing by Trentham RUFC of the Player for biting an opponent's finger contrary to Law 10(4)(k) had been found proved, with the Player consequently being suspended for a period of 52 weeks.

### **Basis of Appeal**

2. The basis of the appeal was set out in a written notice dated 8<sup>th</sup> October 2008. The appeal went to both finding and sanction and its grounds can conveniently be summarised as follows:

- There was no independent corroborative evidence in support of the citing.
- The Referee did not see the incident.
- The finding of the Disciplinary Committee in relation to the citing was wrong in that the citing was not proved on the balance of probabilities.
- With regard to sanction, it was submitted that the facts of the case did not support the length of suspension. The Player took issue with the finding that he had showed a lack of remorse. He had not given evidence, having received legal advice not so to do and had not presented the full extent of the available and relevant mitigation at the time.

### **Introduction and Preliminary Matters**

3. The Panel introduced itself. No party had any objection to its composition. The documents before the Panel were identified and all parties confirmed they had had sight of, and the opportunity to consider, the same. Potential additional witnesses were identified.

4. The written notice of appeal dated 8<sup>th</sup> October 2008 was deemed to be a valid appeal and the Panel considered the form the appeal hearing should take. The Chairman

explained the options available to the Panel and the differing procedures. Submissions

were invited as to the appropriate form.

5. On behalf of the Player, Mr. Greig submitted that there should be a de novo hearing. On the previous occasion before the CB Disciplinary Panel, the Player and witnesses had been advised not to give oral evidence or to tender themselves for cross-examination. They had been advised that their written statements were of equal probative value to oral evidence given by the citing Club which had been tested under cross-examination. They had been disappointed that the CB Panel had not shared that view. As insufficient weight had, in their view, been attached to the written statements, the Player was now prepared to give evidence supported by oral evidence from other witnesses. All were prepared to undergo cross-examination so that their evidence could properly be weighed.

6. Mr. Lewis, on behalf of Trentham, was content to leave the matter to the Panel.

7. In coming to our decision as to the appropriate format for the appeal, we are assisted greatly by the concise and comprehensive written decision from the CB Panel. That Panel carefully considered the relevant Disciplinary Regulations and weighed properly (in our view) the probative value of witness evidence given orally against that given in writing only. Disciplinary Regulation 11.1.3 requires us to be satisfied that a de novo hearing should meet the interests of justice. We note that the Player and his witnesses were acting specifically upon legal advice on the last occasion. They are not to be criticised for taking such legal advice, even though with the benefit of hindsight, that appears not to have been in their best interests given the considerations the CB Panel had to undertake. As we are now informed that the Player and his witnesses are prepared to give oral evidence and be cross-examined, we take the view that the interests of justice require that evidence to be so given so that this Panel has the benefit the CB Panel did not of assessing the probity and cogency of evidence on both sides on an equal footing. Accordingly, the matter proceeds by way of de novo hearing.

8. The powers available to the appeal Panel were confirmed, it being pointed out specifically that the Panel had the power to reduce or increase the original sanction in

appropriate cases. All parties confirmed that this was understood.

9. Mr. Greig queried whether Mr. Duncan should be involved in the hearing to the extent that it was intended he would assist Mr. Lewis. It was noted also that Mr. Duncan knew a member of the Panel. It was accepted that Mr. Lewis was not a qualified lawyer, but the burden of proof in the case was now upon him following the decision that the matter would proceed by way of de novo hearing. Although he was not legally trained, he may be called upon to cross-examine witnesses and it was felt right and proper that he should have some modest assistance. Mr. Greig accepted that.

### **Charge and Plea**

10. The Player was cited for an act contrary to good sportsmanship in that he was alleged to have bitten an opponent contrary to Law 10(4)(k). He denied the offence.

### **The Citing Complaint (Trentham's Case)**

11. Mr. Lewis described in outline the circumstances leading up to the citing. During the game on 1<sup>st</sup> March 2008, an incident took place that resulted in a Trentham player having to leave the field to go to Hospital for treatment. After approximately 30 minutes of the game, a ruck formed in the Trentham half on about 10 metres. As the ruck broke up the Referee stopped play. The Trentham hooker was receiving treatment. The Referee called a SEOB Official onto the field. He spoke with one of his players, who then walked off the field of play. That player was the opposition hooker. The Trentham player also left the field of play and was taken to Hospital. After the game, he had spoken with the Referee, who indicated that he had not seen the incident and could therefore not take any action, but he had examined the injury to the Trentham player, which looked to have been sustained as a result of a "bite".

12. The injury was recorded by the Hospital as a "partial amputation of the right index finger as a result of a human bite".

13. After some investigation, it was suggested that the alleged perpetrator was the

SEOB Player, Carl Driscoll, who at the time was wearing the number 17 shirt.

14. By letter of 30<sup>th</sup> March 2008 to Lancashire County CB Disciplinary Panel Secretary, SEOB confirmed that the Player identified as the alleged perpetrator was Mr. Carl Driscoll, who was playing in the position of hooker during the game and wearing the number 17 shirt. Identification is not a point taken by the Player or his Solicitor in connection with this appeal.

15. Officials of Trentham discussed the matter and injury to their player and spoke with the Referee twice after the game. The decision to cite was taken by the Club following consultation with the Staffordshire Disciplinary Secretary and Lancashire CB Secretary. The victim player, Mr. Bezus, was asked for his views, but ultimately the decision to cite was taken by the Club and not the victim player.

16. Mr. Lewis conceded at the outset that no witness evidence would confirm any individual saw the action of a bite on the finger. However, Mr. Bezus was clear in his recollection and it was submitted that there could have been no other manner in which this injury could reasonably have been sustained. Furthermore, medical evidence indicated that the injury had been sustained as a result of a bite. This would be corroborated by the Referee's report and in other ways.

#### **Evidence of Michael Bezus**

17. Mr. Bezus referred to his written statement of 4<sup>th</sup> March 2008. He stated that he was in no doubt about who had bitten him, namely his opposite number on the field, i.e. the hooker who was wearing number 17 shirt. He had dived over the top of a ruck and Mr. Bezus had placed his hand/arm beneath him in an attempt to drive him up and away from the ball. This is when he bit his finger. He believed other witnesses had seen blood round the mouth of the Player. He also understood the matter had been reported to the Police.

18. He had attended Hospital immediately after the incident where the injury was recorded as a partial amputation of the right index finger as a result of a human bite.

The finger was X-rayed and revealed a fracture to the end of the bone. As a consequence, he had tetanus and hepatitis B injections and was placed on a course of antibiotics. The following day (Sunday 2<sup>nd</sup> March ), he had surgery under local anaesthetic to clean the wound and attempt the re-attachment of the pad of the end of the finger. The re-attachment had gone well, with the Surgeon able to re-attach the nerve and maintain blood flow to the severed section. The finger section was re-attached with internal stitches to the flesh and remaining nail bed and then stitched together externally. There had been confidence that the majority of feeling to the finger end would return in time, but the main concern was that of infection, which would be closely monitored.

19. Giving oral evidence in support of his written statement, he confirmed he had played rugby for 35 years, 25 of them at first team level for Trentham. He felt the incident totally out of order. Things do go on in games, but this was over and above anything which could be regarded as acceptable. He recalled a line-out, following which the ball went to ground and a ruck formed. He stated that the Player dived over the top of the ruck bridging and his team's scrum half shouted "to get that player out of there". He ran in and tried to get his body beneath the player to try and drive him up. As he did so, he felt his finger go into the mouth of the player he was lifting and then felt a searing pain. He said it was quite easy to tell what was going on. There was no question in his mind that it was a bite and that his finger went into somebody's mouth. As the Player bit, the intensity of the pain got worse. He twisted and pulled his hand away. As he did so, he felt his finger "come off". He did not recall any other heads anywhere near the part of the ruck in which he was bitten. There were feet, but no heads. He described turning away, dropping to his knees and saying words to the effect "you bit my fucking finger". The other player denied it, but he had played against him for 35 minutes as his opposite number and was quite confident that the Player was the individual who had bitten him. The SEOB Physio had treated him on the field and advised him to go to Hospital. He was treated by a senior member of the nursing staff, who soaked the finger in an iodine type solution and informed him of the concerns about infection. The medical reports which he produced referred to a human bite and it was not suggested to him at any time or by anyone at Hospital that the injury was sustained as a result of anything other than a human bite. He still had little feeling in the distal end of his right index finger, with a loss of dexterity in finer movements like picking up a screw. He still hoped that he

would get most of the feeling back over the years. He has lost enthusiasm for the game and not played this season. In summary, the player over the ball was wearing 17, he was the only player in the location, he got his arm under him to lift him off and that was when he was bitten. He was prepared to concede that the majority of the injury may have been caused by him twisting and pulling his hand away, but he had done so as a result of the searing pain.

20. Under cross-examination, Mr. Bezus confirmed that he was not aware of any video of incident, but he was in absolutely no doubt as to the player who was responsible. He agreed the match was fair and competitive until that point, with no issues between him and his opposite player. He didn't recall whose line-out it was, only that the ball broke loose and that he was on the 5 metre channel. The ruck formed almost instantaneously, he recalled the player wearing 17 bridging. His head was not on the ground but about 2 feet off the ground with his face looking at the ground. The Player was going for the ball but he did not think he succeeded in getting it. When his scrum half shouted to get him out of there, he entered the ruck. There were other players involved, but they were on the other side of the ruck. He drove in with his right hand under the body. He had no doubt as to which arm he used and on which player. He knows how to drive a player off. He could not go shoulder to shoulder due to the Player's body angle. If he had driven him straight he would have pushed his head further down. He had to get right underneath and put his right arm under the chest in the way he has been doing for some 35 years. He put his head over his opponent's back and could see quite clearly number 17. He was not in physical contact with anyone else.

21. Mr. Bezus demonstrated for us the action he had carried out. It demonstrated lifting, not driving back. He did not see where the ball was. As he tried to lift the Player up, his arm came up as opposed to the Player because he was quite hefty. As he did so, his finger went into the Player's mouth and he felt the bite. He conceded there was no prior aggravation between them, but felt there was intention of malice when he was bitten. He did not recall whether the Player wore a gumshield. He had told the medical staff at the Hospital that he had been bitten and nobody had questioned that.

22. Under questions from the Panel, Mr. Bezus confirmed that his finger was in one

piece as he entered the ruck and when he came out there was a pad of skin hanging off. It was bleeding profusely. He did not put his finger in the Player's mouth deliberately. He was not able to judge whether the Player had sought out his finger. When his finger went into the Player's mouth he felt teeth clamp on it and the pressure and intensity increased until he yanked it away as a natural reaction. He did not believe it possible that someone else on the ground had bitten him as he pulled his hand away from under the Player's face. Just one finger went into the mouth. He recalled that the Player denied his accusation that he had bitten him. He has played for the same Club for 26 years and never been involved in a citing before.

### **Evidence of Aaron Barker**

23. Aaron Barker was playing scrum half for Trentham in the game. He recalled a line-out where the ball went to ground and a ruck formed. He was behind the ruck at the time, managing the forwards and looking for infringements from the opposition. He saw one on his left. The opposition player with 17 shirt came round the side off-side and tried to take the ball from the Trentham player on the ground. He immediately pointed towards the Player and shouted words to the effect "Somebody get him out of the way, he's off-side". Mr. Bezus came past him on his left shoulder and went to lift the Player to remove him from the ruck. Within 5 to 7 seconds after trying to lift him, he turned away and there was blood all over his hand. He did not see a bite taking place. He definitely saw the 17 shirt involved. There was no other incident around the two players. There was only one person infringing, everyone else was rucking. There was nobody else with their head or body or torso lying vertically across the Trentham player on the ground to try to get the ball. There was an assortment of legs and arms, but the opposition 17 was the only active player as everybody else was entangled in the ruck.

24. Under cross-examination, Mr. Barker confirmed he did not see the bite. He could not recall exactly how many players were in the ruck, but did remember his side had won the ball. The opposition player who came in tried to slow the ball coming out. He said to his forwards "to get him out of the way". He thought he was on his knees, with the top of his head (the crown) facing towards him and his face was towards the ground. He was impeding in the ruck. From the angle he went in and the angle his hooker (Mr.

Bezus) went in to remove him, they were the only two players in contact with each other. He saw his hooker try to remove the opposition player by trying to get under him with hands and body to lift him out of the way. He saw the back of his hooker who then turned round, grabbed his hand and there was blood everywhere. The opponent had been so far down that Mr. Bezus had to get under him to move him.

25. Under questions from the Panel, Mr. Barker felt that the incident occurred within 5 to 10 seconds of Mr. Bezus making contact with the Player. There were no other heads close by. The contact between Mr. Bezus and the opposition 17 was a separate incident to the rest of the ruck. Besides this, there was no other grappling going on in the vicinity.

#### **Evidence of James Dono**

26. Mr. Dono was a Trentham player on the day. Following a ruck situation, he was aware of Mr. Bezus pulling out, shouting that he had been bitten and that the end of his finger was hanging off. He went to look at the injury and found the tip of the finger hanging off. He witnessed an argument between Mr. Bezus and his opposite number, whereby Mr. Bezus accused him of having bitten his finger off. He also recalled the Referee talking to the opposition Captain, reporting that he had not seen the incident but, in view of the injury, something had occurred and he would be making a report. He also witnessed an Official from SEOB speak to the player concerned, who then removed his shirt and walked off the pitch. He learned later from Mrs. Bezus that she stated she had seen the SEOB player walking to the changing room wiping blood off his mouth.

27. Questioned by Mr. Greig, Mr. Dono stated that he had not seen the incident itself, or any bite.

#### **Evidence of Dawn Bezus**

28. Mrs. Bezus was a spectator at the game, but was not pitch side when the incident occurred. She first recalled that something was not right when she walked towards the pitch and saw a bare chested player walking by with blood on his face. She asked him if

he was alright but he ignored her and carried on walking past. She was then aware of her name being shouted from the pitch and was called onto the pitch. She there saw her husband with blood and bandaging on his arm. She was told that his finger had been bitten and that he needed to go to Hospital. She went into the changing rooms to collect her husband's belongings and as she did so she looked into a changing room and saw the other player sitting with his head in his hands. She told him that she hoped he was pleased with himself and that her children had been watching the game. She then realised that he was not wearing any pants and so departed.

29. Under cross-examination, she confirmed that she did not see the incident itself. She saw a player with blood on his face. It was a blood splatter. She could not figure out where his injury was. The blood was round his mouth and on his face, but it was not all over his face. It was splattered, it was not smeared. She has watched rugby for 15 years and on many occasions taken injured players to Hospital, so she is no stranger to rugby injuries. She could not be certain how much blood there was as she did not count the spots. She had wondered where the blood on the Player's face had come from until she saw the injury to her husband. She saw no injury on the top of the head of the Player. When she saw the Player walking past her and asked him whether he was alright, she did not at that point know what had allegedly happened on the field.

30. Under questions from the Panel, Mrs. Bezus confirmed that the player walking towards her had blood around his mouth and on his face. She was looking at his face because she was worried he had been injured. She asked him how he was. He did not reply. She did not notice any injuries to the top of his forehead. She knows that when somebody is walking away from the pitch and the game has not finished and he has blood on his face, it is a worry so that is why she asked him how he was.

31. Mr. Greig spent further time questioning Mrs. Bezus about the exact nature of the blood splatter, having informed the Panel that it was part of the Player's case that injury had been sustained to his forehead as a result of stamping in the ruck and that this accounted for the blood on the Player's face which Mrs. Bezus may have seen. Mrs. Bezus confirmed specifically that there was no blood on or coming down from the Player's forehead. It was round his mouth and on his face.

**Further Evidence in Support of the Citing**

32. Mr. Lewis referred the Panel to the further documentation in the Appeal Bundle consisting of written witness statements from Bob Ashworth, Oliver Slater, Joshua Collins, the written medical records from the Royal Liverpool and Broadgreen University Hospital and Whiston Hospital, and a number of photographs of the injury taken by mobile phone immediately after the incident prior to Hospital admission and further photographs showing the finger after surgery.

**The Player's Case**

**Witness Evidence of Carl Driscoll**

33. The Player confirmed the contents of his written statement and expanded thereon. He was playing hooker in this game, wearing 17. He usually plays in the back row. He described what was a normal game, which they knew would be hard, with a lot at stake. They had played this opposition three or four times and it has always been close. He described himself as an honest and fair player and there had been no more than the usual niggles between opposing hookers during the game. He recalled a line-out into which he threw the ball. It was tapped down on his team's side of the line-out but recovered by a Trentham player. He went to recover the ball from the player on the ground. He was low and bent over that player. His head was probably next to the ball carrier's midriff. He felt the impact of the ruck forming. His head was down, facing the ground. The ruck lasted seconds. He felt stamps and boots and said he was definitely stamped on. The ruck ended when the Referee blew the whistle.

34. After the whistle, there were a number of people screaming and shouting. He stayed on the ground because his head was ringing as he had been stamped on. He did not have an injury to the back of his head, though he had already got two cuts on his forehead. He did not recall any contact with an opponent. He became aware of Mr. Bezus gesticulating, saying how he had bitten his finger off. Mr. Bezus was being treated. He recalled him saying "It's him. He has bit my fucking finger off". He took his gumshield out and said "I fucking never". He then heard a Trentham prop say words

to the effect “If it was not you, it was one of you”.

35. The Player always wears a gumshield. He has never been red carded or cited or even disciplined in the past and was offended when he was accused of biting. His team Physio came over and applied the “magic sponge” to his head, but he could all the while hear a carry on and knew that it was directed at him. He was not responsible for the bite. It could not have happened accidentally because nobody put a finger in his mouth. He was facing down, wearing a gumshield, so it was nearly impossible for anybody to get a finger in his mouth. He remembered the Referee speaking to his Captain and then Dave Moran, the Chairman, and he heard Mr. Bezus saying that he was going to be arrested for common assault. That was the final straw. He left for the changing room. He remembered passing a lady whom he didn’t know, but who asked what was up with him. He just kept walking on past her. He denied that his face was covered or splattered with blood, but maintained there might have been blood on his face from his forehead.

36. Under questioning from the Panel, he could not recall anyone attempting to lift him off the ball. When the accusation was levelled at him, he couldn’t understand why. It was so extreme and he had never been accused of skulduggery before. Walking off was dramatic and out of character and he accepted that he had given no reason at the time for walking off. He had two cuts to his forehead, half an inch long each. They scarred. They wept. He had to put Vaseline on during the game. He thought the first cut was a clash of heads, but this didn’t come to the attention of the Referee. He didn’t recall what caused the second, possibly an elbow or a knee. The blood weeping from both cuts did not cause the Referee to mention it, but another player (Mr. Naylor) told him during the game to go to the touchline to put some Vaseline on it.

37. The Player conceded that Mr. Bezus may well have been bitten, the only other possible explanation for his injury being that it was caused by a stud.

38. He was aware that his Club Chairman had come onto the pitch. He did not seek the Referee’s permission to leave the field. He did not come back out. He did not stop for a shower. He believed he had been replaced by John Laycock and assumed that his team continued the game with fifteen players. He has played for the first team for ten

years and is one of the better players. He is competitive and this was a top of the table league match. The winner was likely to be promoted. He accepted walking off was completely irrational, but he did not send himself off for foul play. He denied his face was splattered with blood and that there was any blood around his mouth. He denied he had left the field because he was ashamed of what he had done, though he conceded that to have left in this way may have drawn more suspicion upon him and his actions. He accepted that walking off in this manner was not a rational thing and said that he didn't have a reason for doing it. He kicks himself every day for it.

39. The Player was then referred to his written statement in which he stated "I vehemently denied any wrong doing and to avoid any further incidents I made from the field of play". When asked whether he accepted this was inconsistent with the reasons he was now giving, he could not explain why he had made the earlier statement. The statement he had signed was correct and he could not explain why there was now a discrepancy between that and the evidence that he was giving to the Panel. He denied that he deliberately bit Mr. Bezus' finger in retaliation for being stamped on in the ruck.

40. When questioned by Mr. Lewis as to why he had not mentioned the cuts on his forehead and the blood prior to the appeal hearing, he commented that they were minor small weepy cuts of the sort that the Referee does not stop play for. They were not bandaged or taped over. He wasn't sure when the injuries were sustained, but believed they may have entered the ruck with the two injuries in place. He was also asked as to why the wearing of a gumshield had only been mentioned tonight and not at the previous hearing or in his statement. He commented that he always played in a gumshield.

41. Under re-examination, he confirmed that he had left the field as a consequence of being accused of something he had not done and that he was absolutely certain there was no way he could have caused the injury because there were no fingers in his mouth.

#### **Evidence of Michael Gerard Naylor**

42. Mr. Naylor confirmed the contents of his written witness statement, and gave oral evidence. He played in the game in question and has played in a number of fixtures

against Trentham over the years and it has always been enjoyable. Whoever won this game would be in a prime position for promotion. After about 30 minutes there was a line-out. The ball came in. It went awkwardly. It went down on Trentham's side. The Player went into the Trentham side low and hard. He was behind him and as he drove into the ruck, the Player was being stamped and raked by opposition players. He was concerned about the Player as he saw him take a pretty hard punch to the head. The maul then became a ruck in only seconds and there were about four from each side joined. The Player was low and as he drove in behind him the Player went to ground. He did not recall whether the ball was recovered. He could see Trentham players – at least two – stamping and raking the Player to the head and upper body.

43. Mr. Naylor had no recollection of why play stopped and he didn't hear the whistle. Things just came to a halt and he was immediately concerned about the Player. The Player lay motionless on the ground and his instinct was to administer immediate first aid. He is trained so to do and he got the Player's gumshield out and cleared his airways. The Physio then attended to him. He could see that the player was dazed. He then heard words. He couldn't remember exactly, but the gist was that an allegation of assault was being directed at the Player, and particularly that he had bitten one of the opposition players. He didn't think it was possible for the Player to have bitten anybody and he did not see him bite anybody. He did not hear what the Player said when he was accused, but he himself let it be known that the Player could not have done it as he had nearly been knocked out. He regarded the Player as a hard, fair player. He is selfless. He goes in. He was shocked at the allegation.

44. The Player did not appear compos mentis. He seemed dazed. He had contusion on his forehead which was bleeding. He saw no blood round the Player's mouth. He had no recollection of the Player sustaining a cut before the ruck, nor of advising him to go to the touchline to deal with the cut to his forehead earlier in the game. He could not recollect whether they played on with fourteen or fifteen after the incident, but presumed it was fifteen because another hooker came on. He did not have the Player's mouth in view at all times, but still felt it was unlikely that he bit anybody. He accepted that the game was in the balance when the Player left the field. He also accepted it was very

unusual for someone simply to walk off. When the Player left the pitch, he had a fresh wound on his forehead which was bleeding slightly. Although he was tending to the Player, and standing immediately next to him, he was not aware of any conversation between the Player and Mr. Bezus. Words were being said, but he had no recollection of what they were.

45. Under cross-examination, Mr. Naylor recalled that following the line-out the ball was tapped back to the Trentham side but could not explain why the Player should have indicated it had come back to SEOB. He was asked how he, aged 51, could, in the positions described, have followed the Player into the ruck “immediately” because he must have been a minimum of 5 metres away, having thrown the ball in. He was not aware of what the Physio’s opinion was as to whether the Player was concussed. He accepted it was usual for a Physio to accompany a player off if he is badly concussed, but each situation would be taken on its merits. He cannot say when the cut on the Player’s forehead was sustained.

#### **Evidence of David Moran**

46. Mr. Moran confirmed the contents of his written witness statement and that he is Chairman and first team Manager of SEOB. There was a line-out on about 30 minutes as described. A Trentham player secured the ball and the first person to respond was the Player. He positioned himself in such a way as to try and get the ball. As it was full line-out, all the forwards were in close proximity. The maul became a ruck almost instantaneously and the Player toppled into quite a vulnerable position. He was pinned down and he saw one of the Trentham players strike the Player three times to the back and lower head area. He had shouted out to the Referee to watch what was happening to the Player. At this point, the Referee blew the whistle and he became aware that one of the Trentham players had emerged from the ruck/maul, claiming that he had been bitten. The Player received treatment from the Physio and in the meantime, as the Referee had asked to speak to a SEOB Official, he identified himself as Club Chairman. The Referee drew him a number of metres from the site of the incident and indicated that although he had not seen the incident himself, having seen the nature of the Trentham player’s injury, something serious had happened and that he would be referring to this in his

match report. Mr. Moran returned to speak to the Player to see if he was OK to continue. The Player appeared somewhat dazed, but also agitated that he appeared to be the subject of accusations directly at him by the alleged victim and his team mates and that he had caused the Trentham player's injury. The Player responded to the persistent accusations by saying that he was finished with the game and walked from the field of play. Mr. Moran did not try and stop him.

#### **Further Evidence on behalf of the Player**

47. At this point, Mr. Greig indicated that he intended to call three further witnesses, Kris Farrell, Michael Driscoll and Vicky Driscoll. When asked about the relevance of the evidence they were to give, Mr. Greig confirmed that none had seen the incident itself. They would all state that they did not see the Player bite his opponent, but that none could state that they had a clear, uninterrupted view of the Player's mouth throughout the incident and hence would have to concede that it may have happened as alleged, but that they did not see it. In the interests of expediency, it was agreed that that intention to call such further evidence be noted and the written statement of Kris Farrell be received in evidence as if he had confirmed its contents orally. Neither the members of the Panel, nor Mr. Lewis, had any questions arising out of the evidence being received in this way.

#### **Final Submissions by Mr. Lewis on behalf of Trentham**

48. Mr. Lewis submitted that there was considerable inconsistency in the evidence given by the Player and his witnesses, for example the Player and Mr. Naylor both described the ball coming out different sides of the line-out. He submitted also that the issue of stamping was not relevant to the incident in question. The Club has not cited before and only did so because of the seriousness of the incident. It was a decision taken by the Club rather than the victim player and as such was institutional rather than personal. He submitted that Mr. Bezus' evidence had not been undermined.

#### **Final Submissions by Mr. Greig on behalf of the Player**

49. Mr. Greig summarised the evidence of Mr. Bezus and the citing Club. The game

was competitive, with no malice. It was conceivable that the injury had been aggravated by Mr. Bezus pulling his finger away. His injury had been recorded only as a human bite at Hospital because he had told them that that was the case. Mr. Bezus had accepted that his finger had somehow got into a player's mouth, but there was no evidence that the Player had any intention to bite him. None of the other witnesses advanced Mr. Bezus' case, as they either didn't see the incident or described it differently. Mrs. Bezus was doing her best to support her husband. She wasn't even at the pitch side when the incident occurred, and her account of blood on the face of the Player was inconsistent with the Referee's report.

50. The Player had always given a categorical denial in connection with any accusation. The game was played in fair and proper spirit, with no prior incident. There was no reason why he should have behaved in such a fashion. It was not intended to submit any medical evidence to challenge that in the medial report produced and Mr. Bezus' evidence. The medical records described a human bite only because that was what Mr. Bezus had told them and this was not independent evidence in support of the citing. This was a citing in relation to a serious matter and a high balance of probabilities was required. He submitted that on examination of the evidence of both sides, the Panel could not conclude the threshold was high enough. Such an incident would require independent corroboration and no such corroboration had been put forward.

### **Decision**

51. There are two issues. First, whether Trentham had proved to the requisite standard that Mr. Bezus was bitten. Secondly, if so, whether Trentham had proved to the requisite standard that the Player was responsible for the bite. There is ample evidence to support both those propositions:

- (i) Mr. Bezus saw it, felt it and described it clearly.
- (ii) Though no-one else saw the bite, corroboration of Mr. Bezus' evidence was to be found in the medical evidence and photographs, and the evidence of Mrs. Bezus who stated that she clearly saw the Player's face splattered with

blood, and blood around his mouth, as he walked off the pitch.

- (iii) It is common ground that the Player walked off the pitch without the prior knowledge or sanction of the Referee or his own players. The inference is irresistible that he was so ashamed of what he had done that he felt unable to play on.

The case advanced by Trentham was not seriously undermined by cross-examination. Insofar as the Player's oral evidence conflicts with that of Mr. Bezus, Mr. Bezus is to be preferred. Mr. Bezus' evidence was careful, detailed, cogent and compelling. The Player's credit was compromised by :

- (i) The inconsistent explanation he gave in writing and orally as to why he left the field.
- (ii) His failure to give evidence at the first hearing and though it was stated to be following legal advice, his explanation for this failure invited suspicion.
- (iii) His attempt to explain the blood that Mrs. Bezus saw on his face was all but incredible and inconsistent with Mr. Naylor's evidence.

52. The evidence put forward on behalf of the Player did not undermine the assertion that Mr. Bezus was in close proximity to the Player at the relevant time. The only person to challenge the proximity was Mr. Naylor. Mr. Naylor's evidence could be afforded little weight because his recollection of the immediate aftermath of the incident was revealed to be seriously deficient.

53. Insofar as causation is concerned, the Player had produced no plausible or cogent explanation (including medical evidence) as to how the injury could have been caused by anything other than a bite as alleged. It is not this Panel's experience that the medical profession could have got the presenting symptoms, diagnosis, treatment and prognosis so wrong. The photographs of the injury indicate to this Panel that it was caused beyond peradventure by a bite as described and the Player has done nothing to undermine that.

54. In all the circumstances, this Panel finds the citing proved. It finds it so proved unanimously and to a very high (in this case the requisite) standard.

### **Submissions as to Entry Point, Sanction and Mitigation**

55. Mr. Greig addressed us. He submitted that this was not an intentional act, nor was it deliberate. At most it was reckless without premeditation. There was no subsequent incident between the parties and the game continued after the incident. There was no evidence that the Player sought out the hand of Mr. Bezus. The injury did not require amputation and the victim player was likely to regain full sensation. In all the circumstances, it should be considered as a low end entry point.

56. The Player is a professional man, married with children. He has never been disciplined before. He has played for almost 25 years and is a past Captain and Secretary of SEOB. He is much valued by the Club and is a former first team Captain. He deeply regrets the injury caused but maintains that he was not responsible. He has been courteous and polite throughout the proceedings. Rugby is the focus of his social life and he is at the point in his life where he intends to go into coaching. He is already coaching the Club's Under 9's. Following the allegations, he withdrew his name from selection and there was therefore no internal disciplinary process. He did not play from 1<sup>st</sup> March 2008 to the end of the season and has played only two games this season, on 18<sup>th</sup> and 25<sup>th</sup> October, following the lodging of his appeal, as he was quite entitled to do.

### **Decision on Sanction**

57. The Panel regarded this as a somewhat unusual case in that the Player did not seek deliberately to find someone to bite. His actions were impulsive, rather than premeditated, but plainly deliberate. The extent of injury was exacerbated by the victim player's admission that he pulled his hand upwards in a twisting movement, but this was in reaction to his finger being clamped between teeth and enduring an increasing searing pain. It was a natural reaction. The injury alone puts this offending into the top bracket, and having considered all matters recited previously in this judgment, including the vulnerable position of the victim player, this Panel goes on to conclude that the entry point should be one of 18 months, which equates to 78 weeks, or thereabouts. It is noted that the Player has played twice since lodging his appeal and therefore the suspension period needs to be extended on this account. We find no aggravating factors and have

considered the mitigation submitted on behalf of the Player.

**Sanction**

58. **Carl Driscoll is suspended from playing for a period 80 weeks from 2<sup>nd</sup> March 2008 to 13<sup>th</sup> September 2009. He may play again on 14<sup>th</sup> September 2009.**

**Costs**

59. The Player was ordered to pay costs of £100.00.

**Comment**

60. Offences such as biting and testicle grabbing or twisting or squeezing are generally regarded with revulsion by all those involved in the game. Due to their insidious nature and the difficulty in proving cases to a sufficiently high standard, players regard them with opprobrium and they carry maximum sanctions of 4 years to reflect their gravity. Players should be aware that where, as in this case, the offence is proved to a high standard, then such behaviour will be discouraged with significant deterrent sanctions.

*A.M. Davies*

Chairman

J. Brennan

J. Loughton

5<sup>th</sup> November 2008