

**RUGBY FOOTBALL UNION**

**DISCIPLINARY HEARING**

**At :** Marriott Hotel, Preston

**On :** Tuesday, 16<sup>th</sup> March 2010

**Judgment**

**Player:** CALLUM JENNINGS      **Club:** Whitehaven

**Match :** Aspatria Eagles (2<sup>nd</sup> XV) v Whitehaven (1<sup>st</sup> XV)

**Venue:** Bower Park Aspatria

**Date of Match:** 24<sup>th</sup> October 2009

**Panel:** Antony Davies (Chairman), Mike Hamlin and Peter Rhodes (“the Panel”)

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

**Attending:** Callum Jennings (“the Player”)  
Paul Nicholson (Solicitor representing the Player)

Marcus Nickson (Solicitor representing Aspatria)  
Alan Hedworth (Aspatria player)  
John Heyworth (Chairman, Aspatria)

**Observing:** David McInnes (Cumbria CB Discipline Panel)

**Decision**

- (i) The Panel found the citing complaint in relation to one offence of making contact with the eye or eye area of an opponent contrary to Law 10(4)(m) (acts contrary to good sportsmanship) proved.**
- (ii) The Player is suspended from playing rugby for a period of seventy eight (78) weeks, i.e. from 17<sup>th</sup> March 2010 to 31<sup>st</sup> August 2011. He may play again 1<sup>st</sup> September 2011.**
- (iii) The Panel ordered the Player to pay the costs of the hearing in the sum of £100.00.**

## The Citing

1. This is a citing by Aspatria RFC against the Player which alleges that he made contact with the eye of an opponent (Alan Hedworth) during the above match. The Player denied the allegation.

2. The citing was presented by Mr. Nickson and was supported by oral testimony, written witness statements and medical reports. Mr. Nickson introduced Mr. Hedworth and asked the Panel to look at his left eye area. The physical evidence of injury now carried permanently by Mr. Hedworth was, he submitted, plain to see. Whilst he acknowledged that a hand or fend off was an integral part of the game, Mr. Hedworth's injuries had been caused by an unlawful hand off in that it had been made with an outstretched hand, or extended finger or fingers, which landed in Mr. Hedworth's left eye, causing a rupture of that organ. He maintained that a lawful hand off could not have caused such an injury.

3. Mr. Nickson took the Panel through the medical evidence, which consisted of photographs taken of Mr. Hedworth's left eye whilst in Hospital and subsequently, and correspondence and medical reports from North Cumbria University Hospitals NHS Trust. The Cumberland Infirmary discharge form stated his presenting symptoms to be a ruptured globe of the left eye and a skin laceration of the left lower eyelid. He had undergone surgery for the repair of the ruptured globe and suturing of the skin laceration. A subsequent letter from a Consultant Ophthalmologist confirmed a diagnosis of left severe eye trauma with burst injury to sclera and total retinal detachment. He had been left with a vague perception of light in the left eye, with very little chance of any useful vision, even with surgery. No further improvement with surgery could be predicted, though if pain persisted in the longer term evisceration of the eyeball was suggested.

4. Mr. Hedworth told the Panel that he was in open play one on one with the Player who was carrying the ball. He is 6ft 5ins. and considerably taller than the Player. As he went to tackle him, he was met with the Player's outstretched hand coming towards his face. He felt a blow to his left eye and a "pop". He became aware of fluid leaking out of his left eye and a searing pain. He did not accept that the contact was made with the flat of the hand as he saw fingers coming towards the eye. He received an assessment on the field

from the Whitehaven Physiotherapist who stated immediately that he needed Hospital treatment. He did not think that the Player had intended to blind him, but he could not agree that it was an accident. The incident was avoidable as there was no need for a finger to come into contact with his eye area first. In addition to the eyeball injury, he suffered a laceration to the skin three quarters of an inch below the left eyelid. This was about one and a half inches long. It had not been sustained elsewhere. He had received six to eight stitches in this wound. As to his prognosis, he has been suffering tremendous pain, though fortunately that has settled down of late. He has no sight at all in the left eye and the eyeball is considerably smaller, leading to his facial features being cosmetically impaired. To counteract this, it has been suggested that the damaged eyeball be removed by surgery and replaced with a glass eyeball. He will never play rugby again.

5. Neil Paisley, an Aspatria player, told the Panel that he was about five yards from Mr. Hedworth when he went to tackle the Player. As the two came together, he saw the Player push his hand towards Mr. Hedworth's face. This was done with a straight arm, with the hand and fingers at forty five degrees to the straight arm and in an upwards motion. He had expected the hand off to be on the chest which was level with the Player's arm, because Mr. Hedworth is taller than the Player. He saw the Player's fingers strike Mr. Hedworth around the eye. There was a gush of liquid which flew out from Mr. Hedworth's face, which he now knew was due to the eyeball bursting. He heard Mr. Hedworth yell out and saw him cover his face and drop to the floor in what he thought was some pain. He was certain that the hand and fingers were not at a ninety degree angle to the wrist.

6. John Ravell was the Aspatria Team Manager for the match. He described the Player's powerful playing style. He saw the incident and as the Player approached Mr. Hedworth, he went to hand him off in the face in what Mr. Ravell could only describe as an aggressive manner. As a result of the hand off, he saw liquid spurt from Mr. Hedworth's eye. The hand went straight out in front and contact between it and Mr. Hedworth was made first with the Player's fingers. He was certain that contact was not with the palm of the hand. He described the contact resulting from an upwards motion. When he saw liquid come out of Mr. Hedworth's eyeball, he felt something was desperately wrong. He took Mr. Hedworth to Hospital. He felt it was an unfortunate incident which could have been avoided by the Player using the palm of his hand, not the

fingers, to hand off. Mr. Ravell, in common with Mr. Hedworth and Mr. Nickson, did not allege that there was any malice about the hand off.

7. Kris Borthwick gave evidence of another incident allegedly involving the Player and a statement from Michael Lister was submitted referring to an eye injury he sustained as a result of a hand off from the same player, but we did not feel that these materially assisted our deliberations.

### **The Player's Case**

8. The Player gave evidence. He said that he has played since age ten and has been in the first team for ten years. He has been on the Committee for five years and helps with coaching. He was selected for the League invitation side. He has a playing style which he describes as hard but fair. He has never been sent off or disciplined for any on-field activity before.

9. He told us that he had the ball passed to him from a kick off and set off on a run towards the opposition try line. He beat two defenders, one with a hand off, and ran twenty to thirty yards through a hole in the defence. Alan Hedworth came towards him from the side to tackle. Mr. Hedworth was in a poor position in that he was upright. He made to hand/fend him off. He did so and got round him. He then ran into contact. Play continued for a short time and was then stopped for Mr. Hedworth's injury.

10. The Player told us that he had used the flat of his hand to hand off Mr. Hedworth. His fingers and hand were at ninety degrees to his arm and wrist. The action was designed to push Mr. Hedworth away with the heel of his hand and indeed he had felt contact with the heel of his hand on Mr. Hedworth's head. He did not feel that there was anything wrong with that contact. There was no reaction from anyone and if he had used his fingers as alleged at full pace, he would have broken them. He showed us his fingers. He says he bites his fingernails so could not have caused the laceration injury by using his fingernails. The Referee told him there was no foul play.

11. The Player told us also that he has been deeply saddened by the injury to Mr. Hedworth. Whilst he does not feel he has done anything wrong, he has considered giving

up the game. Nonetheless, he did not believe the contact was illegal, though he accepted that he made contact with the eye. He also accepted that a rupture was a complete split of the eyeball and that level of injury indicated a considerable amount of force. He continued to maintain that the injury was caused by the flat palm of his hand.

12. When asked why he had elected to hand off to the head when the chest seemed to be the obvious place to make contact, he told us that it was a split second decision. He did not accept that it was reckless.

13. The Player plays in the back row – normally on the blind side flank. He agrees that the hand off is an important part of his game. He trains hard and works out in the gym and is a strong player. When we asked him to place the heel of his right hand over his left eye area and explain how the rear of the eyeball could have been ruptured without injury to the bony area surrounding the eye, he was unable to assist us.

14. John Gaffney has coached the player for ten years. He describes him as a fair player who has never been sent off or cited. He saw contact with the open palm and the heel of the hand making contact with the eye in a split second. He considers himself to be an independent, not partisan, witness. He teaches the PE syllabus which includes elements of physiology, anatomy and biology, to A Level. We asked him, in view of his knowledge and training, how he could account for the nature and extent of the injury if he had seen contact with the open palm or heel of the hand. He told us that in his view it was perfectly possible. When we asked him about the perception of risk, he conceded that players should know of the risk of causing injury by handing off to the head and/or eye area, but in this case, the injury had been contributed to by Mr. Hedworth's own fault because of his poor body position when executing the tackle.

15. Andrew Blaney, who played in the back row in the game, explained that rugby is a fast sport and whereas you would normally aim for a body part when handing off because it is much more effective, you are not going to get it inch perfect every time. He had seen the palm of the hand make contact and was able to say categorically that it was not a straight arm and the fingers were not out in front of the hand. Mr. Hedworth had been leading with his head into the tackle and he recalled this being at the same height level as the Player's arm. Mr. Blaney acknowledged that where a hand off was made to the face,

there was more risk of injury.

16. George Collins then gave evidence in support of the Player's case. He is a Chartered Physiotherapist with additional qualifications in immediate injury management. He had an unobstructed view of an extended right arm and cocked wrist. He had attended Mr. Hedworth and seen bruising, a laceration and blood pooling within the eye socket. He was so concerned about the injury that he recommended Mr. Hedworth be taken to Hospital immediately by car rather than waiting for an ambulance. He maintained that on the basis of his training and qualifications, the injury was quite consistent with the contact he had seen and that the flat of the hand could have caused the dual injury (bursting of the eyeball and the laceration under the eye). He supported this by cross-referencing lacerations caused by boxing gloves. We were concerned that we best used Mr. Collins' professed expertise. We asked him in some detail to explain the mechanics and physiology whereby a blunt trauma would cause a large scleral burst rupture and total retina detachment without any apparent injury to the bony structures surrounding and protecting the eyeball. Mr. Collins then appeared to resile from his previous position of medical knowledge and qualification and was unable to comment or assist us further.

17. We asked both Advocates to make their final submissions and address us on RFU Guidance Note 1 Appendix 9 Disciplinary Regulations 2009/2010. Mr. Nickson repeated that it was not the citing Club's case that there was any intention to cause injury. Instead, the actions have been carried out in a grossly reckless manner, resulting in a clear breach of the rules equating to foul play with reckless intent. The medical evidence, he submitted, spoke for itself – the laceration and rupture of such magnitude could only have been caused by an extended digit.

18. Mr. Nicholson reminded us that even a hand off to the head is legal. All contact has a risk. It is a dynamic physical game and what we are asked to deal with is a legal hand off to the face with the flat of the hand. Although serious injury was caused, it was entirely accidental. As to the Guidance Note, he felt that read to the effect that every injury on the rugby field must be as a result of foul play recklessly carried out.

19. Finally, Mr. Nickson addressed us as to the position of the Match Official and that the nature of the injury itself indicated the Referee had been wrong to conclude there was

no foul play. Mr. Nicholson did not seek to persuade us to a different conclusion.

### **Decision**

20. Having considered all the evidence, we are of the view that the citing has been proved on the balance of probabilities and we uphold it. We also make a finding that the Referee was wrong to conclude from the nature of the contact and the injury that there had been no foul play. In coming to this conclusion, we take account of the following :

- Having heard the evidence of the citing Club and its witnesses, we prefer, on balance, the evidence of Mr. Hedworth to that of the Player. Despite his grievous loss, he fairly, and in a measured manner, gave his evidence and his responses to cross-examination by a qualified lawyer. We felt that he was honest and did not try to embellish matters when he could not remember detail. He conceded fairly and, with some grace, that the Player did not intend to cause him injury or to blind him.
- It was never in dispute that the injuries were caused when the Player pushed his right hand into the head/eye area of Mr. Hedworth. The issue is the manner in which contact was made. We find the citing Club's witnesses as to the position and angle of the hand corroborated the evidence of Mr. Hedworth rather better than did those witnesses supporting the Player.
- Mr. Collins – the only witness with any formal medical training – seemed only to be able to apply that medical knowledge to corroborate and support the version of events put forward by the Player. He did not seem prepared to apply that knowledge to the position advanced by the citing Club and we therefore regard his evidence as partial and partisan. The cogency of that evidence and his medical experience is thereby diminished.
- We find that the contact was made with a finger or fingers advancing ahead of the heel or palm of the hand. This is not a legitimate hand or fend off. It is foul play on the basis that it is reckless. In no way do we, or indeed did anyone we have heard from, characterise the foul play as intentional. We do not think the Player

appreciated that a badly executed hand off with such force could cause such serious injury.

### Mitigation

21. Mr. Nicholson reminded us that the victim player was not immobile, defenceless or vulnerable. It was freak injury and whatever the decision of the Panel, the Player would still maintain contact was with the flat of the hand. On the scale of recklessness, he would put it at the very lowest end. It was a genuine hand off in an attempt to run and score a try. There was no reaction on the field and the Player has regretted the injury from the outset. Apologies were proffered immediately after the game and remorse has been present throughout. The Player has no previous record. He invited us to concentrate on the mechanics of the act and contact, not the disproportionate consequences, and submitted that it was capable of being characterised as low end entry point offending. In support of the matters put forward on behalf of the Player, written references from Mr. Jones and Mr. Wood were submitted for consideration.

### Sanction

#### Sanctioning regime – general comment

22. We initially considered our assessment of the seriousness of the conduct of the Player by reference to the memorandum from Tim Gresson, IRB Judicial Panel Chairman, dated 10<sup>th</sup> July 2009 dealing with contact with the eyes or eye area. We have also considered the letter from Bernard Lapasset, IRB Chairman, dated 1<sup>st</sup> July 2009, together with the judgment in the RFU case of Dylan Hartley (23.04.07) and sadly a recent case of eye gouging (Gravesend RFC) which had led to a player being blinded in one eye.

23. In considering the extent to which these assist us in our task, we note that the main thrust of them is to the effect that severe sanctions are necessary against anyone who deliberately targets an opponent's eye. **This present case is as unique in our experience as it is tragic for both sides. In our experience, there are few precedents where such serious long term injury has been caused by recklessness on the lower end of the scale. We have to say that had we considered the Player's actions in this case to have been deliberate, then we would have imposed a ban FOR LIFE.**

24. We are equally mindful of the position had the injury been sustained accidentally, i.e. that there was no foul play and accordingly no question of a period of suspension.

25. We find that the seriousness of the injury alone dictates that this offending is at the top end of the scale of seriousness. Disciplinary Panels have for some time been reminding players that even where offending is reckless, it was only a matter of time before recklessness resulted in such serious and grievous injury as has been sustained here.

26. In cases where the offending is classified as being at the top end of the scale of seriousness a Disciplinary Panel must assess the appropriate entry point within a given range. The top end range for offences of contact with the eye or eye area is twenty four to a hundred and fifty six weeks (three years).

27. In assessing the entry point within that range, we referred to RFU Disciplinary Regulations Appendix 9 Guidance Note 3. We have taken account of :

- The offending Player's intent. There is not, nor has there ever been, any suggestion or evidence that the offending Player intended to commit the offence or that he intended to injure the victim.
- The effect on the victim. The medical evidence is unchallenged. The victim player has lost the sight permanently in his left eye. He has had surgery which was not able to repair his injury and may need further surgery to eviscerate the shrunken eyeball and have it replaced with a glass eye. He is now lost permanently to the game as a player. He has been in considerable pain and discomfort over a long period.
- The absence of reaction on the field of play – there was no reaction.

28. In those circumstances, the appropriate entry point is a suspension of ninety one (91) weeks. This entry point reflects the factors already mentioned.

29. We do not find that there are any aggravating features in this case under Regulation 8.2.7. The Player has shown remorse and, within hours of being informed as to the

seriousness of the injuries, contacted the victim player's Club to express his regrets. He has no previous record of offending. Whilst we fully appreciate the need to combat a pattern of offending, this case can be distinguished from those where sanctions need to deter insidious intentional and deliberate offending.

30. Having considered there to be no aggravating features, we considered the mitigating factors listed in RFU Disciplinary Regulation 8.2.8.

(a) The presence and timing of an acknowledgment of culpability/guilt by the player – since he vigorously contested the matter, he is not entitled to any credit for this factor.

(b) A good record and/or good character. The Player is twenty six and has no disciplinary matters recorded against him. He is well thought of and appreciated by his Club and is involved in coaching and Club administration as a volunteer.

(c) The age and experience of the Player. He is not entitled to any reduction based on youthful impetuosity.

(d) The Player's conduct prior to and at the hearing. The Player was polite and respectful at the hearing. His behaviour in the presence of Mr. Hedworth was more than appropriate. Unfortunately, he was unable to maintain his dignity after the finding against him.

(e) Remorse – the Player has shown genuine remorse and concern for the victim player and his injury.

31. We have decided that these mitigating factors taken together with the two weeks he served as an interim suspension warrant a reduction in the suspension of some thirteen weeks from ninety one to seventy eight weeks.

32. In all the circumstances, the Player will be suspended from playing rugby for seventy eight weeks. As this suspension is so long, it includes periods when the Player might not be playing, for example during the two summer breaks. The Player is therefore suspended from playing all rugby from 17<sup>th</sup> March 2010 to 31<sup>st</sup> August 2011. He may play again on 1<sup>st</sup> September 2011.

33. This is a significant sanction but it must be set into the context of grievous injury. The suspension is solely against playing, so the Player is not precluded from undertaking

other off field activities to support his Club, including coaching.

### **Costs**

34. The Player was ordered to pay £100.00 in costs.

### **Right of Appeal**

35. The Player is reminded of his right of appeal as set out in Disciplinary Regulations.

*Antony Davies*

Antony Davies,

Chairman

19<sup>th</sup> March 2010