## **RFU DISCIPLINARY HEARING**

At: Bloomsbury

On: Monday 22 February 2010

JUDGMENT.

Player: Scott Murphy Club: Upminster RFC

**Match:** Billericay v Upminster

**Venue:** Billericay **Date of match:** 23<sup>rd</sup> January 2010

Panel: Jeff Blackett (Chairman), Jeremy Summers, Philip Evans

Secretariat: Bruce Reece-Russel

**Attending:** The Player.

James Segan – Counsel representing the Player

Tony Bond – Billericay Club Captain

Jason Hendy - Billericay

**Observing**: Jerry Mansfield – Chairman Essex Disciplinary Committee

Denise Robinson – Secretary Essex Disciplinary Committee

1. This is a citing by Billericay RFC against the Player which alleges that he made contact with the eye of an opponent (Scott Last of Billericay) during the final quarter of the London League Division 3 North East match between Billericay and Upminster on 23 January 2010. The Player denied the allegation.

### The Citing

2. The citing was presented by Tony Bond and depended entirely on oral testimony, written witness statements and medical reports. Mr Last told the Panel that he joined a ruck which had formed in about the 65<sup>th</sup> minute of the match. He said he hit the Player (Upminster No 10) hard as he cleared him out legitimately and drove him backwards. Both players fell to the ground with Last on top. He said the Player put his arm round his neck and rolled on top of him and then put at least a couple of fingers into his eye as he gripped his face. As he described what occurred Last indicated his hand in a claw-like position with two fingers making contact with his

right eye. He said he immediately lost his temper and a scuffle started but by that time the referee was at the scene telling him not to react. He said he told the referee that someone had put his finger in his eye.

- 3. Other Billericay players gave evidence as to what they saw. Dan Kell said he saw the two players grappling and saw the Player put his hand on Last's face, although he did not see contact with the eye. Anthony Atkinson said he saw the Player holding Last in a head lock with his hand gripping his face in the area of the cheek and throat but he did not see direct contact with the eye. Written statements from David Draper described the Player "put his open hand across Scott Last's face" and from Adam Willingale who witnessed "the Upminster fly half's hand covering [Last's] face."
- 4. All of the witnesses said that these were the only two players involved in the scuffle.
- 5. After the incident broke up, Last stayed on the ground and the club physiotherapist, Pauline Slattery, attended him on the pitch. She said that Last had his hand over his right eye. On initial examination his eye was streaming clear liquid, there was a blood spot on the upper lid of the eye and his cheek and mouth were both bleeding. She stemmed the flow of blood and then washed Last's eye first with water and then with saline solution as she observed that it had already started to swell up. He was blinking rapidly and complaining of pain. She placed an ice pack over the eye for "a few minutes", but although Last said his vision was blurred and his eye was still streaming, he said he wanted to carry on playing.
- 6. Atkinson said that he had seen and spoken to Last no more than a minute before this incident and observed that he had no injury to his eye or face. Immediately after the incident he saw that Last had physical damage to his right eye, including a blood blister on his eye lid, and that his cheek below was bleeding. He said Last was complaining that he had been "eye-gouged". Billericay captain, David Hyett, had seen the Player and Last grappling, but did not observe any detail However, after the incident had broken up he observed that Last's eye was 'really

inflamed.' He drew the referee's attention to the eye and complained that he had been gouged, but the referee said he could take no action because he had not seen anything.

- 7. Witnesses suggested that play was stopped for about three minutes, although the Player said it was much shorter than this, and the game resumed with Last playing. However, he said that he could not see properly and he left the pitch to be replaced at the next breakdown.
- 8. After the match the physiotherapist again examined Last's eye. She thought he had scratched the right eye over the iris part and the medial side of the white and advised that he see a doctor immediately. During the next hour in the club house she administered further eye wash but the eye continued to stream and became worse as he went towards brighter light, and he was continually blotting it with tissues. She said that his discomfort and symptoms did not appear to have improved at all, and his vision was still blurred, so he was taken to the Accident and Emergency department at Basildon Hospital about 2 hours after the match. At some time before he left the club a photograph was taken of his face which was presented to the panel. It was not of very good quality, but it showed reddening to the upper eye lid and abrasions above and to the side of the eye and a scratch on his right cheek.
- 9. Last was seen by a doctor in A&E at 1824 on 23 January. He was diagnosed as having a corneal abrasion on his right eye (-40 involvement) and prescribed Chlor Ointment (1%) to be applied four times a day. He was advised to see his own GP for an ophthalmology referral if still symptomatic after seven days. Last complained of continuing pain and blurring of vision and returned to A&E the following morning. The doctor observed corneal abrasion and conjunctivitis in the right eye which was red and tender. Last was due to go to work that day (Sunday) but he took a day's leave and for the next four days he used public transport to get to work rather than driving his car. He said that symptoms persisted for about five days.

## The Player's Case

10. The Player gave evidence. He said that he had played rugby for about 23 years since he was 5 and, apart from a couple of short periods elsewhere, he had

always played at Upminster. He has never been in any disciplinary trouble before and he works for the RFU as a Community Rugby Coach in the Essex area.

- 11. He said that he joined the ruck and was cleared out by Last. He said that Last drove into him and then started to lift his leg in such a way that he feared he was trying to turn him over and spear him into the ground. He therefore got him into an arm lock to protect himself and they both fell to the floor. When on the floor he thought he was going to be hit so he kept hold of him in an arm lock. He said the ensuing scuffle was no more than "handbags" which was quickly broken up. He said that throughout he was only defending himself and afterwards he did not hear anyone complain about eye gouging. He said that Last received some attention probably for only a minute to a minute and a half and then he continued to play for about five minutes before he was replaced. He stated categorically that his hand did not make any contact with Last's face or eyes and that the totality of the contact was placing his arm around his neck to hold him in a head lock, with the head near his chest area. He accepted that nobody else was involved in the scuffle.
- 12. The Player said that the first time he heard about gouging was at the end of the match when he went to shake hands with Last. He said Last swore at him and accused him of gouging him. The Player said that at this stage he observed no discernible injury to Last's eye.
- 13. Chris Byrne, a member of Upminster, said that he watched the match. He saw the scuffle but did not see any contact with the eye, but he heard Last complain that the Player had hurt his eye. He also said that earlier in the match he had seen a player receiving treatment to his eye he thought it was to do with grit in the eye or something to do with a contact lens. He could not be sure but he thought that player might have been Last. After the game he observed Last accusing the Player of gouging him.
- 14. Statements of Andy Fairbairn (Upminster player) and Stuart Field (spectator) were read. Both described a scuffle and both said that they did not see fingers near the eyes of either player.

## Submissions on behalf of the Player

15. Mr Segan reminded the Panel of the burden and standard of proof and submitted that the evidence must be strong before the Panel could find that the act of foul play was more probable than not. He said that only one person – the complainant – gave direct evidence that the Player had put fingers in his eyes and his evidence was inconsistent with others who had described the headlock. He said that the injury to Last's right eye could have been caused by any number of incidents in the first 65 minutes of the match and the diagnosis was consistent with legitimate contact. He submitted that the Player was not seeking to hide behind any technical defence such as accident but was clear that he did not make contact with the eye. Further the volume of evidence was consistent with his account.

#### Decision

- 16. The evidence is such that the citing has been proved on the balance of probabilities and we uphold it. We believe that the evidence is so strong that had this been a criminal trial a jury would have been satisfied so that they were sure of his guilt. We have no doubt that the Player made deliberate contact with Mr Last's eye by gouging him with two fingers and causing not insignificant injury. In coming to this conclusion we take into account the following:
  - It is clear that Last suffered an injury to his right eye consistent with gouging. It is also clear that the injury occurred during the scuffle between him and the Player. We reach that conclusion because of the evidence from Mr Atkinson that there was no injury just before the ruck and from Miss Slattery, and others, that his eye was injured afterwards. We have discounted Mr Byrne's evidence in relation to some unknown player having treatment on an eye earlier in the match as being too vague to have any weight or relevance.
  - It is also clear that the Player caused the injury. Nobody else was involved in the scuffle and Last's evidence was compelling he was honest and did not try to embellish matters when he could not remember detail. Other witnesses who saw the Player's hand on or over Last's face corroborated this evidence. We

- did not find the Player to be credible and discounted his suggestion that his hand made not contact anywhere on Last's face.
- The Player's denial of any contact with the face and his assertion that Last did
  not have any injury to his eye at the end of the match draw us to the
  conclusion that he lied to us when he gave evidence to hide the fact that he
  knew he deliberately attacked Last's eyes.

# Mitigation

- 17. Mr Segan reminded the Panel of the Player's previous good character and suggested that this incident must have been an aberration which was entirely out of character. He urged the Panel to restrict any suspension only to playing because if it affected his ability to coach or administer he would definitely lose his job. As it was that employment was in jeopardy because of the Panel's finding.
- 18. Mr Segan suggested that the offending could be properly classified as at the Low End or Mid Range because he had acted because of provocation, the injury was not permanent and it did not appear to have had an impact on the Game.

## Sanction

## Sanctioning regime – general comment

19. We first made an assessment of the seriousness of the conduct of the Player and in so doing referred to the judgment in the RFU case of Dylan Hartley 24 April 2007 (imposing a sanction of 26 weeks suspension). The following statement of principle has been adopted by the IRB in a letter to all Judicial Personnel dated 10 July 2009:

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.

20. The IRB directive referred to a letter from Mr Bernard Lapasset, Chairman IRB, dated 1 July 2009 which expressed concern about lenient sanctions imposed on Schalk Burger (South Africa v British and Irish Lions) and Sergio Parisse (Italy v New Zealand) in June 2009. Mr Lapasset said:

"The prevalence of eye-gouging in the Game is a major worry for the IRB with cases ranging from reckless to intentional. In order to arrest recourse to this heinous act it is necessary that strong sanctions are disbursed as a deterrent...... We felt it necessary... to express our strongly held view that such serious offences of this sort must be dealt with severely to protect players, deter others from such activity and to remove offenders from the game to ensure that they learn the appropriate lesson."

21. Sadly a recent case of eye gouging in England (Gravesend RFC) has led to a player being blinded in one eye: that is a stark indication of why this offending is so dangerous, and why severe sanctions are necessary against anyone who deliberately targets an opponent's eye even where damage is not permanent.

## **Entry Point**

- 22. In assessing the seriousness of the Player's conduct we took account of the following features of his offending:
  - a. The offending was deliberate. Mr Last gave very clear evidence that as soon as he and the Player hit the ground the Player put his hand round his face and put two fingers into his eye and gouged him. In our view this was neither accidental nor reckless and was clearly designed to cause significant discomfort to Last.
  - b. The actions were serious. The Player used considerable force pressing his fingers into the eye socket in a clawing motion.
  - c. The Player suggests he was provoked in that he though Last was firstly attempting to lift him up and spear him into the ground and secondly attempting to hit him. We do not accept this analysis and determine that there was no provocation.
  - d. Last suffered significant injury which required two visits to the hospital, one day off work and four further days of discomfort which prevented him from driving. It was obviously very painful.
  - e. This contact occurred during a scuffle which was taking place between the two men after the ball had moved away and then broke up, but it drew an angry reaction from the victim.
  - f. Last was in an extremely vulnerable position. He was lying on his back, probably in a head lock with the Player on top of him and he was unable to protect his eyes from attack.
  - g. We accept that this was opportunistic and there was no premeditation.
  - h. The conduct was completed.
- 23. In our view the Player reacted to being cleared out and dumped on the ground and deliberately targeted Last's eye intending to cause serious discomfort to his victim. He must have realised that there was a risk of causing a serious injury and he had no concern for the welfare of his victim. In those circumstances this offending is at the Top End of the scale of seriousness.

## Sanction

- 24. 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 24 156 weeks (3years).
- 25. 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. The clawing action applied with his fingers to Last's right eye indicate a clear intent not only to make contact with the eye but also to inflict a significant degree of discomfort and pain to the victim;
  - The effect on the victim. Last received not insignificant injuries and was in considerable distress during the attack and discomfort for a number of days following;
  - The IRB's directive that this sort of offending should be dealt with severely.
- 26. In those circumstances the appropriate entry point is a suspension of 52 weeks. Had the evidence indicated that the Player caused more serious injuries the entry point would have been considerably higher that is well up the Top Entry range. This entry point reflects the factors already mentioned: the Games abhorrence for this sort of offending and the need for offenders to be dealt with severely.
- 27. With reference to RFU Disciplinary Regulation 8.2.7 there are two aggravating features in this case:
  - a. The absence of remorse and/or contrition. Even after the Panel found the citing proved, the Player did not express any remorse for the injuries which had been caused. Nevertheless we have decided not to add anything to the entry point because this lack of remorse can be taken into account by making no reduction to the entry point which would have been available had the Player pleaded guilty.

- b. The need for a deterrent to combat a pattern of offending. Despite a number of previous high profile cases involving contact with the eye or eye area over the past two years, the sanctions imposed do not seem to have deterred this insidious offence and higher sanctions are necessary to change the behaviour of some players and indicate that this conduct will not be tolerated. Deterrence in this case merits an increase of 25% from the entry point, that being 13 weeks.
- 28. Having considered the aggravating features in this case we considered the mitigating factors listed in RFU Disciplinary Regulation 8.2.8:
  - a. The presence and timing of an acknowledgement 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 28 years old and has no disciplinary matters recorded against him. He is employed by the RFU as a Rugby Community Coach in Essex where he is respected for his work.
  - 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 throughout the proceedings and maintained his dignity after the finding against him.
  - e. The player has shown no remorse;
  - f. Off-field mitigating factors it is highly likely that the RFU will review the Player's employment as a community coach following this finding and sanction.

- 29. We have decided that these mitigating factors effectively cancel out the increase imposed in relation to the aggravating factors. In all the circumstances, therefore, the appropriate sanction is a suspension from playing rugby for 52 weeks. As this suspension is so long, it includes periods when the Player might not be playing, for example during the summer. The Player is therefore suspended from playing all rugby from 22 February 2010 21 February 2011. He may play again on 22 February 2011.
- 30. This is a significant sanction but it must be set into the context that the Top End entry range for contact with the eye or eye area is 24 156 weeks (6 months to three years) and this sanction is only one third of the maximum sanction. We accept that this may place his employment in jeopardy, but that is the inevitable consequence of this type of offending. Nevertheless, the suspension is solely against playing so that this sanction *in itself* does not preclude the Player from undertaking other off-field activities.

### Costs

31. The Player/Upminster are ordered to pay £100 in costs.

### Right of Appeal

32. The Player is reminded of his right of appeal.

The sound

HHJ Jeff Blackett Chairman

23 February 2010