RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

At: Holiday Inn, Bristol

On: Monday 21 September 2009

JUDGMENT.

Players: George Stowers Club: Gloucester Rugby FC

Gareth Delve Club: London Irish RFC

Match: London Irish v Gloucester Rugby

Venue: Madejski Stadium **Date of Match:** 13 September 2009

Panel: Christopher Quinlan (Chairman), Mike Curling and John

Doubleday

Secretariat: Liam McTiernan

Citing Officer: Budge Pountney

Attending: The Players

On behalf of George Stowers: Kieran McCartney and David Ellis On behalf of Gareth Delve: Rob Burgess and Bryan Redpath

Preliminaries

- 1. In advance of the hearing, we saw (together) Mr Burgess and Mr McCarthy to explain our provisional view as to the procedure we proposed to adopt in relation to the three citing complaints we had been convened to hear and determine. In short, the player George Stowers faced two charges and Gareth Delve a single charge. Our view was that we should (for reasons which will become clear in this decision) follow this procedure
 - a. Take from each Player his plea to the charges faced.
 - b. Anticipating (because we were told in advance) that both would admit striking, but Stowers would deny the dangerous tackle charge, hear and determine that contested citing. Since that incident occurred first in time, we would hear that first and without Gloucester being present.
 - c. If the citing were upheld we would hear mitigation, again in the absence of Gloucester.

- d. If dismissed or after mitigation, we would consider the striking offences. Since the Players were alleged to have struck each other, that part of the hearing would take place with both parties together.
- 2. Mr McCartney was happy with that approach and had no objections or observations. Initially Mr Burgess sought to persuade us that he wished us to consider the Delve case separately from Stowers. Our view was that such a course was not appropriate in the circumstances of this case and possibly contrary to his Player's interests. He did not pursue that submission and we proceeded as outline in paragraph 1 above.
- 3. There was no objection to the Panel.

Charge and Plea

- 4. George Stowers pleaded not guilty to a charge of dangerous tackling contrary to Law 10(4)(e), during the Guinness Premiership match played between London Irish and Gloucester Rugby on 13 September 2009.
- 5. Both Players pleaded guilty to striking an opponent contrary to Law 10(4)(a) in the same match.
- 6. We proceeded to hear first the contested citing complaint, in the absence of Gareth Delve and those from Gloucester Rugby.

The Citing Complaints

Stowers - Dangerous Tackle

Facts

7. The detailed citing report dated 17 September 2009 and drafted by the Citing Officer Budge Poutney read:

"Gloucester 21 takes a quick tap penalty and runs towards The London Irish defensive line. Gloucester 21 passes the ball across the face of Gloucester 19 who is cutting back. Just as Gloucester 1 receives the pass Gloucester 21 is hit late and high by London Irish 20 George Stowers. Irish 20 uses a stiff right arm to lead his tackle which is clearly seen in the photo 117 taken off Webshots sports website. The stiff right arm can be seen hitting somewhere between the jaw line and cheek of Gloucester 21. Using a clip from Opta-clip090913 3 secs in Stowers is clearly seen to be launching himself into the tackle and there is a very audible groan from the crowd implying that they had seen something more or that it was a very hard tackle. In my opinion not only was this late

but it was high and dangerous and was the catalyst to a very ugly moment in the game. Having spoke to Dean Richards the referee he said that he did not see the late challenge but thought something had happened to initialise the brawl"

- 8. We had the advantage of hearing from Mr Pountney who with commendable clarity and conspicuous fairness took us through the DVD clips of the incident. There were two: one from Sky and the other, Insight ('Opta') footage. We also saw the still photograph 117 (Appendix 1) referred to in the passage cited above. The photograph is taken from that passage of play.
- 9. The available footage was from the same side of the pitch, namely the dugout side, which was furthest from the incident. Mr Pountney made a number of observations as he took us through the incident. In his considered view the tackle was late, it was high and dangerous in the way it was executed.
- 10. Mr Ellis told us the Player was performing a tackle in the manner coached by the Club. The right arm was not stiff and was being used in an attempt to dislodge the ball. He contended that the arm moved through a vertical plain, up to down, rather than horizontal (side to side) as in the classic "swinging arm". He pointed to the lack of any reaction from other Gloucester players close to the incident, who "must have" seen it. He made the same observation about the referee who was very close.
- 11. The Player told us that he intended to and was attempting to dislodge the ball. He said he did not notice that the ball had (in fact) been passed, though noticed the (passing) movement of the player's hands. He accepted his "timing was out".
- 12. We heard from the referee by conference call. He told us that he was following the ball and saw something of the tackle out of the corner of his eye. He told us that at the time he did not "notice the hit in its entirety" and clarified that he did "not see the hit" at the time. He told us that on viewing the video the tackle was "slightly late" and not something he would "particularly worry about".

Decision

13. The test for us to apply is that adumbrated in paragraph 14, Appendix 7 to the RFU Disciplinary Regulations 2009-2010. The referee did not detect the offence. His opinion subsequently is not determinative. The so-called 'red card test' is not for us; it is for the Citing Officer. We must uphold the citing unless we determine that there was no act of

foul play or the player was mistakenly cited because another committed the offence.

- 14. We rejected Mr McCarthy's point that the matter was cited only because of the fracas which followed. Mr Pountney told us that the fracas was an "indicator" which led him to look at the passage of play immediately before. Once he identified the tackle, he considered it on its merits. He said and we accepted that the decision to cite was taken without regard to what followed.
- 15. In a case such as this, the Chairman is able to (and I did) draw on the considerable rugby knowledge of those with whom I sit. Unanimously, they and I were satisfied the Player committed an act of foul play. The tackle was late. It is clear from the DVD that the ball was passed when the Player was a good 1½ 2 metres away. He continued to close and then engage. The ball had almost reached its intended recipient by the time contact was made. The argument that it was an attempt to dislodge the ball does not run when the ball was gone and, notwithstanding the dynamics of the situation, obviously so.
- 16. We were careful to remind ourselves of the need for caution when considering a single photograph (Appendix A) which (of course) catches but one frame of a highly dynamic incident. We are not ignorant of the important contact element of the Game. However, in our judgment, the tackle was also dangerous. It was high, there was little if any initial effort to close the arms and was effected with a straight arm.
- 17. Once we informed the Player and his representatives of our decision, we heard mitigation restricted to that act of foul play. We record those at the appropriate part of this Decision.
- 18. We then proceeded to hear the striking offences, in the order in which they occurred on the pitch. This part of the hearing took place with both players and their representatives present.

Delve - Striking

Facts

19. The facts were not in dispute. The detailed citing report dated 17 September 2009 and drafted by the Citing Officer Budge Poutney stated:

"Referee awards a penalty to Gloucester. Gloucester 21 takes a quick penalty and attacks the London Irish defensive line. He is tackled late and high with a

swinging arm which is initially unclear on the video until you look at photo 117 webshots sports website by London Irish 20. A ruck is formed. Stowers London Irish 20 is standing on the left hand side of the ruck looking inwards to the ruck. Gloucester 8 (Gareth Delve) can see the tackle and runs about 9 m(I estimated one meter per stride and he took 9 strides to get there) from a standing start. Delve is Clearly upset by the tackle made by Irish 20 (George Stowers) Delve pushes Stowers to the floor with some force and Stowers is caught by surprise. If you look at clip 090913 you can clearly see Delve run from a distance of about 9m and push Stowers to the floor but what is more clear on this clip are the punches that follow. After the initial push to the floor by Delve the players end up grappling each other. Where Lamb (Irish 10) joins in to add his weight! Both players then trade a punch almost simultaneously. Delve uses his right fist and appears to connect with an uppercut to Stowers's face. At this point Irish 14 (Thompson) comes in and actually hits his own player which I am led to believe caused the cut to Stowers's face. At the same point Thompson arrives Delve connects with two more punches with his right fist around the rib and chest area of Stowers's, Just as this happens Gloucester 4(Attwood) arrives and runs into Thompson which causes a splintering of players all around. Keeping your eye upon the main body of players It is clear to see that both players are continuing with their altercation trading punches (but unclear exactly where the punches landed), once the maul dies down it is obvious that without the restraint of his fellow teammates Stowers would have continued the fight as he is struggling to get free to get to Delve. Delve walks away but turns to gesture towards Stowers but does not get involved again. Delve is given a yellow card. Penalty awarded to Irish. Having spoke to Dean Richards the referee he decided to yellow card both players to diffuse the situation on the pitch. Dean also said that London Irish were claiming eye gouging immediately and were clearly upset. This I am sure helped to refuel the clash with an unsightly altercation on the touchline after both players had been yellow carded. You can view this clip on the sky dvd at 0.31.33 T03 Ch06."

- 20. Once more, the Citing Officer took us through the footage. Gareth Delve took nine strides to get to the opposing player. Once there, he pushed him to the ground and followed him. As the opposing player, Stowers, attempts to rise to his feet, he grabbed him and wrestled with him. Stowers was able to stand, both appear to have a grip of the other. Simultaneously they throw a punch at the head of the other. Delve throws a number of other punches which connect with Stowers's body.
- 21. The incident continues as described by the Citing Officer. The central brawl involved a number of players from both sides. Two separate melees fractured off that 'main incident'; each involved a deal of 'struggling' between players. Taken as a whole, it was an ugly incident.
- 22. We were shown an email dated 18 September 2009 timed at 18.11, from Dr Mike Rossiter to Mr McCarthy. It recorded a 2.5 cm laceration to the

- 23. Mr Pountney told us that he used the words "led to believe" in his report in the context of ascribing the injury to Thompson's punch, because the referee told him that is what Irish were saying after the match. In other words, the London Irish position at the time, was told to the referee was that the injury to the eye was caused by their own player. Mr Pountney's view was that the injury was probably caused by Thompson's (inaccurate) punch.
- 24. We sought clarification from London Irish as to whether they were asserting *now* that Mr Delve caused the injury. If so then he should have an opportunity to deal with it (one reason why this part of the case was heard together). Mr McCarthy told us that on the Monday after the match and in the context of discussing the citing of Delve (and before he knew his player was being cited) he informed the Disciplinary Manager (Mr Reece-Russel) that the injury "was caused by our own player". Before us, he said that Thompson's punch hit Stowers on the left ear and it must be left to a "process of elimination". Pressed, he said he was not suggesting that Mr Delve was responsible.

Player's Submissions

- 25. Mr Delve immediately apologised to us for his actions. He did not seek to excuse what he did but rather explain. He reacted to what he felt was a dangerous tackle and was "extremely angry and upset". The same Gloucester player (replacement scrum half) was "tackled" in a similar way in a fixture played between the clubs at Kingsholm last season. That "challenge" (not by Stowers) was not dissimilar in execution (not cited) and because of the way he went to ground (under the tackler), he sustained a serious injury to his ankle which kept him out of the game for months. At Mr Burgess's request we viewed footage of that incident.
- 26. Mr Delve continued that another Irish player (Ryan Lamb) grabbed his arms and so he felt vulnerable. He lashed out and now regretted what he had done.
- 27. Mr Burgess invited us to say we could not be satisfied to the requisite standard that Mr Delve caused the eye injury. He invited us to the view the incident was spontaneous, and having regard to Mr Delve's record and character, the yellow card issued by the referee was appropriate.

Stowers - Striking

28. The facts were not in dispute. The detailed citing report dated 17 September 2009 and drafted by the Citing Officer Budge Pountney stated:

"After a quick tap penalty taken by Gloucester 21 Stowers Tackles Gloucester 21 and a ruck is formed. Stowers London Irish 20 is standing on the left hand side of the ruck looking inwards to the ruck. Stowers is knocked to the floor by Delve Gloucester 8. The best view of this is from Clip 90913 from opta. After the initial push to the floor by Delve the players end up grappling each other. Where Lamb (Irish 10) joins in to add his weight! Both Delve and Stowers trade a punch almost simultaneously. Stowers uses his Left fist intially and glances a blow across the right side of Delves head. Delve uses his right fist and appears to connect with an uppercut to Stowers face. At this point Irish 14 (Thompson) comes in and actually hits his own player which I am led to believe caused the cut to Stowers face. At the same point Thompson arrives Delve connects with two more punches with his right fist around the rib and chest area of Stowers, Luckily for Stowers if he did throw anymore punches they are on the wrong side of the camera which would lead me to ask Gloucester player Delve if he was hit by Stowers. Just as this happens Gloucester 4(Attwood) arrives and runs into Thompson which causes a splintering of players all around. Keeping your eye upon the main body of players It is clear to see that both players are continuing with their altercation trading punches(but unclear exactly where the punches landed), once the maul dies down it is obvious that without the restraint of his fellow teammates Stowers would have continued the fight as he is struggling to get free to get to Delve. Stowers is given a yellow card. Penalty awarded to Irish. It is clear to hear on clip 90913 when discussing the episode that Dean Richards and his touch judges concurred that punches were thrown. Having spoke to Dean Richards the referee he decided to yellow card both players to diffuse the situation on the pitch. Dean also said that London Irish were claiming eye gouging immediately and were clearly upset. This i am sure helped to refuel the clash with an unsightly altercation on the touchline after both players had been yellow carded. You can view this clip on the sky dvd at 0.31.33 T03 Ch006.Although later after the game Irish retracted the gouging claim to Dean."

29. We were taken through the footage by Mr Pountney. Towards the end the footage, Mr Stowers is seen being restrained by team-mates. Without that restraint, it is clear he would have continued. Even when he was called to the referee, he had to be told to calm down and was then joined by a team-mate who placed a hand on his shoulder. When shown the yellow card, he was guided from the pitch by team mates.

Player's Submissions

30. Mr McCarthy's pithy submission was that Stowers was the victim and acted in self defence. He should not receive any further sanction (in addition to the yellow card) for doing so.

Sanction

Stowers

Dangerous Tackle

- 31. Initially, we undertook an assessment of the seriousness of the Player's dangerous tackle (Disciplinary Regulation 8.2.5). Unanimously we agreed
 - a. It was a late and dangerous tackle and it was deliberate.
 - b. There was no provocation nor was it was a retaliatory act.
 - c. It did not cause injury the tackled player jumped straight to his feet and carried on playing.
 - d. It had an effect on the game: we were quite satisfied it was the catalyst for Delve's reaction
 - e. The opposing player was to some extent vulnerable in that he had passed the ball, could not see what was coming nor was he in any position to defend himself
 - f. It was a completed act of foul play
- 32. In light of those factors the appropriate entry point was LOWER END, which pursuant to Appendix 2 of the Disciplinary Regulations (as amended by the RFU's incorporation of the iRB Council Decision of 28 July 2009 and its Notice of Alteration of Regulation 17 dated 29 July 2009), is a period of 2 weeks.
- 33. There were no aggravating features within Regulation 8.2.7.
- 34. As for mitigating factors (regulation 8.2.8), he did not plead guilty. The other matters prayed in his aid were not in our judgment such as to warrant a departure from the starting point of two weeks.

Striking

- 35. We carried out the same exercise for the offence of striking. In assessing the seriousness of that offence we found
 - a. It was deliberate.
 - b. He reacted to the violent attack by another, namely Delve.

- c. His conduct did not cause injury.
- d. He participated in a struggle which became a brawl.
- e. His participation was not premeditated.
- f. It was completed rather than attempted foul play.
- 36. The Player received a yellow card. We return to paragraph 14, Appendix 7. The final sentence of that paragraph reads
 - "However, where the offence was detected by a match official, but the cited player was awarded a red [sic] card, the Disciplinary Panel must dismiss the citing unless it is satisfied on the balance of probabilities that he referee was wrong in not sending the player off."
- 37. That sentence does not make sense if the word "red" is correct. Plainly it cannot be. The sense and meaning of the sentence led us to conclude it is a typographical error and "red" should read "yellow". We applied the Regulation in that way.
- 38. Was the referee wrong in not sending off the Player? They do not have the luxury of time and opportunity to analyse closely and carefully the incident; they may not see it all. Referees have a number of specific game management considerations when making split second decisions in relation to the appropriate on-field sanction. The Citing Officer applies an objective test which addresses only the incident in question; disciplinary panels so the same.
- 39. It is clear from the DVD footage that the referee did not see all of the incident. He was following the ball initially and can be seen not to be looking at it for its entire duration. With all the advantages we had, including the assistance of Mr Pountney's analysis, and in light of our assessment of the seriousness of the offence, our view differed from that of the referee. The yellow card was wrong.
- 40. In our judgment the appropriate entry point was LOWER END, namely 2 weeks.
- 41. There were no aggravating features within Regulation 8.2.7.
- 42. As for mitigating factors, he pleaded guilty. We also gave his credit for his playing record; he is a capped International and has captained his country (Samoa). We were told and accepted that he had never been cited or received a red card. His age and experience we considered neutral. He behaved as we would expect a player to behave before a panel, namely well. His regret and remorse we accepted as genuine. All of those matters enabled us to reduce the appropriate period of suspension to 1 week.

- 43. Thereafter in considering whether the periods of suspension should be concurrent or consecutive we determined to impose a sanction which was in all the circumstances proportionate to the level of the Player's overall conduct (Regulation 8.2.10). His tackle precipitated the chain of events. It is fair to observe that Delve behaved inappropriately in attacking him, but the Player did not then desist. It is important to note, as Mr Pountney did, that the first blow he threw was simultaneous with and not in response to one from Delve. Thereafter it was only the efforts of his team-mates which controlled him. In our judgment, his admitted offence of striking warranted a sanction in addition to that imposed for the tackle. We resolved the suspension should run consecutively.
- 44. Accordingly, we imposed a period of suspension from playing rugby union for 3 weeks (2 + 1). His Club had taken no action pending resolution of the citing and so the suspension starts from the date of the hearing. The suspension will commence run from 21 September 2009 up to and including 11 October 2009. He is free to play again on 12 October 2009.

Delve

- 45. Mr Burgess invited us to the view that the referee's assessment (yellow card) was correct. We carried out the same analysis as with the striking offence of Stowers.
- 46. In assessing the seriousness of the Player's conduct (Disciplinary Regulation 8.2.5) we found
 - a. It was a deliberate act of striking.
 - b. That act was repeated the Player landed a number of blows.
 - c. We accept he reacted to what he believed was a dangerous tackle. We accepted he found that provocative.
 - d. We were not satisfied that it caused the eye injury to Stowers and so proceeded on the basis that it did not.
 - e. It had an effect on the game: we were quite satisfied it was the catalyst for both Stowers's reaction and the brawl which followed.
 - f. It was a completed act of foul play.
- 47. We share the Player's assessment of the tackle: it was late and dangerous. We do not however agree with his reaction to it nor the referee's assessment of it, based on his incomplete observations. The yellow card was wrong. However provocative he found the tackle, it did not entitled him to take the law into his own hands and to exact retribution. What aggravated this offence of striking was the distance

- travelled by him to become involved and thereafter the sustained, repeated nature of his conduct; pursing the player and then punching him, more than once.
- 48. In light of those factors and the others set out above we were driven to conclude the appropriate starting point was MID RANGE, namely 5 weeks.
- 49. There were no aggravating features within Regulation 8.2.7.
- 50. As for mitigating factors, we give him credit for his admission. We also gave his credit for his playing record, which includes 3 years with Gloucester (and Bath before), as well as his being a capped international (for Wales). We were told and accepted that he had never been cited or received a red card. His age and experience we considered neutral. He behaved properly before us. His regret and remorse we accepted as genuine.
- 51. In all the circumstances, we determined the appropriate reduction to reflect those matters was a period of two weeks. Accordingly, we concluded that the appropriate sanction is the imposition of a period of suspension from playing rugby union for three weeks.
- 52. His Club has not suspended him and so the suspension starts from the date of the hearing. The suspension will run from 21 September 2009 to and including 11 October 2009. He is free to play again on 12 October 2009.

Comment

- 53. We were anxious to make it clear to the Players that each of them would be sanctioned for their own actions. It would however have been wrong of us to have ignored a matter Mr Pountney commented upon in his Citing Report. After both Players had been shown the yellow card, they left the field. There followed what he described as "unsightly altercation on the touchline".
- 54. We were told the 'yellow card protocol' at the Madejski requires a player to return to his dugout. Gareth Delve returned to that area, but did not sit down. He told us he was unsure where he should be.
- 55. The Sky footage we saw shows the London Irish captain Bob Casey being pushed back by a member of the Gloucester staff. He, Casey, appeared to be out of the Irish technical area, close to the Gloucester technical area. He appeared to be saying something and pointing along the touchline in the direction from which Stowers was walking.

Stowers then proceeded to enter the Gloucester technical area, but was directed around it, mainly by one member of the Irish staff. As Stowers was about to enter the Irish technical area, Casey then walked towards and appeared to be shouting at and gesticulating towards Delve. Delve stands his ground, was facing Casey and stepped towards him. Putting machismo to one side, he should not have done so. Casey was then ushered away.

- 56. We were told Mr Stowers had no alterative but to go through the Gloucester technical area. He was clearly unhappy as he did so and had to be steered away from Delve. As he was ushered around the area, he appeared to be looking at Delve, at one stage looking away and then looking back. He should have made his way directly to his own technical area.
- 57. Quite what Bob Casey was doing we have no idea. We were pleased to hear (when we enquired as to what steps Irish had taken) that London Irish held an internal disciplinary hearing at which he was reprimanded (we were told). We have not heard from him and do not have his account as to what he was doing and why. Mr McCarthy told us Casey was trying to get to Stowers; that does not explain his conduct once Stowers had been ushered to his own technical area.
- 58. What is clear to us is that what happened after the showing of the yellow cards was unedifying and does nothing but damage the image of the Game. Those we have mentioned, including Delve should reflect hard on their responsibilities and duties to the Game.
- 59. The same observation applies to the mass brawl. Some of the players who joined in were no doubt seeking to restrain and to calm things down. Others, like the Irish winger who succeeded in punching his own man, were not. It is a statement of the obvious to say events such as these do nothing but besmirch the game's image. As HHJ Blackett has observed¹ such "behaviour is unacceptable and players must demonstrate self control in these circumstances". With those sentiments we respectfully concur.

Costs

60. Costs of £250.00 are awarded against each Player/club.

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¹ Paice & Ward, 26 March 2008

Right of Appeal

61. Each Player is reminded of his right of appeal against this decision. This is to be exercised by 0900 hrs Thursday $24^{\rm th}$ September 2009.

Christopher Quinlan (Chairman)

22 September 2009

Appendix 1

<u>Photo 117</u>

