RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

VENUE: Holiday Inn, Bloomsbury, London

DATE: 9 November 2009

Player: Danny GREWCOCK Club: Bath RFC

Match: Bath v Saracens

Venue: Recreation Ground, Bath Date of match: 31 October 2009

Panel: Jeremy Summers (Chairman), Philip Evans and Michael White ("the Panel")

Secretary: Liam McTiernan

In attendance:

Danny Grewcock ("the Player") - by telephone

Thomas Sheppard - solicitor

Dave Guyan - 1st XV manager Bath RFC

Peter Larter – Independent Citing Officer- by telephone

Kevin Stewart - Assistant Referee - by telephone

DECISION

The Panel found the Player guilty, on his own admission, of the offence of striking an opponent with his arm. For the reasons set out below, the Panel determined that the Player should be suspended for a period of 2 weeks from Thursday 5 November 2009 to Wednesday 18 November 2009 inclusive.

PRELIMINARIES

2. The Panel convened to consider a charge alleging that the Player had been guilty of striking an opponent in the twenty-ninth minute (first half) of the match contrary to Law 10 (4) (a) of the Laws of the Game. The charge resulted from a citing brought by the independent Citing Officer appointed for the match.

- 3. For perfectly understandable personal reasons the Player was unable to attend before the Panel but participated in the hearing by telephone. Mr Sheppard confirmed that he was willing to proceed in this way and did not seek an adjournment. He similarly conformed that the Player did not object to the composition of the Panel.
- 4. Regrettably, due to technical reasons it was not possible to link up all parties by way of a telephone conference call. Mr Sheppard was nevertheless content for the Panel to hear evidence from witnesses without the Player being able to listen to that evidence. At the conclusion of that evidence the hearing would take a short adjournment so that instructions could be taken from the Player. Although less than ideal, the Panel was satisfied that the hearing could proceed fairly in that way.
- 5. Mr Sheppard sought clarification of the basis upon which the citing would proceed. In this respect he stated that Bath RFC had produced a transcript of the conversation between the match officials. This was tendered and Mr Sheppard submitted that it appeared to be at variance with Citing Officer's report in that it indicated that the Assistant Referee had seen the incident concerned. If that was correct, Mr Sheppard submitted that the Panel would be unable to determine that the Red Card test could be satisfied.
- 6. Mr Sheppard was however referred to the provisions of paragraph 14 to Appendix 6 to the RFU Disciplinary Regulations ("DR") and the point was not pursued. No other preliminary issue arose.
- 7. On instructions Mr Sheppard initially entered a plea of not guilty to the charge on behalf of the Player. However, following the evidence presented in support of the citing, the offence was admitted.

EVIDENCE CONSIDERED

- 8. The Panel considered:
 - a. The Citing Report.
 - b. Oral evidence from the Citing Officer

- c. The match recording.
- d. A transcript of a conversation purportedly between the Referee and the Assistant Referee
- e. Oral evidence from the Assistant Referee
- f. Oral evidence from the Player.
- g. Submissions from Mr Sheppard.

THE CITING

9. The Citing Report recorded as follows:

"Saracens won the ball at a line-out just outside the Bath 10m line on the near-side of the pitch in relation to the Sky camera. A ruck developed and Saracens retained the ball, which was held at the base of the ruck for a few seconds. The Saracens No.9 (Neil De Kock) picked up the ball from the base of the ruck and kicked ahead. As De Kock was kicking, the Bath No.5 (Danny Grewcock) advanced towards him and attempted to charge down the kick with his arms stretched upwards, but was unsuccessful. As the ball went over his head, Grewcock continued advancing towards De Kock and, as he approached him, he lowered his arms to about the horizontal and extended his right arm sideways. Grewcock then struck De Kock on his head with the upper part of his extended right arm. De Kock did not appear to be injured, and continued playing for the remainder of the match.

I spoke to the referee, Chris White, and asked him if he had seen anything following the ruck in question, and he stated that he had followed the ball and was looking away from the incident, and had not seen an offence. Chris White also stated that the referee's assistant nearest to the incident (Kevin Stewart) had reported to him that he had seen De Kock push Grewcock in the back, but did not know why; Chris White took no action on this report. The Sky DVD just shows De Kock moving towards Grewcock as they both get up after the striking incident, and this is when I think De Kock pushed Grewcock in the back. I therefore cite the Bath No.5 (Danny Grewcock) for striking an opponent with the arm contrary to Law 10(4) (a) of the Laws of the Game Rugby Union 2009."

10. Mr Larter presented the citing by telephone and referred the Panel to the match recording that was viewed simultaneously with Mr Larter's presentation. The match recording was wholly consistent with the detail helpfully contained in the written citing report.

- 11. Mr Larter further explained that just over half a second elapsed between the ball having been kicked by De Kock and the contact made by the Player. He accepted that some form of contact had been inevitable and was satisfied that the Player's actions would not have constituted a late tackle. However his arms, which had been raised in an attempt to charge down De Kock's kick, then dropped to slightly below the horizontal at which point the Player's right arm struck De Kock. The point of impact was not entirely clear, but Mr Larter was "pretty sure" that the Player's arm had struck De Kock's head, and had he not been, he would not have brought the citing.
- 12. Mr Larter believed that, had the Player simply enveloped De Kock, and fallen to ground with him he would not have been concerned. However, he had "swung through" with his right arm and in so doing had struck De Kock on the head. In Mr Larter's view that contact could have been avoided and so constituted foul play that warranted a citing.
- 13. Mr Larter had not been able to speak to the Assistant Referee before being required to lodge the Citing but had done so thereafter. Mr Larter believed that the Assistant Referee had not seen the incident.
- 14. Mr Larter was asked by Mr Sheppard if his view would have been affected if the Assistant Referee had in fact seen the incident. In response Mr Larter noted that he had the benefit of being able to consider the match recording. He was therefore confident that his position would not have changed even if the match official had seen the incident.

EVIDENCE ON BEHALF OF THE PLAYER

- 15. Mr Sheppard called the Assistant Referee who similarly gave evidence by telephone. The transcript of his conversation with the Referee was put to him. In the event it was not necessary to verify this by reference to the audio tape.
- 16. Mr Sheppard placed reliance on the fact that the Assistant Referee had apparently reported the incident in the following terms:
 - "5 Bath [the Player] tackled 9 [De Kock] legal in my opinion. 9 retaliates pushes him then we get guys coming in. Penalty against Red 9 here"

- 17. However, on questioning from Mr Sheppard, the Assistant Referee explained that although he had been close to the incident on his touch line, he had been following the ball. He had therefore only seen the challenge in a peripheral way from the corner of his eye. He was satisfied that the tackle was not late but had not seen the point of impact. In response to a question from the Chairman he confirmed that any reference to the tackle being "legal" was a reference to the fact that it was not late. In that respect his evidence was entirely consistent with the view formed by Mr Larter.
- 18. In light of the fact that the Player was not present, the hearing was adjourned so that Mr Sheppard could speak privately with the Player and report on the evidence given. When the hearing resumed the Panel was advised by Mr Sheppard that the Player felt unable to defend the citing further. He did not seek an adjournment and wished to change his plea.
- 19. The Player then gave evidence and confirmed that he wished to change his plea without seeking an additional adjournment. He explained that he had taken up a defensive position to the left of the ruck. He had realised De Kock was going to kick and was committed to attempting to charge the kick down. He had 3 or 4 meters to cover to get to De Kock to do so, was "not the quickest" but had been totally committed. Having failed with the charge down his arms had dropped naturally and there had been no way of avoiding the contact. He had been concerned to avoid being struck himself either by the ball or by De Kock's boot properly following through from his kick. There had been no malice in his action and he had not intended to commit an act of foul play. He had apologised to De Kock after the game.
- 20. The Player has played over 200 Premiership games in addition to his distinguished international honours for both England and the British & Irish Lions. Mr Sheppard accepted that he has an unhappy disciplinary record but submitted that the Player had gone to great lengths to correct his behavior and had been successful in so doing in that his last offence prior to this matter had been in June 2007. The Player is a highly respected and committed club man who participates fully in all aspects of club life and has been a former club captain. He appreciates that his playing career is drawing to a close and is contemplating how he can remain in the game once he retires as a player.

21. Mr Sheppard submitted that the offending should be categorised as being a low end offence and that the Player should receive mitigation for his plea albeit that it was tendered late.

FINDINGS

- 22. The Panel reminded itself of the standard of proof prescribed, and as required undertook an assessment of the seriousness of the offending having regard to the criteria set out in 8.2.5 DR. In this regard the Panel found as follows:
 - a) That it could not be satisfied, to the standard required, that the Player had acted intentionally.
 - b) The Panel was however satisfied that the Player had acted recklessly.
 - c) The offending consisted of a single strike to the head by the Player's arm that swung into De Kock in a manner that was avoidable following an attempted charge down. There was no provocation.
 - d) No injury was sustained, although De Kock was momentarily stunned.
 - e) The Panel was advised that some other Players joined in briefly but was satisfied that there had been no material effect on the game.
 - f) There was some, very slight, vulnerability as De Kock was off balance following his kick.
 - g) There was no premeditation.
 - h) The conduct was complete.
 - i) There were no other relevant factors constituting the Player's offending.
- 23. In light of these findings, the Panel categorised the offence as being at the LOW END of the scale of seriousness. The entry point for this offence is accordingly one of 2 weeks.
- 24. The Panel proceeded to consider with great care the presence of any of the aggravating features prescribed by 8.2.7 DR, and in particular whether the Player's previous record required an increase in the entry point having regard to his status as an offender of the laws of the game¹.

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¹ 8.27 b) DR

- 25. It was accepted that the Player had 6 previous offences recorded against him between 1998 and 2007. As noted the most recent offence, for stamping, was in June 2007. The Panel was mindful of recent RFU decisions in *Abraham (*28 September 2009) and *Azam* (13 October 2009) where entry points had been increased to reflect each player's status as offenders but was satisfied that both could be distinguished from the present case. The former case involved four offences within 9 months, the latter in effect back to back offences that both involved contact with the eye area.
- 26. In the precise circumstances of this case the Panel was not however minded to add an additional period of suspension by way of an aggravating feature. However, the Player would do well to note that this will be the likely outcome in the event that he appears again before a disciplinary panel.
- 27. Having regard to his record, and indeed late plea, the Panel was not however minded to allow any discount from the entry point by way of mitigation.

SANCTION

28. The Player was accordingly suspended for a period of 2 weeks from Thursday 5 November (the date on which the Player was suspended by Bath RFC²) until Wednesday 18 November 2009. He is free to play again on Thursday 19 November 2009.

COSTS

29. Pursuant to 8.3.1 DR the Player and/or his club shall pay the costs of the hearing of £250 in accordance Appendix 6 DR, such costs to be paid within 21 days of receipt of this judgment³.

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² Whilst the Panel did not consider it appropriate to question Bath's suspension, the Club is **strongly advised** to properly document all future internal disciplinary proceedings and to provide a copy of such to RFU Discipline.

³ 8.3.2 DR

RIGHT OF APPEAL

30. The Player was advised of his right of appeal. Such appeal must be lodged with the RFU Discipline Department within 24 hours of this decision.⁴

Jeremy Summers

Chairman

10 November 2009

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⁴ 11.2.3 DR