

## **RUGBY FOOTBALL UNION**

### **DISCIPLINARY APPEAL HEARING**

#### **JUDGEMENT – PART 2**

**Venue:** Holiday Inn, Coventry

**Date:** 14 July 2010

**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 October 2009

**Panel:** Matthew Lohn (Chairman), Barry O’Driscoll and John Brennan (“the Panel”)

**Secretary to the Panel:** Bruce Reece-Russel (RFU Discipline Department)

#### **In attendance:**

1. Callum Jennings Whitehaven RFC (Cited Player)
2. Julian Gill (Barrister)
3. Tim Smith (Solicitor)
  
4. Alan Hedworth Aspatria RFC (Injured Player)
5. John Heyworth Aspatria RFC (Chairman)
6. Marcus Nickson (Club Solicitor)
  
7. David McInnes Cumbria CB Discipline Panel (Observer)

#### **Background**

The Disciplinary Appeal Panel (‘the Panel’) resumed their consideration of the case of Callum Jennings (‘the Player’) on 14 July 2010.

The directions made by the Panel dated 10 May 2010, following the initial hearing of this matter, required an expert statement to be provided to the Panel by the RFU Disciplinary Officer, His Honour Judge Jeff Blackett. This set out expert evidence in relation to the application of the Laws of the Game to the findings of fact made by the Panel.

Further written submissions were made by Aspatria and the Player to the Panel in the light of the expert evidence.

## **Finding**

The Panel reviewed the written submissions and expert evidence and heard further oral submissions on behalf of Aspatria and Mr Jennings. It determined that the citing was upheld in relation to a law reference different to that originally cited. The Panel found that the Player was guilty under law 10.4(a) of striking. The Panel determined that the injury had not been caused accidentally and that the Player had been reckless as to what injury would be caused to Mr Hedworth as a result of his foul play.

The Panel in making this finding amended the law reference as set out in the citing mindful of its power to make such a change as set out in RFU DR 5.6.2 (IRB Regulation 17.18.10).

In reaching this finding the Appeal Panel directed itself to paragraphs 7 - 10 of the submission made by the RFU Disciplinary Officer which set out his view as follows:-

7. *The question posed by the Appeal Panel in the case of Callum Jennings is, effectively, whether the hand off delivered by the player which made contact with Mr Hedworth's eye can properly be classified as an act contrary to good sportsmanship, or whether it infringed some other Law of the Game.*
8. *There is no definition of "hand off" in the Laws of the Game. A player in possession of the ball is entitled to prevent another player from tackling him by using his hand to push a potential tackler away. He may not use his fist, elbow or forearm but may use his open hand. He may make contact with any part of the body of the tackler including head and face. However, a hand off is a defensive action and must not involve any use of excessive force. If a player throws his hand forcefully towards another player to fend him off so that the base or heel of his hand (ie the hard part) makes contact with an opponent's face, then there is a risk of injury to the player who is handed off. Such an action could properly be described as a "hit" or a "strike".*
9. *In my view, a person who hands off an opponent in an aggressive manner, making contact with an opponent's face with such force that there is a risk of injury (a forceful strike with the hand could, for example, break an opponent's nose) has committed an act of foul play either under Law 10.4(a) or as an act contrary to good sportsmanship under Law 10.4(m) of "using excessive force in handing off an opponent." In either case the appropriate sanctioning entry points would be the same as for "striking" under Law 10.4(a). Thus, if a player intends to hand off an opponent, and he does so with excessive force, he has committed an act of foul play. If he targets an opponent's face with such an action then there is clearly a risk of injury and a panel could properly conclude that the player was reckless (if it did not find that it was intentional).*

10. *If a tackling player is injured by a hand off, a panel could only conclude that the injury was accidental if it were satisfied that:*
- a. *the hand off was executed in a defensive manner;*
  - b. *without any disproportionate level of force or intent to cause injury;*
  - c. *the player was unaware of the risk of injury from that action; and*
  - d. *the dynamics and body positions of two people moving quickly towards each other combined to generate sufficient force to cause injury accidentally.*

In determining whether the injury was caused accidentally, the Panel directed itself to each of the questions set out in paragraph 10 of the RFU Disciplinary Officer's submission. The Panel concluded that the "hand-off" was not executed in a defensive manner. The Panel found that it was "a strike" executed with a disproportionate level of force necessary to lawfully "hand-off" Mr Hedworth. The Panel determined that the Player must have been aware of the risk of injury to Mr Hedworth. Lastly in reviewing the criteria the Panel did not consider that the dynamics and/or body positions of Mr Hedworth and the Player was such as to cause the injury accidentally.

### **Submissions on Penalty**

In view of its finding that the injury was not accidental the Panel received further submissions from both parties as to the approach that should be taken with respect to sanction. On behalf of Aspatria attention was drawn to the life changing serious permanent injury that had been suffered by Mr Hedworth as a result of the foul play. The Panel was told of the very real affect this had on Mr Hedworth's job as farmer as he was required to operate heavy machinery. The Panel was encouraged to consider the most serious sanction open to it.

On behalf of the Player it was submitted that his actions were not deliberate but reckless. The Panel were asked to take into account Mr Jennings flawless disciplinary record and the contribution that he had made to rugby at Whitehaven in his role on the Committee, coaching young players and working in the club house. The Panel was also asked to take into account how deeply affected Mr Jennings had been by these events and that he had considered giving up the game of rugby.

### **Determination**

The Panel in determining the seriousness of the player's conduct and the correct approach to sanction carefully reviewed the criteria set out in the Disciplinary Regulations. It determined that this offence was one that merited a sanction at the top end of the sanction range for "a strike" contrary to Law 10.4(a). In reaching this decision the Panel considered that the Player's offending

was intentional. The Player knew he would commit a breach of the Laws of the Game in running towards Mr Hedworth with his arm outstretched at the moment of impact. Although the Panel accepted that the Player did not intend to blind Mr Hedworth, he was reckless as to the injury he would cause Mr Hedworth as a result of his offending. Significantly the Panel took into account the effect of the player's actions on Mr Hedworth and the catastrophic nature of the injury to his eye, an organ which is extremely vulnerable to damage if force is directed towards it.

In determining how to select an entry point that was appropriate to all the facts of this case the Panel noted that for a breach of "Law 10.4(a), striking the opponent with the hand", the top end entry point set out in Appendix 2 of the Disciplinary Regulations was 8+ weeks and the maximum sanction was 52 weeks.

The Panel noted the provisions of Appendix 9, RFU Guidance Note 3 "Sanctions for Illegal Foul Play – Top End Entry Points – Practical Guidance for the Application of Regulation 8.2.6. It also noted the footnote to Appendix 2 that provides "*notwithstanding the above recommended sanctions in Appendix 2, in cases where the player's actions constitute mid range or top end of offending for any type of offence which had the potential to result in and in fact did result in serious/gross consequences to the health of the victim, the preliminary committees may impose any period of suspension including suspension for life.*"

The Panel concluded that the catastrophic nature of the injury that occurred to Mr Hedworth and the permanent life changing consequences weighed heavily in determining the appropriate entry point. The Panel in reviewing what approach to adopt reminded itself of the manner in which other juridical systems operate and in particular how the nature of an injury following similar offences may provide for significantly different consequences. The Panel considered the variance in criminal punishments that may result from pushing some one to the floor when reckless as to the harm that may be caused by one's actions. An individual may fall over and suffer nothing more than a graze to their hand. This may be contrasted where the same push could cause some one to trip over, hit their head and die from a sub-dural haemorrhage. The same index offence could lead to charges of mere assault or in the alternative, manslaughter. The punishment will be dependent on the outcome to the individual who is pushed.

And so for rugby - the Panel believes these principles should be applied in equal measure in its approach to sanctioning. Where a player intentionally commits an act of foul play and is reckless, (as judged by a reasonable player), as to what injury is caused to his opponent, the consequences of his actions will be determinative when considering the appropriate sanction.

In this case the Player intentionally committed an act of foul play whilst reckless as to the injury that could have been caused by his actions. He falls to be sanctioned on the basis that his act of foul play directly resulted in him blinding Mr Hedworth in one eye. In view of the severity of the injury caused to Mr Hedworth, the Panel determined that the proportionate entry point for this offence will be greater than the 52 week recommended maximum as set out in Appendix 2.

The Panel exercised its discretion in view of the permanent and life changing nature of the injury. Both these factors were highly material in the Panel reaching its entry point decision. This was not a case of a mere black eye or bruised cheek – such injuries may be significant and can result in temporary interference with vision. Likewise this injury was not a simple laceration to the forehead or eyelid which may produce a permanent disfiguring scar. This injury was of a far greater magnitude. The Player's actions caused Mr Hedworth's eyeball to burst. He is blinded in one eye with no prospect of regaining his sight. As a farmer, this injury has significantly affected his working capacity. And Mr Hedworth will never play competitive rugby again. For these reasons the entry point falls to be increased substantially over the normal maximum recommended tariff to reflect the preternatural nature of these facts. The Panel have determined it should be measured in years rather than months.

Had there been any intention to harm Mr Hedworth in this way, the Panel would not have hesitated in banning the Player for life. This was not the case. The Player did not intend to blind Mr Hedworth. The Panel determined the appropriate entry point to be 4 years. The Panel realised that this is a very long time for a player to be banned but firmly believes that it is proportionate to mark the severity of the events in this case.

Notwithstanding this entry point the Panel felt there were aggravating features that had to be addressed mindful of the provisions of the Regulations and in particular the indication that aggravating features may include an absence of remorse and/or contrition (Regulation 8.2.7(a)) and the need for a deterrent to combat a pattern of offending (Regulation 8.2.7(c)) and any other off field aggravating factor (Regulation 8.2.7(d)).

Issues concerning contact with an opponent's eye or eye area are a prominent feature in the Game and have featured in recent directions issued by the IRB. The Panel concluded that it must act to deter behaviour involving intentional offending which involves reckless disregard to potential of injury to an opponent's eye.

In addition to the absence of any genuine remorse and contrition expressed before the Panel, it found a further aggravating feature in the abject failure of the Player to contact Mr Hedworth directly express concern for his wellbeing or moreover to indicate any form of sorrow for the consequences of the tackle. These actions do not require any admission of liability. The game of rugby, by its very nature, requires physical play to be accompanied by the very highest levels of sportsmanship. This was an appalling failure by the Player to observe a common courtesy that the game expects of its players.

In considering whether to increase the entry point sanction as a result of these aggravating features, the Panel took into account, to the Player's credit, the countervailing positive submissions made on behalf of the Player as to his contribution as a player and organiser at Whitehaven.

Having weighed up the relative aggravating and mitigating features, the Panel determined in the light of the serious aggravating features to increase the penalty by 1 year so as to produce a total penalty of 5 years.

Mr Jennings will be banned from playing rugby for 5 years from 17 March 2010 to 16 March 2015.