

## RUGBY FOOTBALL UNION

### DISCIPLINARY HEARING

**On:** Thursday 19<sup>th</sup> November 2009  
**At:** Park Inn Hotel, Heathrow, London.

### JUDGMENT

**Player:** Ben McKinnell  
**Club:** Westcombe Park RFC  
**Match:** Barking RFC v Westcombe Park RFC  
**Venue:** Barking RFC  
**Match Date:** 7<sup>th</sup> November 2009  
**Panel:** Jeremy Summers (Chairman), Michael White & Dr. Julian Morris  
**Secretary:** Liam McTiernan

**Regarding:** The sending off of Ben McKinnell of Westcombe Park RFC ("the Player") for receiving two yellow cards in the match Barking v Westcombe Park, contrary to Law 10(4)(k).

#### Charge and Plea

The Player requested that the case be heard in his absence, having plead guilty by post. He was content for the case to be heard on a papers-only basis.

#### Evidence as to Fact

The Panel considered the Sending Off Report and the two Yellow Card Reports.

#### Evidence

##### 1st Yellow Card

The 1<sup>st</sup> Yellow Card recorded: *"In the 25<sup>th</sup> minute of play Barking were in possession of the ball and had formed a maul moving forward just inside the Westcombe Park 22m line and approximately 10m from the touchline. Barking were driving forward, I noticed two players in particular, Westcombe Park No.1 (Ben McKinnell) and Barking No.8. Both players exchanged punches to each others head area, I believe that McKinnell was the instigator. Both*

*player's ended up on the floor with McKinnell on top of the Barking player, forcing his forearm into the Barking player's face. I moved from the touchline and requested both players separate, by this time several other players were trying to pull McKinnell off. The referee blew for an offence in the maul and I signalled foul play, reporting it to the referee by radio. The referee invited me onto the field of play after separating the teams and asked me what I had observed, I reported what I had witnessed as above. He asked me for a recommendation and I recommended a Yellow Card for both players. The referee called both players and captains over to him, briefed them on my report and issued Yellow Cards to McKinnell and the Barking No.8."*

## 2<sup>nd</sup> Yellow Card

The 2<sup>nd</sup> Yellow Card was for an offence of a technical nature, the specifics of which have no bearing on the considerations of this panel.

The Sending Off Report made no mention of any further problems during the match, and in the absence of such reports it would not be sound for the Panel to put the incidents into a context of ill-discipline.

## Entry Point

The Panel assessed the Player's conduct<sup>1</sup> and found as follows:

- a) The Player had acted intentionally.
- b) As such his actions could not be viewed as reckless.
- c) The offending consisted of more than one attempt to strike an opponent. There was limited provocation, insofar as the Player was involved in a physical contest while in the maul, albeit not in a way which constituted foul play in the mind of the official or should have elicited a response of the type demonstrated by the Player. However, it was not clear from the report that the punches found their attempted target, merely the "head area".
- d) There was no injury which could be debited to the Player.
- e) There was no effect on the game.
- f) The opponent was not vulnerable and was, in fact, an equal participant having been Yellow Carded himself.
- g) There was no premeditation.
- h) The conduct was attempted.
- i) There were no other relevant features.

In light of these findings, the Panel had no hesitation in categorising the offence as being at the low end of the scale of seriousness. The low end entry point for the offence contrary to Law 10(4)(k) is Sending Off Sufficient.

## Mitigation and Aggravation

---

<sup>1</sup> As required by RFU Disciplinary Regulation 8.2.5

The Panel carried out an assessment of the aggravating and mitigating circumstances surrounding the incident<sup>2</sup>. The Panel that concluded that there were no aggravating circumstances and that all the mitigating circumstances were present. The Panel had no need to apply a discount given that Sending Off Sufficient was the only available sanction.

#### Sanction

The Panel concluded that the sending off was sufficient punishment, he is free to play again immediately.

#### Costs

The Player and/or his club shall pay the costs<sup>3</sup> of the hearing of £75<sup>4</sup>, such costs to be paid within 21 days of receipt of this judgment<sup>5</sup>.

#### Right of Appeal

The Player is hereby advised of his right of appeal. Such appeal must be lodged with the RFU Discipline Department by not later than 1000hrs on the 14<sup>th</sup> day following receipt of this judgment.<sup>6</sup>

**Signed:** Liam McTiernan, on behalf of Jeremy Summers, Chairman.

**Date:** 1<sup>st</sup> December 2009.

---

<sup>2</sup> As required by DR's 8.2.6 and 8.2.7.

<sup>3</sup> As required by DR 8.3.1.

<sup>4</sup> As per DR Appendix 6.

<sup>5</sup> Regulation 8.3.2

<sup>6</sup> Regulation 11.2.3