

**RUGBY FOOTBALL UNION**

**DISCIPLINARY APPEAL HEARING**

**VENUE: Holiday Inn, London Bloomsbury**

**DATE: 28 January 2010**

**Player/Coach:** Mark PICKERING

**Club:** Effingham and Leatherhead RFC

**Panel:** Gareth Rees QC, Michael Cordell and Dr Julian Morris

**Secretary to the Panel:** Bruce Reece-Russel

**In Attendance:** Mark Pickering (MP)  
Samuel Magee representing the appellant  
Robin Page, Hon. Secretary, (E&F)

**Decision under Appeal:** Decision of an RFU Disciplinary Panel (Jeremy Summers (Chairman), Peter Budge and Jonathan Dance) (“the panel”) on 8<sup>th</sup> December 2009 (“the Decision”).

**Judgment**

**Background**

1. This appeal is by Mark Pickering (“the appellant”) against a sanction of Suspension from having any involvement with the playing, coaching or administration of rugby football from 8 December 2009 until 30 June 2010, a period a few days over 30 weeks.
2. The decision related to an offence contrary to Law 5.12 of the Laws of the Rugby Football Union to which the appellant pleaded guilty. The incident was connected to a number of other offences against the two clubs involved, London Irish Amateurs RFC (“LIA”) and Effingham and Leatherhead RFC (“E&L”), and two other players, Liam Prescott (“LP”) and Paul Mason (“PM”), who were both members of the playing squad of LIA on 17 October 2009 when the two clubs were playing a London SW2 league fixture.
3. The panel’s decision in those cases can be summarised as follows. The clubs had league points deducted over the next two seasons but those deductions were suspended in each case. LP was suspended for 4 weeks and PM was suspended for 5 weeks.
4. We do not repeat the detail of the incident here because it is set out in the panel’s decisions. The first half of the match was ill-disciplined requiring the referee to issue two yellow cards (one to each team) and to talk to the captains on more than one occasion.

5. At half time the incident escalated and serious and entirely unacceptable violent conduct took place involving players and others on the touch line. The appellant, who is the coach of E&L, became angered by the verbal abuse that was being directed at an E&L player by a LIA water carrier, Charlie Connor. This caused the appellant to go across to the LIA technical area where he struck Mr Connor to the upper body with the flat of his hand. LP then ran some distance and struck the appellant from behind causing him to be knocked unconscious. The appellant later required hospital treatment.

### **Submissions on behalf of the Appellant**

6. For the appellant, Mr Magee submitted that the sanction imposed should be reduced for two reasons. First, because the length of suspension was manifestly excessive and, second, because the decision was disproportionate and disparate by comparison to like decisions and in particular compared to other parties charged in relation to the same incident.
7. Further the appellant raised a preliminary point that the decision of the panel to give a separate judgement in respect of the appellant was unjustified and led to disparity in the sanctions imposed.
8. The written and oral submissions on behalf of the appellant made a number of points. We formed the view that three submissions were particularly relevant to our decision. First, it was submitted that the panel had been wrong to conclude that the act of the appellant had been the “catalyst” for the incident to escalate into something far more serious. The act of LP was, it was submitted, a far more likely cause of the escalation.
9. Second, the panel had been wrong not to follow the guidance in the RFU Recommended Sanctions for similar offences on the field of play under Law 10(4)(a). It was submitted that “insufficient heed” was paid to the procedures which require a panel to decide upon a starting point and if this had been done the proper starting point was low end and, therefore, 2 weeks suspension.
10. Thirdly, the appellant submitted that if that low end starting point had been considered appropriate by the panel then the appellant’s poor recent disciplinary record could not amount to an aggravating feature so as to justify this length of suspension.
11. The thrust of the disparity submission was that the sanctions imposed on others before the panel were very short in length by comparison with the appellant and this was unfair in the circumstances of the incident. The appellant went further and cited examples of other cases before other RFU Tribunals which had resulted in shorter periods of suspension for more serious acts of violent conduct on the field of play.

### **Decision**

12. We made the following procedural decisions:-

- a. We accept the appellant's basis of plea as the panel had at the first hearing. This requires us to decide the appeal on the basis that the appellant had struck: "...Mr Connor to the upper body with the flat of his hand".
  - b. It is the proper course in this case for us to use the guidance in the RFU Recommended Sanctions for offences under Law 10(4)(a) for Striking another player with the hand, arm or fist. This guidance is Lower end 2 weeks; Mid Range 5 weeks and Top End 8+ weeks. The maximum sanction is 52 weeks.
  - c. It is not appropriate in this case to look to decisions in other cases to compare the sanction imposed because there will always be cases with more or less severe sanctions because of the facts of the case. The question of disparity in the sanctions imposed in decisions involving this incident may have become relevant to our decision but in view of the fact we decided to take the approach set out at (b) above we concluded, having decided that the appeal should be allowed to some extent, that it did not arise in this appellant's case.
13. We decided that the starting point was Mid Range 5 weeks. It was submitted by Mr Magee on behalf of the appellant that the force used was a "simple push in frustration". We do not accept that interpretation. It was, in our view, a provocative act which was bound to make an inflamed atmosphere far worse. It cannot be taken in isolation. We agree with the panel's findings that he acted in a confrontational manner.
  14. In the circumstances, and bearing in mind the criteria at 8.2.4 of the RFU Disciplinary Regulations, we find that it was an intentional act by a senior coaching member of the E&L club and was directly associated with that coaching capacity. Adopting the finding of the panel we agree that the appellant had an obligation to do all possible to reduce the ill-feeling generated in the first half. Therefore, bearing all these matters in mind we assess this as Mid range starting point.
  15. In our view it is the aggravating features in the appellant's case which calls for his sanction to be significantly more severe than that imposed on others involved in this incident. Of particular concern is the appellant's recent disciplinary record.
  16. The disciplinary findings against the appellant in a period of 12 months prior to this incident can be summarised as follows. The first matter involved abuse of a match official. That resulted in a suspended period of suspension that was subsequently breached resulting in an immediate suspension of 12 weeks for offences of a very similar type because in that case the appellant struck an opposition coach in an off field incident. That suspension was completed about 4 months prior to this incident. We regard the frequency and the similarity as serious aggravating factors justifying a significant increase on the starting point.
  17. We also take into account as an aggravating factor the need for deterrence in this sanction. This applies not only to the appellant's frequent offending but also as a warning that this type of offending is too prevalent and should be marked as an aggravating factor. The starting point is increased to 15 weeks to reflect these aggravating factors.

18. We then considered mitigating factors. Of some relevance is the appellant's good disciplinary record over 20 years prior to this sequence of offending but we place greater emphasis on the plea of guilty which allows us to reduce the sanction to 12 weeks.
19. We find it appropriate to reiterate here the view of the panel expressed at paragraph 28 of its judgment because, although we have allowed the appeal, we agree that the appellant's behaviour is far beyond acceptable bounds and he has done a great disservice to his own reputation and that of the game and his club.
20. The sanction is, therefore, reduced to 12 weeks suspension from having any involvement with the playing, coaching or administration of rugby football. The appellant is free to resume his involvement with the game on 2 March 2010.

### **Costs**

21. As the appeal is successful we order the return of £100 paid in costs for this appeal.

Gareth Rees QC  
Chairman  
29 January 2010