

**RUGBY FOOTBALL UNION**  
**DISCIPLINARY HEARING**

**At:** Holiday Inn, Epsom Downs

**On:** Sunday 26 May 2013

**JUDGMENT.**

**Player:** Dylan Hartley                      **Club:** Northampton Saints

**Match:** Leicester Tigers v Northampton Saints

**Venue:** Twickenham                      **Date of match:** 25 May 2013

**Panel:** HHJ Jeff Blackett (Chairman), Jeremy Summers, Peter Budge

**Secretariat:** Rebecca Morgan

**Attending:** The Player  
Dorian West (Northampton Saints forwards coach)  
Max Duthie (Solicitor representing the Player)

**Introduction**

1. The Player was ordered off the field of play in the 40<sup>th</sup> minute of the first half for verbal abuse of the referee contrary to Laws 10(4)(m) and (s). The Player sought to show that the Referee's decision to send him off was wrong. Before formally indicating that he contested the award of the red card he stated, through his solicitor, that he did use the words 'f\*\*\*ing cheat' but they were directed at the opposing hooker Tom Youngs, not at the referee. He said he would never dream of using these words to the referee. He indicated that he did not object to the composition or constitution of the Panel.

**The Evidence leading to the ordering off**

2. The Referee's report stated:

“Following the award of a penalty out of a scrum the Northampton hooker looked towards me and said: ‘You f\*\*\*ing cheat’. Approximately two minutes before this incident I had called the Player across and told him to think about the way he was speaking to me. I had done this as on at least two occasions as a scrum was setting he said: ‘As usual he's against us.’ In addition, on two occasions, one at approximately 1.50 left in first half (2 minutes before half time) and one following a penalty at a scrum in Leicester half, the Northampton hooker had asked if he could speak to me. As I said prior to the match that I would speak to the captains if they required further clarification following the taking of the penalty, I told the player I would speak

to him in a moment. When I approached the captain he said: ‘I don’t want to speak to you.’”

3. The DVD footage of the incident provided some corroboration of the referee’s report. With less than two minutes to go before half time there was a scrum. Before the engagement the referee and the Player spoke to each other. The referee said: “How you behave as Captain. Please keep comments to yourself or I may have to deal with it by way of penalty.” The Player started to speak and the referee said: “Listen to me, just listen...listen. Talk to me like that and if I think it’s to me and I will have to deal with it. Do you understand?” The Player replied: “Yes sir.”

4. On the stroke of half time Northampton Saints had a 22m drop out. The Northampton No 10 kicked the ball directly into touch – obviously in the expectation that the referee would blow up for half time. However, the referee, having warned him three times that he should not kick directly into touch, awarded an attacking scrum to Leicester on the 22m line. Shortly after the engagement of the scrum the referee indicated a penalty against Northampton and as the scrum broke up the Player said something. It was clear from reading the Player’s lips in the slow motion footage with no sound that he said something including the word “f\*\*\*ing”. The referee reacted immediately, showing the Player a red card. Initially the Player did not leave the pitch but after a few seconds he walked off. During that period the Referee said: “leave the field” a couple of times. After the Player left the referee spoke to another Northampton player and that conversation was picked up by Reblink. He said: “He’s just called me a f\*\*\*ing cheat, he leaves the field.”

5. The referee attended the hearing by telephone link. He said that he had the greatest of respect for the Player, that respect having grown during a long association of refereeing Northampton and when they worked together in the England camp. He was, therefore, disappointed with the way the Player talked to him during the match. On at least one occasion he heard the Player say: “He is against us again”, taking that to be a criticism of him, spoken within earshot. On two occasions he asked him to explain a decision and the referee asked him to wait. When he approached the Player, the Player said: ”I do not want to talk to you.”

6. The referee said that at the end of the first half he awarded a scrum because the Northampton 10 had drop kicked the ball directly into touch at a 22m restart. He awarded a scrum and then a penalty to Leicester. As the scrum broke up the Player was walking back facing the referee. He said the Player was standing to his right hand side within his peripheral vision – that meaning he was to the right of his vision but he could see him fully. He said that the Player looked at him and said: “You f\*\*\*ing cheat” – it was put to him the Player said: “F\*\*\*ing cheat” (not using the word “you”). The referee said he was as certain as he could be that the phrase was as he had reported it and he was absolutely sure the words were directed at him. He said that if he had any doubt at all he would have given the benefit of that doubt to the Player. The referee was asked by Mr Duthie whether he could have been mistaken, and whether the Player might have been directing his comments at another player. The referee said that he was as certain as he could be that the words were spoken to him. He said that he was no more than five metres away and that there was nobody in between him and the Player.

7. The Player accepted that he used the words “f\*\*\*ing cheat” (but not using the word “you”.) However, he said that as the scrum was about to set the Leicester pack engaged early and, in his opinion, conned the referee into awarding a penalty against Northampton. As the scrum broke up and he walked backwards he looked towards Tongahuia who was standing next to him and said the words. He then looked down at Tom Youngs who was on the floor. He said that his comments referred to Tom Youngs – that being the sort of comment which front rows often say about their opponents. He said he never directed the comments at the referee – he did not allege that the referee was making up the allegation, he simply believed he was mistaken. He produced further footage of the incident from an overhead camera. This showed that Tongahuia was standing near the Player when the words were spoken, and was at variance with the referee’s evidence. When asked to explain why he thought the referee was so certain about what had happened, the Player said he may have been mistaken because of his positioning, the pressure of the situation, the fact there were bodies everywhere, the frustration of the players and the fact that he had been in the referee’s peripheral vision. He reiterated that he was not attacking the referee’s integrity, but he believed the referee was mistaken.

8. Referring to earlier incidents, the Player said that he had been respectful to the referee at all times. He said he never insinuated that the referee was against him – he had actually spoken to his own pack saying that they were “up against it” (referring to the competence of the Leicester pack). On the occasions when the referee suggested that the Player had told him he did not want to speak, it was because he was happy that there was no need for any explanation of any decisions. He repeated that he is always respectful to referees, that he had never been abusive before and he would not have been on this occasion. Mr West agreed with this self assessment and said although the Player was robust and competitive he always respected match officials.

### **Decision**

9. IRB Regulation 17.17.3 states that a disciplinary panel shall not make a finding contrary to the referee’s decision unless it is satisfied on the balance of probabilities that the referee’s decision was wrong. RFU Regulation 19 does not adopt the same approach (although it will next season when the RFU Regulations are aligned to IRB Regulation 17<sup>1</sup>). However, currently RFU Regulation 19.5.1 states that where a referee’s decision is challenged, the Player is presumed innocent until his guilt is proved. We have, therefore, approached this case on the basis that the Player is innocent of verbal abuse unless we are satisfied on the balance of probabilities that he committed the offence.

10. We do not accept the Player’s explanation that he directed the offending comments to a fellow player and that the statements related to the opposing hooker.

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<sup>1</sup> RFU Regulation 19 maintains that a player ordered off or cited may play until the final outcome of the disciplinary process because there is a presumption of innocence. It is a core principle of IRB Regulation 17 that a player ordered off or cited may not play pending the outcome of the disciplinary process and the burden is on the player to show that the award of a red card was wrong. RFU Regulation 19 is being amended to conform with IRB Regulation 17 from the beginning of next season.

The referee had no doubt that the words were directed at him. He was asked a number of times whether he could possibly have been mistaken and he said no. The referee's reaction to the words was immediate and decisive, and he told another player immediately that the Player had said the offending words. There is no reason why the referee should make this up, and we accept that he would have given the Player the benefit of any doubt. He was close enough to know what was said and what was meant. The Player, on the other hand, has every reason to provide an alternative version. We believe that he quickly regretted what he had done and that as soon as he left the field of play he told his team management that he had directed the comments to Tom Youngs who was on the ground after the scrum had collapsed. We observed that this account changed subtly, no doubt after he had examined the DVD footage showing that his eyes were not looking downwards. The version provided to the panel was that he had spoken to Tongahua, who was between him and the referee, about Tom Youngs and then looked down at Youngs. In our view this is not a credible explanation. The Player had become increasingly frustrated about a number of decisions made by the referee and in particular he was cross when the referee ordered a scrum at the 40 minute mark. He became even more cross when the referee gave a penalty for a scrum offence and he then made the offensive remarks.

11. We are, therefore, satisfied to the requisite standard that the Player did call the referee a "f\*\*\*ing cheat." In our view whether or not he preceded these two words with "You" makes no difference. We are satisfied that the gravamen of the comment was the imputation that the referee lacked integrity, and it was expressed in an offensive manner. The Player is, therefore, guilty of verbal abuse of a match official contrary to Laws 10.4(m) and (s).

### **Mitigation**

12. Mr Duthie said that whatever words were actually spoken, the Player does not believe that the referee is a cheat. He said that there was an enormous amount of pressure on the Player, the words spoken were fleeting, there were no threats and the words were not repeated. In those circumstances the offending should be assessed as being at the Low End of the scale of seriousness. As for aggravating and mitigating factors, the Player has offended in the past: 26 weeks for contact with the eyes in April 2007; 8 weeks for biting in March 2012; 2 weeks for striking in December 2012. However, Mr Duthie suggested that the Player was not an offender against the laws of the game within the meaning of RFU Regulation 19 and there should be no increase in sanction from the entry point. On the other hand he should be given credit for his good character: he is a role model at the club, is a model professional off the pitch and is a man of good character (despite his disciplinary record). He was also open with and helpful to the panel during the hearing.

### **Sanction**

13. The panel undertook an assessment of the seriousness of the players' conduct. We accept that there was significant pressure on the Player as the captain of Northampton Saints during the Premiership final, but that does not excuse any disrespect or abuse of a match official. He had been warned a number of times about his attitude to the referee but he did not heed those warnings. Only a minute before

this incident the referee had made it very clear to him that if he continued to talk in a particular way the referee would have to deal with it. Swearing at a match official is offensive in its own right, but challenging a referee's integrity by calling him a cheat exacerbates the offence. Referees have a very difficult job; some make mistakes; some have bad days when their officiating is poor. However, suggesting that the referee is a cheat, particularly in such an offensive manner – that is suggesting that the referee was making erroneous decisions for the benefit of one favoured side over another – represents an attack on an official's integrity. It undermines the core values of rugby. That is reprehensible and makes the offending more serious. Such behaviour requires a significant sanction to mark the Game's view that respect of match officials must never be undermined. It is that aspect of the offending which has persuaded us that this is at the Mid Range of the scale of seriousness.

14. The Mid Range entry point is a suspension of 12 weeks. We considered adding to that entry point on the basis that he is an offender of the laws of the Game. However, we determined that the positive aspects of his character should offset any increase. By pleading not guilty the Player has not demonstrated any remorse nor can he claim any benefit from any of the other matters listed at mitigating factors. His conduct at the hearing was, however, impeccable – and that does deserve some credit because the Player was under enormous emotional pressure facing, as he was, a suspension which is likely to lead to him missing the Lions tour to Australia. That credit is one week. Thus the appropriate sanction for this offending is a suspension of 11 weeks.

15. We have examined closely the Player's possible playing schedule. He has been picked to tour Australia with the British and Irish Lions. The Lions are due to play 10 matches over a period of 6 weeks. Clearly a player would not be expected to play in every fixture. The Lions tour agreement states at paragraph 12.5.7: "The IRB's sanctions for Foul Play (set out in Appendix 1 to Regulation 17) have been established on the basis that one week period of suspension would normally result in a player missing one match. However, during the Tour players may participate, or have to be prepared to participate, in more than one match per week. Accordingly when determining the appropriate period of suspension, Judicial Officers and Appeal Officers must take into account the unique scheduling of the tour and the fact that a player may miss more than one match during a week's suspension, and may impose a suspension based on a number of matches."

16. During the period of six weekends of the tour (from 1 June to 6 July) the Player may have expected to play in six of the matches and we have assumed that he might also be part of the match day squad for two other matches. This period, therefore, represents 8 of the 11 weeks of the suspension imposed. That period will then be followed by the summer break and the Northampton programme starts again with pre season matches over three weeks on 17 August (v Bedford), 24 August (v Edinburgh) and 31 August (v Leinster). The balance of the suspension will, therefore, be served during those three weeks.

**17. The Player is, therefore, suspended for 11 weeks from today until 7 July and from 10 - 31 August. The Player will be free to play again on 1 September 2013.**

**Costs**

18. Standard costs in the sum of £500.00 are awarded against the Player.

**Right of Appeal**

19. The Player is reminded of his right of appeal which should be exercised by no later than 1000 on Tuesday 28 May 2013.

Signed: ***Jeff Blackett***  
***Chairman***

Date: **27 May 2013**