RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

VENUE: The Offices of Russell Jones & Walker, Chancery Lane, London

DATE: 8 January 2013

Player: Toby FLOOD Club: Leicester Tigers

Match: Worcester Warriors v Leicester Tigers

Venue: Sixways Stadium Date of match: 4 January 2013

Panel: Jeremy Summers (Chairman), Philip Evans and Dr Julian Morris ("the Panel")

Secretary: Rebecca Morgan

In Attendance:

The Player
Mr Richard Smith QC – Counsel for the Player
Mr Richard Cockerill – Director of Rugby
Mr Peter Wheeler

Miss Charlotte Mitchell-Dunn, RFU Discipline Case Officer

Mr Stefan Curtis, England Teams Press Officer

DECISION

1. For the reasons set out below the Player was found not guilty of foul play.

PRELIMINARY ISSUES

2. There was no objection to the composition of the Panel.

- 3. Mr Smith QC objected to the Player being charged with an offence contrary to Law 10.4 (j) of the Laws of the Game referred to herein as a "dangerous tip tackle" and, in the alternative, an offence of dangerous tackling contrary to Law 10.4 (e). The Citing Report alleged only that the Player had committed an offence contrary to Law 10.4 (j). Mr Smith submitted that, pursuant to paragraph 13 of Appendix 4 to RFU Regulation 19, only the Citing Officer was now empowered to determine that an act of foul play had satisfied the Red Card test.
- 4. As such it was not open to the Panel to find the Player guilty of an alternative charge to that cited by the Citing officer, or to amend the charge pursuant to Regulation 19.8.5, and in this regard he referred to the decision of the RFU Disciplinary Officer on *Hipkiss*.¹
- 5. The Panel carefully considered that decision but determined that it could be distinguished from the present case in that in *Hipkiss* the panel had found that the match footage was not capable of bearing the interpretation placed upon it in the citing report, which was not the position in this case. In the Panel's view therefore, and notwithstanding paragraph 13 of Appendix 4 above, the RFU had the power to charge the matter in the alternative as it had elected to do.

CHARGE AND PLEA

6. The Player was accordingly charged with the alternative offences set out above and pleaded not guilty to both.

THE CITING

- 7. The Panel considered:
 - i. The Citing Report.
 - ii. The match recording.
 - iii. Medical evidence from Worcester.
 - iv. Oral evidence from the Player.
 - v. Submissions from Mr Smith QC and Mr Cockerill.
 - vi. 4 still press photographs submitted in support of the Player's defence.
- 8. The Citing Report read as follows:

"Worcester in possession and attacking just inside the Leicester half. A midfield ruck is formed just short of the Leicester 10 metre line. Worcester recycle the ball and move it left to their fly half, No 10, Andy GOODE acting as first receiver. On catching the ball, he straightens his run and is tackled by the Leicester fly half, No 10, Toby FLOOD, who tackles GOODE in the midriff with

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¹ 25.9.12

his left shoulder. FLOOD begins to drive GOODE back in the tackle, but as he does so, he picks up the left leg of GOODE with his right arm. With the continued momentum of the tackle both GOODE'S legs are lifted off the floor, with his left leg above the horizontal and his torso twisting in the air whilst being driven backwards. FLOOD is assisted in the tackle to a small degree by the Leicester No 2, hooker, Rob HAWKINS

FLOOD continues to drive GOODE back, who puts out his right arm in an attempt to 'break' his fall as he descends. FLOOD does not control GOODE'S descent and is still driving him in the tackle as GOODE'S neck and left shoulder hit the ground simultaneously. FLOOD lands on top of GOODE and the ball is recycled by Worcester. GOODE is left prone on the floor as play continues and requires medical treatment. The referee, Mr. DOYLE, is approximately 5 metres away from the incident but his view of it is obstructed by the Worcester No 4. The far side assistant referee, Mr. PEARSON, is approximately twenty metres away, but his view is also obstructed and therefore there is no match official sanction. There is considerable crowd reaction but no particular player reaction to the incident.

Mr. DOYLE stops play and awards a penalty to Worcester for an unrelated technical infringement at the ruck situation. GOODE resumes into the game nearly two minutes later having received medical treatment.

In view of the above, I therefore cite the Leicester fly half, No 10, Toby FLOOD for an offence of tip tackling, contrary to law 10.4 (j) of the International Rugby Boards laws of the game.."

9. W10 required brief treatment on the field but was otherwise unhurt.

DEFENCE

- 10. Mr Smith accepted that the offence prescribed by Law 10.4 (j) contained four elements:²
 - I. The tackled player being lifted from the ground;
 - II. The tackled player being dropped or driven into the ground;
 - III. At a time when the tackled player's feet were off the ground;
 - IV. The tackled player's head or upper body had come into contact with the ground.
- 11. It was conceded that W10's upper body had come into contact with the ground at a time when his feet were off the ground and that accordingly the third and fourth components of the offence were established. However he submitted that

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² Hala 'Ufia December 2012

- the Player had neither lifted W10 from the ground nor driven him into the ground having done so.
- 12. The footage was then viewed at normal speed, slow motion and frame by frame.
- 13. As recorded in the Citing Report this showed W10 attacking the Leicester defensive line and stepping inside the Player to his right. The Player initially effected a legitimate tackle with his left shoulder making contact with W10's midriff and his right arm wrapping around W10's left leg. W10 stands up in the tackle and moves the Player backwards and to his (the Player's) left L5 comes into assist and takes hold of W10's shirt and in so doing pulls him around further to the left. At this point W10's feet are still on the ground. L2 then comes in from the left, takes hold of W10's head and/or shoulders and pulls W10 down. W10's left leg and then right leg are subsequently seen to come off the ground. The left leg briefly goes through the horizontal plain. As W10 falls to the ground L2's right arm continues to exert some downward pressure on W10. Although W10 was taken to a position that was broadly horizontal to the ground, at no point did his body (save briefly for his left leg as above) get to, or close to, a vertical position.
- 14. The momentum is also, albeit to a lesser extent, added to by the efforts of W4 who is attempting to assist W10.
- 15. All these actions, particularly that of L2, appeared to contribute to W10 being moved away from the Player and towards the ground.
- 16. The Player comes down heavily on top of W10 thereby adding to the force of W10's impact with the ground.
- 17. Mr Smith accepted that at first glance the footage was unattractive but urged the Panel to view it sequentially and without regard to the emotion that had been generated after the match. In so doing he carefully broke down the footage into stages and invited the Player to speak to it at each stage to explain what had happened and why.
- 18. Mr Smith noted that the incident had initially only involved the Player and W10 and had commenced with the Player effecting a perfectly legal tackle as W10 attempted to cut inside on his left shoulder. The Player had then stepped backward and to his left in an attempt to gain ascendency in the contact and prevent the offload. Again at this stage there was no illegality in the movement.
- 19. At that juncture Mr Smith pointed to the involvement of L2 in particular who was seen clearly to have placed his hand on W10's head and to have pulled it downwards. Simultaneously, with that action, W10's feet came off the ground. In Mr Smith's submission it was this action, coupled with an additional intervention from W4 that had caused W10 to be lifted from the ground. In his submission therefore the Player should not be held responsible for the action of other

- players, and suggested L2's action in pulling down W10 by the head could reasonably have been subject to separate disciplinary action.
- 20. It was further argued that the Player had not driven W10 into the ground within the meaning of the word. It was accepted that the Player had come down on top of W10 but contended that the dynamics of the situation had seen the Player, W10, L2 and W4 crab left at which point the Player had crumpled due to the weight imbalance causing both players to go to ground. Again this was not the fault of the Player but had been caused by the actions of others.
- 21. The Player stated he had not tried to lift W10 and had felt in control of the tackle until the intervention of others. He had not at the time been aware of the actions of L2 but having reviewed the footage he felt that, but for his intervention, he would have effected a normal and legitimate tackle.
- 22. Mr Smith stressed that at no point could the Player's hand be seen to manoeuvre into a position to lift W10 and that, critically, his elbow did not bend and raise, which are the classic hallmarks of a lifting movement. He also submitted that the match officials would have been likely to have detected the sense of an offence had one occurred, and reminded the Panel that the officials would have had the ability to refer the matter to the TMO had they so wished.
- 23. Mr Cockerill noted that there been no reaction from the Worcester players, which he felt was particularly significant as, at the time, Leicester were winning by 2 points and thus it might have been expected that Worcester would have appealed for a penalty or an even a more severe sanction being imposed on the Player.
- 24. Mr Smith referred to the Player's hitherto unblemished disciplinary record. He is 27, has won over 50 caps, played in the region of 200 first team games for Leicester and has never previously been sent off or cited. As such he submitted that he was not a player with a reputation for foul play.

DECISION

- 25. The Panel took considerable time in reviewing the footage and considering the evidence and submissions. It made the following findings:
 - The incident began with a lawful tackle executed by the Player, and W10 at this point was not lifted from the ground;
 - Although not referred to by Mr Smith L5 then intervened by grabbing W10's shirt and pulling him round to the left which would have caused an initial imbalance in the contact;
 - Approximately 2 seconds after the initial tackle (at 1:14 on the counter)
 L2 is seen to grab W10 around the head and pull him down towards the ground. It is only at this point that W10's legs leave the ground;

- W4 endeavoured to assist W10 and in so doing moves W10 further to the left and away from the Player which was likely to have again contributed to the downward motion;
- L2 continues to push down with one hand on W10's shoulder area as he falls to the ground;
- The Player loses control of his own feet and comes down on top of W10 who has been pulled and/or pushed down by L2.
- 26. The Panel was acutely conscious of the importance of the rugby disciplinary process in protecting both players and the image of the game generally, and therefore gave the most anxious consideration to this plainly high profile incident. However, and whilst it found that the elements of a dangerous tip tackle contrary to Law 10.4 (j) were made out, after very careful analysis it could not be satisfied, to the standard required, that the dynamics of the incident had not been caused, or contributed to significantly, by the involvement of the other players referred to above.
- 27. There have regrettably now been a significant number of cases involving dangerous tip tackling and, in appropriate instances, substantial periods of suspension have been imposed. This incident was however distinguishable from such cases, the majority of which involved only the actions of one offending player. In this instance there was a material involvement on the part other players, and in particular L2, and it was this aspect that led the Panel to conclude as it did.
- 28. Having made the findings it had, and thereby concluding that the incident could not be shown, on the balance of probabilities, to have been caused by the Player, the Panel held that this position applied equally to the alternative charge under Law 10.4 (e).

COSTS

29. The citing having not been upheld no order for costs was made.

Joremy Summers
Chairman
9 January 2013