

RFU

V

Maidstone FC

**Hearing into Allegations of Misconduct Prejudicial to the Union Against
Maidstone FC**

Held at: Holiday Inn Bloomsbury

On 12 January 2011

Panel: Gareth Rees QC, Mike Curling, Dr Julian Morris

Secretariat: Bruce Reece-Russel, Liam McTiernan, Sam Dimmock

RFU: Andrew Green QC, Karena Vleck, Polly Handford

RFU Corporate Communications: Dave Barton

Maidstone FC: Sean Minihan (Counsel), Andrew Golding (Director of Rugby and Chairman), Wendy Pound

Observers: Clarence and Rachel Harding (present following the Panel Ruling)

Introduction

1. This hearing concerns the conduct of Maidstone FC (“the club”) in respect of a Kent Cup match between the club and Gravesend played on 17 January 2010. During that match Clarence Harding of Gravesend received an injury to his right eye which resulted in total blindness. Following the match the incident was reported to the police who conducted an investigation which did not result in criminal charges.
2. Thereafter, the RFU commenced an investigation and instructed Surelock to undertake that investigation. Following the completion of the investigation the RFU initiated proceedings against Matt Iles, the club’s No.8, for breach of RFU Rule 5.12 which alleged he was guilty of conduct prejudicial to the interests of

the game in that he made contact with the eye or the eye area of Clarence Harding.

3. A hearing took place on 23 November 2010 (further to an adjourned earlier hearing on 16 August 2010) when an RFU Disciplinary Panel, chaired by HH Judge Blackett, RFU Disciplinary Officer, heard the evidence presented by the parties and determined that they could not be satisfied to the required standard that Matt Iles committed the offence and found him not guilty of the offence.
4. The panel then directed that, in these circumstances, having concluded that the injury had been caused by a deliberate act by one of the back row forwards in the club's first team using a finger or fingers in and around the eye area, that the matter should be referred to the RFU Company Secretary and Legal Officer to determine whether Maidstone FC should be brought to account for the serious misconduct of one of its players under RFU Rule 5.12.
5. The panel made plain its reason for directing that the matter be referred back to the RFU by stating: "If the player responsible cannot be identified then the club must bear responsibility for what has occurred". That proposition is central to this hearing and we address that issue below.
6. This judgment does not repeat the matters set out in the judgment of the hearing on 23 November 2010 unless it is necessary to explain our reasoning at this hearing and for the sake of clarity. Rather we would ask that the judgment of Judge Blackett be appended to this judgment as the two hearings are intrinsically connected and should be read together.
7. We note that a second charge alleging misconduct by the club for a failure to investigate the incident was withdrawn by the RFU prior to the hearing upon receipt of information provided by the club which had not previously been available.

Preliminary Issues

8. The RFU case is dependent upon the panel accepting two important submissions. First, that the panel is satisfied that one of the club's players deliberately made contact with the eye of Clarence Harding causing an injury that led to the loss of sight in the eye. The submission of Andrew Green QC is

that this panel can adopt the factual finding made at the hearing on November 23 2010¹. That finding was in these terms:

“The injury was caused by a deliberate act of a Maidstone player – Clarence Harding immediately alleged an eye gouge which he would not have done had it been an accident by one of his own players”

9. Sean Minihan, counsel for the club, submits that this panel should not adopt that finding and that it should hear evidence to determine that matter for itself.

10. Second, the RFU submits that an offence alleging a breach of RFU Regulation 19.2.1.2 is an offence of strict liability. That would mean that a member club would be liable for the acts of serious misconduct prejudicial to the interests of the union and/or the game *even if* the club, through its officers, could not be said to have any knowledge or foresight of the misconduct. No one suggests in this case that the club through its officers was on notice of the misconduct by one of the club’s players.

11. Regulation 9.2.1.2 reads as follows:

*“Every club shall be responsible for the conduct of its members, and for investigating any allegations of foul play and taking appropriate action in accordance with these regulations.”*²

12. The submission made by Mr Green is stated in these terms:

“The paradigm situation in which a club must take responsibility for the misconduct of its members/players is where, as here, there has been an act of misconduct by a player of the club (i.e. “foul play” contrary to Rule 5.12) but the particular guilty player cannot be identified.”

13. On behalf of the club Mr Minihan submitted that it would be unfair for clubs to be held responsible for the conduct of its members’ conduct in such circumstances and that it would set a dangerous precedent.

¹ See 23 November 2010 Judgment page 5 “Findings” point 3.

² This Regulation was amended for season 2010-11 from 2009-10. The parties agreed that such amendment was not material to the issues before this panel.

Rulings

Deliberate act of foul play

14. The panel was satisfied that it could rely upon the factual decision made by the previous panel. However, it is important to emphasise that this conclusion was not reached without some knowledge of the written evidence which had been compiled. The panel read with care the statements of a number of witnesses who were playing in the match as well as spectators.
15. We also had a full medical report from Mr Matthew J. Starr, MD FAAOphth FRSM, Consultant Ophthalmologist, who opined that the injury to the eye was caused by a finger and excluded the possibility that it was caused by a blunt object. We agree with the earlier panel that the evidence provided by Mr Starr is compelling and we refer to, and agree with, the summary of this evidence set out in the judgment of Judge Blackett.³ This was significant evidence.
16. The panel was quite satisfied that the injury was caused by the deliberate use of at least one finger and, given that active interference together with the level of damage, that the injury was caused by gouging. The panel excluded the possibility of accident and, in those circumstances, the panel also excluded the possibility that the injury was caused by a member of the Gravesend team.
17. It is important to distinguish the issue at the hearing before the panel on 23 November 2010 and the issue before this panel. The earlier panel had to be satisfied that the accused player had been responsible for the injury whereas this panel only had to be satisfied that it was an act of foul play committed by any one of the club's team playing that day.
18. The panel reached the conclusion that it was a deliberate act of one of the club's players on the balance of probabilities deciding that it was the most likely cause of the injury to Clarence Harding's eye.

Strict Liability

19. We rule that Regulation 19.2.1.2 should be construed as meaning that the responsibility of clubs for members' conduct is one of strict liability.

³ See page 4 Judgment

20. The panel was impressed by the RFU submission that these circumstances are unique. The panel regards these circumstances as exceptional and it was the unanimous view of the panel that the use of this Regulation in disciplinary proceedings against clubs in such circumstances would be unusual. The RFU reassured the panel that this was not an interpretation of the Regulation that would lead to a sudden increase in disciplinary proceedings against clubs.
21. Strict Liability is required in these exceptional circumstances because otherwise it would mean that a very serious act of foul play could go unpunished where it was shown that one player must have been responsible. In those circumstances this panel accepts that the club must accept the responsibility for its members and must take some positive action to reflect the finding.

Finding

22. The panel was satisfied that the club's conduct had been prejudicial to the interests of the Union and/or the Game contrary to Rule 5.12 of the Rules of the RFU 2010-11 in that one of its members playing in the match against Gravesend on 17 January 2010 had deliberately committed an act of foul play by making contact with the eye of Clarence Harding causing the loss of sight in his right eye.

Sanction

23. The panel accepted that the club had provided assistance to the police and the RFU in the investigations that had been undertaken following the incident. The club had a disciplinary record which was unexceptional and in recent seasons had been very good.
24. The panel was less impressed with the submission that the club had reacted in an understandable way following the decision of the panel in November 2010. The club should have realised throughout that it was entirely unsatisfactory that an injury such as this had been suffered by an opponent. It may well be that the possible assailants had each denied any deliberate or other act of foul play but in the view of the panel the evidence available to the club should have caused it to question more carefully the circumstances of the incident.

25. The panel could not ignore that the impact of the injury on Clarence Harding which had been enormous. His loss of vision in his eye was permanent and had a profound effect on his general health. He could no longer play rugby and it had limited his employment opportunities leading to a reduction in his income.
26. The sanction imposed by the panel was one of a reduction in the points in this season of 50 points and a £2,000 fine.
27. The panel viewed this as a very serious case. The sanction against the club was intended to show to players that serious acts of misconduct on the field of play could have serious repercussions for the club as a whole. The changing attitudes in the modern world impose a great responsibility on players to take responsibility for their own and each other's conduct.
28. The club was advised of its right of appeal as set out in the RFU Regulations.

Gareth Rees QC
13 January 2011

RFU

v

**Matt Iles
Maidstone FC**

**Hearing into allegations of misconduct in relation to the match
Maidstone FC v Gravesend RFC
On 17 January 2010**

Held at: Holiday Inn Bloomsbury

On 16 August and 23 November 2010

Panel: Jeff Blackett, Robert Horner, Jeremy Summers

Secretariat: Bruce Reece-Russel, Liam McTiernan; Samantha Dimmock

RFU: Tony Wyatt (Counsel), Polly Handford (Legal Officer)

Accused Player: Sean Minihan (Counsel), Matt Iles (Player)

Observers: Wendy Pound, Andy Golding (Maidstone)
Graham Hagggar, Clarence Harding, Rachel Harding,
Charmaine Harding, Charles Harding (Gravesend)

Bob Moffatt and Roger Spreckley (Surelock)

Introduction

On 17 January 2010 Maidstone played Gravesend in the Kent cup. During the match Clarence Harding received an injury to his right eye which resulted in total blindness in that eye. He subsequently reported the matter to the police alleging that he believed that Maidstone No 8, Matt Iles, deliberately gouged his eye thereby causing the injury. The police conducted a criminal investigation but eventually decided that there was insufficient evidence with which to charge Iles or any other person with causing this injury. No further action was taken in relation to a criminal investigation.

The RFU Company Secretary and Legal Officer then determined that the RFU should investigate the allegations under RFU Regulation 19.2.5.4(a) (as it is now numbered) and, on 7 May 2010, instructed Surelock to undertake the investigation. As a result of that investigation the RFU initiated proceedings against Iles for breach of RFU Rule 5.12 which alleged that he was guilty of conduct prejudicial to the interests of the game in that he made contact with the eye or eye area of Clarence Harding. Iles denied the offence.

The Panel convened on 16 August but adjourned while further evidence was obtained from other players and while medical experts discussed causation of the injury. The Panel reconvened on 23 November. The Panel heard or read evidence from:

- David Forbes Gower – match referee
- Clarence Harding – injured player
- Dr Matthew Starr MB, BChir, MD, FAAOphth, FRSM – consultant ophthalmologist
- Mr D A Laidlaw, MD, FRCS, FRCOphth – consultant ophthalmologist
- Roger Gray – photographer
- Ashley Moorey – Gravesend player
- Gary Gray – Gravesend player
- Matthew Iles – Accused
- Wendy Pound – Maidstone Chairman
- Steven Matthews – Maidstone player
- Lee Thompson - Maidstone player
- Josh Pankhurst - Maidstone player

Misconduct complaint

Towards the end of the first half of the match there was a scrum from which Harding picked up the ball and ran forward. He was tackled round the ankles and immediately laid the ball back. He said that he was on the ground and he felt a hand coming over the side of his head which was then jerked backwards. He did not see whose hand it was but he was certain it was a hand. As he set the ball backwards at arms length he saw Ian Harman (Gravesend No 6) go to ground on the ball to protect it. There was no contact between them and Harman's hands were nowhere near his face. He then said that he felt an intense and excruciating pain in his right eye socket. He instinctively put his hand over his right eye and immediately looked up. At that moment he saw Iles (Maidstone No 8) stepping over him and then turning back to look at him. Nobody else was near and he was certain that Iles had gouged his eye intentionally as he lay on the ground after the tackle. He said that the injury was definitely inflicted by a finger and that it could not have been caused by boot studs because there was never a boot anywhere near his face.

No other witnesses observed what occurred, but Roger Gray produced a series of photographs which he had taken at about the time of the incident. Two relevant photographs were taken 6 seconds apart. The first showed Harding being tackled by Josh Pankhurst (Maidstone No 7) just as he was hitting the ground. Iles and Steve Matthews (Maidstone No 4) were running towards the tackle and were in close proximity. The second photograph showed Harding lying prone on the ground on his left hand side with his head buried into the grass. There was a ruck behind him (Maidstone side) of which Lee Thompson (Maidstone No 6) was crouched in a pushing position, Matthews (Maidstone No 4) was at the bottom of the ruck and Pankhurst was to the left of Harding, his right foot not far from Harding's head, appearing to approach the ruck. Iles was to the right of Thompson about to join the ruck. The injury occurred during the six second period between the two photographs.

Play moved away from Harding and he immediately received treatment from the Gravesend physiotherapist. When the play broke down about 15 seconds later the referee ran over to ask how Harding was and the physiotherapist complained that he had been gouged.

Harding was removed from the field and taken to Maidstone hospital. He was examined by a Dr Simpson at about 4pm. He recorded in his notes that there was a penetrating injury to the sclera (upper white of the right eye) and arranged for immediate surgery that evening to restore the integrity of the globe of the eye. He was found to have a 15mm long full thickness sclera laceration, mainly horizontal but with an incline down toward the nose. This was sutured. In addition to the vitreous gel, the dark tissue inside the eye, the uvea, was passing out of the eye through the wound. The uveal tissue was placed back into the eye. He was discharged from hospital on 19 January. He could perceive light. An ultrasound showed a temporal choroidal haemorrhage, and a temporal funnel-shaped detachment of the retina. The iris was detached at its root. He underwent a further procedure in order to try to stabilise the retinal detachment on 29 January. He was seen regularly and by March the diagnosis was that his right eye had settled well. He had severely limited vision in that eye – only hand movements when close to his eye – and it is very unlikely that he will get any further improvement. However the surgery was successful in restoring the integrity of the eye and stabilizing it. In short Harding has been effectively blinded in his right eye.

Defence Case

Matt Iles could not remember much about the match, but by reference to the photographs could reconstruct what occurred. He said he had no dealings with Clarence Harding at all – he opined that the photographs supported that view. In the first he was running towards the ruck as it was forming and in the second he was to the left of the ruck looking as though he was about to join it. He said that he did not gouge or poke his finger into Harding's eye. He first learned that he was being accused of an offence when he was telephoned by the police a week later.

Iles also said that he bites his nails which were consequentially very short. He said that he is a man of good character who has never been involved in any disciplinary offence before and there was no reason why he should want to attack an opponent's eye deliberately. He also said that he could not have come into contact accidentally because he was never anywhere near Harding's head. Three other Maidstone players gave evidence about the game - Steven Matthews (4), Lee Thompson (6) and Josh Pankhurst (7). None could remember the game specifically and nor did the photographs jog their memories. They all denied that they had deliberately made contact with Harding's eye but speculated that it would be possible for accidental contact if the ball had been near his head and they had competed for the ball. When pressed they all denied either deliberate or accidental contact.

Causation

Dr Starr reviewed all of the records and concluded that the injury was caused by a finger or fingers being forced into the eye and a finger nail making a linear cut to the sclera. He thought it was more likely that there were two fingers because the eye lid

had to be forced upwards before the nail could lacerate the sclera and there did not appear to be any grazing on the surface of the eye which might have been caused by one finger pushing up the lid and then causing the injury. He said that the nail did not have to be long – the shorter it was the more pressure would be needed. He discounted a blunt trauma which would have resulted in a burst injury because there was no associated peripheral injury such as bruising or scratches around the orbit. In particular the condition of the eyelid is important in determining the cause of injury and the mild trauma to the tissues immediately around the eye appears to make an injury from a boot stud unlikely (as did the lack of injuries elsewhere).

Mr Laidlaw had examined Harding sometime after the injury and opined that the injury could also have been caused by blunt trauma, noting that the absence of recorded peripheral injury did not preclude there being some bruising which was simply omitted from the records. He said that it was his belief that the eye was most likely to have been ruptured, and neither lacerated nor penetrated. He did not think that a laceration from a finger nail was likely to cause the injury but this did not rule out gouging involving deliberate compression of the eye by a finger or thumb.

The Panel were not persuaded by Mr Laidlaw's observations particularly his speculation that all injuries presented may not have been recorded. The initial diagnosis suggested a penetrative injury and Dr Starr's assessment is compelling. It is a matter of common sense that if the injury were caused by blunt trauma then there would be significant peripheral damage to the orbit and soft tissue surrounding the eye. There was none and it is therefore clear to the Panel that the injury was caused by the insertion of a finger or fingers into the eye and a finger nail lacerating the sclera.

Submissions

Mr Wyatt on behalf of the RFU suggested that the injuries could only have been caused by one of the four Maidstone players who were identified as being near Harding in the photograph taken just after the injury occurred – No 4, 6,7 or 8. He suggested that the evidence pointed to Matt Iles. None could remember much about the game or the incident but one of them must be lying. He submitted that the telling evidence came from Harding himself who, although he did not see who injured him, looked up and the only person he could see near him was Iles.

Mr Minihan on behalf of defence conceded that the evidence suggests that the injury was caused by a finger or fingers being placed in Harding's eye. He suggested that Iles is not the sort of character who would do this deliberately and that it could have been caused accidentally by any one of a number of people, including Gravesend No 6, when competing for the ball which may have been near Harding's head after the tackle. Mr Minihan commented that nobody had seen any player bend over Harding and place his hand into his face and there was no player reaction. This suggested that the likely cause of injury was an accident and there were simply too many anomalies in this case for this Panel to conclude that it must have been Iles and a deliberate act.

Standard of Proof

The standard of proof in disciplinary cases, such as this, is the balance of probabilities, not the more onerous criminal standard. The balance of probabilities means that, having heard all the evidence and using their experience of the Game to help them to decide what was most likely to have occurred, the Panel believes that it is more likely than not that the offence took place as alleged.

Finding

The Panel has unanimously concluded the following:

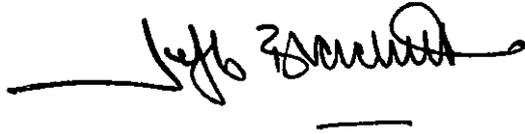
1. The injury to Clarence Harding was caused by a finger or fingers inserted into the eye causing a laceration;
2. The injury was not caused accidentally by Gravesend No 6 when he picked up the ball after Clarence Harding had pushed it back following the tackle;
3. The injury was caused by a deliberate act of a Maidstone player – Clarence Harding immediately alleged an eye gouge which he would not have done had it been an accident by one of his own players;
4. The injury was not caused by Maidstone No 4 Steven Matthews – in the 6 seconds between the two relevant photographs he was involved in the ruck around Gravesend 6 and would not have been near Clarence Harding;
5. The injury was caused by either Maidstone 6, 7 or 8.
6. Clarence Harding is an honest witness – he very fairly said that he does not know who caused the injury but he concluded it was Matt Iles because he looked up and saw Matt Iles looking back at him. His vision would have been affected at this point and he could not discount the fact that another player was also near him.
7. Had this been a criminal trial there is insufficient evidence to satisfy the burden of proof.

Having agreed those matters, the panel were unable to agree whether the case has been proved on the balance of probabilities against Matt Iles. Panel members felt that Clarence Harding's observations of Iles immediately after the infliction of the injury was not determinative because Iles could have been looking back for any number of legitimate reasons. Further the evidence of Josh Pankhurst and Lee Thompson was not particularly convincing and they could not be discounted. **In these circumstances it was not possible to determine with any degree of certainty which of those three potential assailants committed the offence. Therefore, and by a majority of 2:1, the Panel is not satisfied to the required standard that Matt Iles committed this offence and find him not guilty of the charge.**

Comment

However, that is not the end of the matter. A serious act of foul play has been committed by a Maidstone player which has caused a serious and life changing injury to Clarence Harding. The Panel is unable to determine who that player was on the evidence before it but believe that it is not in the interests of justice or the Game to leave matters there. If the player responsible cannot be identified then the Club must bear responsibility for what has occurred. The Panel, therefore, directs that its

findings are brought to the attention of the RFU Company Secretary and Legal Officer for her to determine whether Maidstone FC should be brought to account for the serious misconduct of one of its players under RFU Rule 5.12.

A handwritten signature in black ink, appearing to read 'Jeff Blackett', with a horizontal line underneath it.

HHJ Jeff Blackett
Chairman

23 November 2010