RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

VENUE: Holiday Inn, Bloomsbury, London

DATE: 4 October 2010

Player: Paul TUPAI Club: Bedford Blues

Match: Rotherham Titans v Bedford Blues

Venue: Rotherham **Date of match:** 5 September 2010

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

Secretary: Liam McTiernan

In Attendance:

Andre Bester – 1st XV Coach and presenting for Rotherham by telephone

Paul Tupai ("the Player") Geoff Irvine – Chairman Bedford Blues.

DECISION

1. The Player was found guilty of striking an opponent contrary to Law 10.4 (a). For the reasons set out below he was suspended from playing rugby for a period of 5 weeks, including a 1 week club suspension already served. The Player was accordingly further suspended from 4 October 2010 to 1 November 2010, and is free to play again on 2 November 2010.

PRELIMINARY ISSUES

2. The Player was content to proceed with a two person panel as permitted by RFU Regulation 19.5.1.2. The procedure to be followed was explained and no preliminary issues arose.

CITING

- 3. The Panel convened to consider a citing by Rotherham Titans dated 14 September 2010 in consequence of which the Player was charged with a single offence of striking contrary to Law 10.4 (a). The Player pleaded guilty to that charge.
- 4. The Panel considered:
 - i. The Citing Letter
 - ii. The match recording
 - iii. Minutes of a Bedford Blues Disciplinary Hearing held on 9 September 2010.

- iv. Oral testimony from the Player
- v. Submissions from both clubs.
- 5. The Citing recorded as follows:

We contend that an act of foul play was perpetrated by the Bedford No 5, Paul Tupai.

This player struck Rotherham's No 8, Adam Kettle, with his elbow whilst Kettle was on the ground. We believe this was an unprovoked, intentional and violent act on a player who was in a defenceless position.

Whilst Kettle was dazed for the remainder of the game we believe that if the blow had landed fractionally lower he would have sustained an extremely serious injury.

- 6. The incident had occurred in the 6th minute of the game.
- 7. Mr. Bester indicated that the decision to cite the Player has not been taken lightly, but that Rotherham considered the incident to be a serious matter such that it had a duty to take action to prevent further instances of a similar nature. In his view the Player had deliberately struck a prone opponent Rotherham 8 (R8) who was unable to defend himself. The Player had gone across the breakdown to strike R8. It had been fortunate that R8 was wearing a head guard and his mouth guard but the gravity of the incident went beyond the fact that serious injury had not, in the event, been caused.
- 8. R8 could not recall the incident, and had been dazed for the rest of the match, which he had though been able complete. No medical evidence was submitted but Mr. Bester claimed that R8 had been unable to train throughout the following week. He had been selected for the following match, but had been taken off shortly after half time as it was felt he had not sufficiently recovered.¹
- 9. The match recording was then viewed. This showed R8 going to ground following a tackle. The Player then joined the breakdown. He was seen to squat/bend down slightly and then extend his right forearm towards R8 who was prone. The Player twisted his upper body towards R8 before making contact, thus adding to the force of the contact. There was no question of the Player going for the ball and his action was plainly aimed at striking R8. The blow landed on the side of R8's head, who was then seen to get up slowly clearly feeling the effects of the impact. There was no reaction from any other Rotherham player a number of whom appeared to have been in a position to witness the incident.

MITIGATION

10. The Player stated that he had been reckless not malicious. He had been able to see the ball and had been trying to clear R8 away from the breakdown. Mr. Irvine indicated that the Player had seen red mist and had acted in the heat of the moment. He was not however trying to excuse his action and would take any suspension "on the chin". When pressed by the Panel as to what had caused the red mist, Mr. Irvine asserted that there had been a previous incident, but he was not proposing to detail it for the purposes of the Player's defence.

¹ To the extent that Rotherham was willing to play R8 it would though appear that the club did not consider that he had had been concussed.

- 11. The Player is 36 and has been playing professional rugby for 18 years in New Zealand and England. He has also gained 5 caps for Samoa the last of which was some 4 years ago. He is held in the highest regard by his club and viewed a model professional and a player who one would want on your side. Although no hearing was convened, he received a 2 week suspension in 2006 having accumulated 3 yellow cards in a season.
- 12. The Player had shaken hands with R8 following the game. Mr. Irvine had also spoken to R8, (who had played for 2 seasons at Bedford), after the game, and no reference to the incident had at that time been made.
- 13. Bedford had held an internal disciplinary hearing on 9 September and suspended the Player for 1 week in consequence of which he was not selected for the game against Esher.

RULING

- 14. The offence had been admitted and the Panel had no hesitation in concluding that had the incident have been detected by the Match Officials, a red card would have been issued. The Citing was accordingly upheld.
- 15. The Panel was unable to accept the Player's case that the incident was merely reckless, and whilst the Player may not have intended to cause injury, he had deliberately struck an opponent's head with his forearm.

SANCTION

- 16. The Panel undertook an assessment of the seriousness of the offending having regard to the criteria set out in 19.8.2.5 of the RFU Regulations. In this regard the Panel found as follows:
 - a) That the Player had acted intentionally in that he had deliberately struck an opponent.
 - b) As above, the Player's actions could not be regarded as reckless, save as to the risk of serious injury.
 - c) This was a serious incident, the Player having intentionally and forcibly struck the head of an opponent with his forearm. There was no evidence of provocation or that the Player was retaliating.
 - d) The offending clearly had an adverse effect on R8 although the failure by Rotherham to submit medical evidence did not enable a finding to be made as to any continuing effects after the conclusion of the match. The offending plainly had the potential to have caused serious injury.
 - e) There was no effect on the game.
 - f) R8 was struck whilst prone and thus inherently vulnerable.

- g) There was no premeditation, and Mr. Bester's submission in this regard was not accepted.
- h) The conduct was complete.
- i) There were no other relevant factors constituting the Player's offending.
- 17. In light of these findings the Panel assessed the offending as being at the TOP END of the scale of seriousness.
- 18. The top end entry point for this offence is a suspension of between 9 and 52 weeks. Pursuant to Regulation 19.8.2.6 the Panel was required to consider the appropriate entry point between those two periods. Having regard to the fact that any injury sustained did not prevent R8 completing the match or from starting Rotherham's next game together with the lack of any reaction from other players, the Panel determined that no increase from the 9 week starting point was warranted. To the extent that the Player had acted intentionally, that fact was sufficiently addressed by assessing the offending at the top end.
- 19. None of the aggravating feature set out at Regulation 19.8.2.7 were found to be present.
- 20. Having regard to the matters advanced in mitigation, and the factors set out at Regulation 19.8.2.8, the Panel gave credit by way of reduction of 4 weeks from the entry point, and the Player was accordingly suspended for a period of 5 weeks.
- 21. The Panel applied the Bedford suspension from 9 to 16 September 2010 and further suspended the Player for 4 weeks from 4 October to 1 November 2010.

COSTS

22. The Player and/or his club are ordered to pay costs of £250.

APPEAL

23. The Player was advised of his right of appeal as set out in the RFU Regulations.

Jeremy Summers

Chairman 4 October 2010