RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

Venue: Holiday Inn, London Gatwick

On: 30 September 2010

JUDGMENT

Player: Charlie McGOWAN

Club: Worthing RFC

Match: Worthing v Westcombe Park

Venue: Worthing

Match Date: 4 September 2010

Panel: Jeremy Summers (Chairman), Peter Budge & Fred Batchelor.

Secretary: Liam McTiernan

Attending: John Ward-Turner (1st XV Coach, Westcombe Park)

Charlie McGowan ("the Player")

Brian Vincent (Chair of Rugby, Worthing RFC)
David Hinchliffe (1st XV Manager, Worthing RFC)

Decision

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 4 weeks (including a 1 week club suspension already served) from 23 September 2010 to 21 October 2010. He is free to play again on 22 October 2010.

Preliminary Issues

2. The Player did not object the composition of the Panel. The procedure to be followed and the burden of proof was explained to all parties and no preliminary issues arose.

Citing

 The Panel convened to consider a citing by Westcombe Park RFC dated 16 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 not guilty to that charge.

4. The Citing recorded as follows:

"The incident involves the Worthing No 5 coming in with a late fore-arm smash into the face of our No 11 who was on the ground at the time following a tackle. This can be seen clearly on the CD enclosed which was supplied by Worthing RFC. The incident was not seen by the Referee or the Touch Judge and we believe if seen this would have resulted in a Red Card for "Foul Play" for the Worthing No 5."

5. The Panel considered:

- i. The Citing Letter
- ii. The match recording
- iii. An injury report from Denise Thornborrow dated 24 September 2010
- iv. Oral testimony from the Player
- v. Submissions from both clubs
- 6. Mr Ward-Turner took the Panel to the match recording. This showed Westcombe Park No.11 (WP11) attacking in open play close to the touch line. He was tackled by his opposition wing with both players starting to fall to the ground. The Player then came across to assist from the right and having got to within about two paces of WP11 his right arm was seen to pull back slightly before straightening and then swing at WP11 making contact with his face. His left arm did not make contact with WP11 in an attempt to execute a lawful tackle.
- 7. Mr Ward-Turner confirmed the injury report to the effect that WP11's nose had been broken causing extensive bleeding for some 20 minutes in consequence of which he could not continue playing. He has been assessed subsequently by the club Doctor and, whilst he is playing again at present, he will need corrective surgery at the end of the season.
- 8. No one at Westcombe Park had contacted any of the match officials in relation to the incident. WP11 had complained to club officials immediately after the game. The club had then waited to consider the match recording provided by Worthing before determining that it was appropriate to cite the Player.
- 9. The Player gave evidence. He stated that WP11 had not been fully held in the tackle and he was coming across to assist. His intention was to push WP11 into touch. He had not at the time known that he had made contact with the face but, having seen the match footage, accepted that he had. He similarly agreed that he had not wrapped his arms around WP11 in a lawful tackle. He thought though that the fact that WP11 was going to ground had prevented him from forcing WP11 into touch as intended.
- 10. Mr Vincent on behalf of the Player stressed that, as WP11 was already going to ground, had the Player arrived a split second earlier he would have made contact across the chest. He had been the 4th official that day. He had not seen the Player make contact with WP11 but had seen another player's knee subsequently come into contact with the head of WP11 and had immediately alerted medical staff. Whilst he was not saying that was how the injury had been caused, he submitted that any actions by the Player were accidental and not even reckless.

11. Mr Ward –Turner confirmed that WP11 had been clear that his injuries had been caused by the Player and that he had not mentioned any other later contact involving a knee.

Ruling

- 12. The Panel carefully considered all the evidence. It was unable to accept the Player's case that the incident amounted to an accident in the course of trying to tackle and/or push WP11 into touch. It noted that the Player did not execute a lawful tackle and that his right arm could be seen to have drawn back before it then made contact with WP11.
- 13. It was thus satisfied, to the standard required, that an act of foul play had occurred which had not been detected by the match officials. Had it been detected, in the view of the Panel a red card would have been issued. The Panel accordingly upheld the citing.
- 14. Having advised the Player of it's decision, the Panel invited mitigation on his behalf. He is 28 and has been playing for Worthing for 21 years. He has made over 200 1st XV appearances for his club and has also represented Sussex and England Students. To his credit he has never previously appeared before a disciplinary panel or received a Yellow Card for foul play. He and his family are hugely committed to the club, and he in turn is very highly regarded by all facets of Worthing from the junior section to its officers.

Sanction

- 15. 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 not acted intentionally in that he had not deliberately struck an opponent.
 - b) However, the Player actions had, on any view, been reckless. In so far as his objective may have been to assist in tackling an opponent no lawful tackle had been made and his arm had simply been swung towards an opponent in a manner that was clearly dangerous.
 - c) The offending consisted of a blow to an opponent's face delivered by a swinging forearm. There was no provocation and the Player was not retaliating.
 - d) The offending caused a fracture to the nose and corrective surgery will in due course be required.
 - e) There was no effect on the game.
 - f) As the victim was struck whilst being tackled he was unable to avoid the Player's arm and was vulnerable in that respect.
 - g) There was no premeditation.
 - h) The conduct was complete.
 - i) There were no other relevant factors constituting the Player's offending.
- 16. In light of these findings the Panel assessed the offending as being at the MID RANGE on the scale of seriousness. The mid range entry point for this offence is a suspension of 5 weeks.

- 17. None of the aggravating feature set out at Regulation 19.8.2.7 were found to be present.
- 18. Having regard to the matters advance in mitigation, the Panel gave credit by way of reduction of 1 week from the entry point, and the Player was accordingly suspended for a period of 4 weeks.
- 19. Somewhat surprisingly, at the conclusion of the hearing the Panel was advised that the Player had previously been found guilty of foul play at a club internal disciplinary hearing held on 23 September 2010 and suspended for 1 week. We can do no more than note that, had a guilty plea been entered consistent with that decision, it is likely that the player would have received an additional reduction in his suspension from this Panel.
- 20. The Panel was however minded to commence the period of suspension as at the date of the club suspension. The suspension was therefore ordered to run from 23 September to 21 October 2010 inclusive.

Costs

21. The Player and/or his club is ordered to pay costs of £200.

Appeal

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

Jeremy Summers

Chairman
3 October 2010