RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

VENUE: Holiday Inn, Bloomsbury, London

DATE: 28 November 2011

Player: Nic BERRY Club: London Wasps

Match: London Wasps A v London Irish A

Venue: Sunbury Date of match: 7 November 2011

Panel: Jeremy Summers (Chairman), Simon Wakefield and Elizabeth Riley ("the Panel")

Secretary: Rebecca Morgan

In Attendance:

Nic Berry ("the Player").

Kevin Harman – London Wasps A team manager.

DECISION

1. The Player, on his own admission, was found guilty of dangerously tip tackling an opponent contrary to Law 10.4 (j). For the reasons set out below he was suspended from playing rugby for a period of 3 weeks. The suspension will run from 28 November to 19 December 2011. He is free to play again on 20 December 2011.

PRELIMINARY ISSUES

- 2. The Player did not object to the composition of the Panel.
- 3. The Player was charged with an offence under Law 10.4 (e). However having considered the match footage the Panel determined that the offence was more properly classified as an offence contrary to Law 10.4 (j). The position was explained to the Player who did not object to the amendment of the charge pursuant to RFU Regulation 19.8.5. No other preliminary issues arose.

CITING

4. The Panel convened to consider a citing by London Irish dated 21 November 2011 in consequence of which the Player was charged with an offence contrary to Law 10.4 (j). The Player pleaded guilty to that charge.

- 5. The Panel considered:
 - i. The Citing.
 - ii. The match recording.
 - iii. Oral testimony from the Player.
 - iv. Submissions from Mr Harman.
- 6. The Citing was contained in an e-mail (dated 21 November 2011¹) sent to the RFU Disciplinary Manager by Mr Kieran McCarthy of London Irish and recorded as follows:

Can you please take this as our request to have the Wasps No 9 cited for the dangerous tackle on the London Irish No 9, Jack Moates; he tips him over the horizontal and then drives him into the ground. Victim player not treated and no injury sustained. Is this not the prototype tackle that the world is gone hysterical about viz Warburton etc. Indeed, we have our own case to deal with after Steve Shingler's red-card in Cardiff on Friday night.

- 7. There was no evidence before the Panel as to whether the incident had been seen by the match officials. Both the Referee and nearside Assistant Referee appeared to have been in close proximity and yet, strangely, no action was taken. However, the Player readily accepted that an act of foul play had occurred and did not seek to argue that the officials (if they had seen the incident) had dealt with the matter correctly.
- 8. The Panel had no hesitation in finding that the offending warranted the issue of a red card.²
- 9. As noted above there was no injury to the tackled player.
- 10. The Panel viewed the match footage at normal and reduced speed. This showed London Irish 9 (LI9) attacking down the short side close to the touch line having won possession at the previous breakdown. LI 9 breaks left and effects a pass to a teammate whose number could not be seen. The Player is defending on the short side and closes in to make the tackle. He is looking down and the ball has been passed and caught by the receiver before contact is made with LI9. Contact is around the hips, and both arms wrap around LI9. Just before contact the Player's legs are in a slightly squat position and his legs then straighten which causes LI9 to be lifted from the ground. The Payer's upward movement continues and LI9 is taken through the horizontal. He is not driven into the ground and neither is he dropped. LI9's right elbow makes initial contact with the ground before the full force of the impact is taken by his back/shoulder area. At the point of impact LI9's legs are still in the air pointing upwards and away from the ground. The footage was not conclusive, but it was arguable that the Player had himself fallen off balance so that his weight was pushing down through LI9 as he hit the ground.

¹ This was the last day on which the citing could have been lodged; the delay in doing so did not appear to the Panel to have been helpful.

² If the match officials had seen the incident and had determined to take another course of action, the Panel would have found that the reasons for their doing so were wrong.

MITIGATION

- 11. The Player gave evidence. He accepted that having looked at the footage once the citing had been lodged it did not look good. At the time he had, however, not appreciated the seriousness of the incident. Once he had seen the footage he had immediately put his hand up and admitted foul play. He agreed that the ball had been passed before he had made contact with LI9.
- 12. He had been trying to make an offensive tackle and to knock LI9 backwards. Contact had been made just under the hips and he then tried to drive his opponent back. LI9 had tried to spin out of the contact and this had led to his (the Player's) left arm getting caught around LI9's right thigh. He had though not intended to take him through the horizontal, had not driven LI9 into the ground and had not intended to cause injury.
- 13. At the time there had been some minor reaction from LI9 and another London Irish player, but when the incident did not even lead to a penalty he had believed there was nothing to it. However once he had seen the footage after the citing had been lodged he had immediately apologised to LI9 through his club.
- 14. The Player did not seek in any way to diminish the potential seriousness of the incident and readily expressed remorse which the Panel found to be wholly genuine. He is 27 years old and has been a professional player for 8 years including spells with Queensland Reds and Racing Metro. He has also represented Australia U.21s and been selected for an Australian Prime Minister's XV.
- 15. Mr Harman noted that the incident had occurred very quickly and had not been dealt with by the match officials. He too though accepted that the incident did not look good. He noted the lack of injury and felt that the offending could properly be categorized as being low end. He spoke very highly of the Player and praised in particular his outstanding efforts with the local community and with younger players.

RULING

16. The offence was admitted and, as already noted, the Panel had no hesitation in concluding that, had the incident been detected by the Match Officials, a red card would have been issued. The Citing was accordingly upheld.

SANCTION

- 17. The Panel undertook an assessment of the seriousness of the offending having regard to the criteria set out in 19.11.9 of the RFU Regulations. In this regard the Panel found as follows:
 - a) The Player had acted intentionally in that he had deliberately lifted a player off the ground and had straightened his legs whilst doing so.

- b) Whilst the Panel did not find that the Player had deliberately taken LI9 through the horizontal or had intended to cause injury, he had plainly been reckless as to both those risks.
- c) This was a serious incident. The Player had lifted LI9 off the ground and failed to do all reasonably possible to bring him down safely. Indeed it was likely that his body weight was bearing down on LI9 thus adding to the potential force of the impact. There was no provocation and the Player was not retaliating.
- d) There was no injury.
- e) There was no effect on the game, and only minor reaction from London Irish players.
- f) Any player taken through the horizontal is inherently vulnerable.
- g) There was no premeditation.
- h) The conduct was complete.
- i) There were no other relevant factors constituting the Player's offending.
- j) There were no other circumstances considered relevant by the Panel.
- 18. In light of these findings the Panel assessed the offending as being at the MID RANGE of the scale of seriousness. In so doing it had regard to a number of decisions made at RWC11 relating to similar offending and to further decisions in the current ERC tournaments.
- 19. The mid range entry point for this offence is a suspension of 6 weeks.
- 20. The Panel gave very careful consideration as to whether the entry point should have been increased to reflect the aggravating feature set out at Regulation 19.11.11(c) the need for a deterrent to combat a pattern of offending. In this regard it was particularly conscious of the relevant IRB Memorandum issued in June 2009. The Panel however noted that there has been some divergence in the approach taken by Judicial Officers/Disciplinary Panels in similar cases heard since the issue of that Memorandum, and that accordingly there is uncertainty as to whether the Memorandum requires entry points to be increased by way of deterrence. In light of that position, but only on a majority decision, the Panel determined not to increase the entry point in this instance. In so doing it noted that the issue has been raised in a number of recent high profile cases, and it is hoped that a considered position may soon be reached on the point which others will then be required to give effect to.
- 21. Having regard to the matters advanced in mitigation, and the factors set out at Regulation 19.11.12, the Panel gave the maximum (50%) credit by way of mitigation and reduced the entry point by 3 weeks. The Player was accordingly suspended for a period of 3 weeks as set out at paragraph 1 above.

COSTS

22. The Player and/or his club is ordered to pay costs of £500.

APPEAL

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

Jeremy Summers

Chairman 29 November 2011