

# DECISION OF THE INDEPENDENT JUDICIAL OFFICER

## ERC Heineken Cup, Season 2013/2014

Held at Huguenot House, 35/38 St Stephen's Green, Dublin 2, on Thursday 17<sup>th</sup> October 2013 at 11.40am

In respect of:

**Samson Lee ("the Player")**

and

A citing complaint for an alleged breach of Law 10.4(b) of the Laws of the Game in the Heineken Cup match between Harlequins and the Scarlets played at the Twickenham Stoop on 12 October 2013.

Judicial Officer appointed to hear the case:

Rod McKenzie (Scotland) ("The Judicial Officer")

### **Decision of the Judicial Officer:**

- (i) the Player had committed the act of Foul Play for which he had been cited;
- (ii) the act of Foul Play committed by the Player would have warranted a red card; and
- (iii) the Player is suspended from taking part in the game of rugby up to and including Sunday 27<sup>th</sup> October 2013. This represents a two week suspension commencing on Monday, 14<sup>th</sup> October 2013.

### **Introduction**

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the ERC's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2013/2014.

The Judicial Officer was appointed to consider the citing of the Player in the match between Harlequins and the Scarlets played at the Twickenham Stoop on 12<sup>th</sup> October 2013.

The Player was alleged to have committed an act of Foul Play in breach of Law 10.4(b) of the Laws of the Game.

### **The Parties at the Hearing**

Present at the hearing in addition to the Judicial Officer were the following persons:

- Mr Roger O'Connor ("the Disciplinary Officer"), Disciplinary Officer, ERC
- Mr Liam McTiernan, Regulatory Officer, ERC
- The Player
- Mr Gareth Jenkins, Head of development and recruitment at the Scarlets

- Miss Amy Cornelius, clerk to the ERC Disciplinary Panel
- Miss Holi Smith, Administrative Executive, ERC (observing)

### **Preliminary Matters and Procedures**

At the commencement of the hearing, the Judicial Officer noted the identities of all present and narrated the contents of the citing complaint reminding the Player that he had been considered to be in contravention of Law 10.4.(b).

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2013/2014 ("the Disciplinary Rules" and "DR" in the singular) would apply.

The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.

The Judicial Officer established what evidence was placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented. There was no additional evidence.

The documentary and video evidence for consideration comprised of the following:

- Letter from the Disciplinary Officer to Professor Lorne Crerar, Chairman of the Disciplinary Panel, dated 14<sup>th</sup> October 2013
- Citing Report from Jean-Claude Legendre in French and English
- Email from John Lacey to Liam McTiernan, dated 15<sup>th</sup> October 2013
- Email from Peter Fitzgibbon to Liam McTiernan, dated 15<sup>th</sup> October 2013
- Email from Olly Hodges to Liam McTiernan, dated 15<sup>th</sup> October 2013
- Statement from Marshall Kilgore, undated
- Email from Graeme Bowerbank to Liam McTiernan, dated 15<sup>th</sup> October 2013
- Email from Garan Evans to the Judicial Officer, dated 16<sup>th</sup> October 2013
- Email from the Disciplinary Officer to the Judicial Officer, dated 16<sup>th</sup> October 2013
- Video recordings provided by the Disciplinary Officer and the Player

The Judicial Officer noted the terms of the Player's responses to the Standard Directions and that the Player denied committing an act of Foul Play in the incident in question and in any event, denied that any act of Foul Play committed by him would have warranted a red card. The Player confirmed that this remained his position.

In those circumstances, the Judicial Officer said the purpose of the hearing was to consider the evidence before him and determine whether the Player had committed the act of Foul Play for which he had been cited, if so, would such an act of Foul Play have warranted a red card and to determine what, if any, sanction was to be imposed.

### **Evidence Supporting the Citing Complaint**

#### Video Evidence

The video evidence before the Judicial Officer consisted of six clips provided by the Disciplinary Officer and two clips provided by those representing the Player. The following are the sequence of events determined by the Judicial Officer after hearing representations from the Disciplinary Officer and Mr Jenkins and evidence from the Player, from all of the clips taken together.

- The incident took place just inside the Scarlets' half of the pitch, a few metres from the half way line and towards the right hand touchline as viewed from the Scarlets' try line.
- Harlequins' 9 has possession of the ball and takes it into a ruck. Harlequins' 9 is at the bottom of the ruck with the ball held at his chest area.
- The Player is standing at the back of the ruck on the Scarlets' side with his hands on his own players who are in the ruck. The Player is on his feet.
- The Player looks down to his left and sees the ball at the chest of Harlequins' 9 in the hands of Harlequins' 9.
- Initially Harlequins' 9 is slightly on his side partially turned to the right and the Player reaches down with his left hand stretching towards the ball. In order to do so he has to lean over the head of Harlequins' 9. The Player could not but be aware in carrying out this action of the position of the head of Harlequins' 9. The Player then realises that for him to handle the ball in this position would be a contravention of Law 16.4(b) and he withdraws his left hand.
- The Player then sets his weight on his right foot and raises his left leg so that the top half of his leg is parallel with the ground. He then stretches out with the bottom of his leg looking down and brings his foot down on to the ball which is being held in the hands of Harlequins' 9 at his chest area. The Player could not but be aware in carrying out this action of the position of the head of Harlequins' 9. At this point, Harlequins' 9 has turned fully onto his back and has his face only a few centimetres from the ball. In order to target the ball with his foot the Player is again looking down and must have known the location of the head of Harlequins' 9 in relation to the ball.
- The Player knew or ought to have known that he was bringing his foot down in close proximity to the face of Harlequins' 9 and that in attempting to ruck the ball in this way and in this position, he was doing so dangerously. There was a clear and obvious danger either that he would miss the ball and instead contact the upper body or face of Harlequins' 9 or that after making contact with the ball he would then contact the upper body or face of Harlequins' 9.
- The Player successfully gets his foot on the ball and in so doing loosens the ball from the grip of Harlequins' 9.
- However, as would be expected, Harlequins' 9 attempts to resist the ball being rucked out of his hands and the Player does not get a clean purchase on the ball with the base of his left boot. The Player then draws his foot back in a rucking movement as a consequence of which it slips off the ball and lands on to the lower part of the face of Harlequins' 9. The Player then draws his foot back and his boot is drawn over the face of Harlequins' 9.
- At an earlier part of the ruck, the Referee had already signalled a penalty advantage to Harlequins in relation to a different infringement by another Scarlets player.
- However, on seeing the actions of the Player described above, the Referee blows for dangerous play and misconduct against the Player.
- The Player acknowledges to Harlequins' 9 that he has struck the Harlequins' 9's face with his boot and appears to apologise to Harlequins' 9 for having done so.
- The Referee then gives a yellow card against the Player for his dangerous play and misconduct and the Player leaves the field of play for 10 minutes.
- Harlequins' 9 is initially treated on field by the Harlequins' medical team but is found to have no significant injury and the match continues normally until full time except for the 10 minute absence from the field of the Player.

### The Referee's Report

The Referee's Report is in the form of an email of 15 October 2013. He advises:

*"I saw the incident out of the corner of my eye and sent for review to the TMO. I*

*asked TMO for sanction also as screen not very clear at stadium. I deemed in my view that scarlets players had got the ball first and agreed with TMO for penalty and yellow card. The explanation to player was reckless use of the boot and put player in the bin which he fully accepted."*

### Further Evidence

AR Fitzgibbon reports in an email of 15 October 2013 that the incident was on his side of the ruck but was some distance away (approximately 40 metres) and he was not in a position to see clearly what occurred.

AR Olly Hodges also in an email of 15 October 2013 advises that the incident was on the opposite side of the ruck from him and that he had no view of the incident.

The TMO reported:

*"At a ruck the Scarlets 3 [the Player] reached his leg forward to ruck the ball. He made contact with the ball but as he was bringing his foot back it made contact with the face area of the Harlequins 9. I adjudicated that this was reckless use of the boot and recommended a yellow card."*

In an email of 15 October 2013 Graeme Bowerbank, Team Manager of Harlequins advised that:

*"Danny [Harlequins' 9] got stuck at the bottom of the ruck facing up having presented the ball back from being tackled. He was stuck on his back and the ball somewhere near his chest and he simply remembers a boot on his face. It connected the face predominantly the nose is a scraping motion. Fine to play on having had some on pitch treatment and will train this week without any impingement from the injury."*

### **The Player's Evidence**

The Player advised that in the week prior to the match he was coached that the breakdown would be a key feature of the match and that he should focus in attempting to win possession of the ball for his team at the breakdown. He has seen this incident as an ideal opportunity to legitimately win turnover ball.

In his response to the Standing Directions, the Player accepted that his boot had made contact with the face of Harlequins' 9 but denied that this constituted stamping or trampling. The Player states that it is accepted by the Citing Commissioner, the Referee, and the TMO that the Player was attempting to play the ball and that contact with Harlequins' 9 occurred as a result of the Player's boot being dragged back.

The Player asserts that Harlequins' 9 is holding the ball away from his [Harlequins 9's] head. The boot makes contact with the ball approximately 40 centimetres beyond the head. He Player's leg is extended forward but with defensive players moving in the opposite direction, this prevents the Player from moving further forward, causing him to be off balance.

The Player contends he is trying to play the ball back moving it in the opposite direction of the boot. He says as the ball is moved one way and the boot is dragged back, contact with the ball was lost and that the boot was not stamped down through the ball towards the Player. The Player states that he is attempting to drag the ball back and the boot does not come to rest near Harlequins' 9 but 50 centimetres away from the legs of other Scarlets' Players. He claims his boot has by then moved 90 centimetres back during the incident.

The Player contended that the contact with Harlequins' 9 was accidental and as a consequence of a genuine attempt to ruck the ball and not a stamp.

The Player observes that in the TMO's report he acknowledges that the movement of the Player was one of drawing back rather than stamping.

## **Submissions**

### The Disciplinary Officer

The Disciplinary Officer, Mr O'Connor, contended what the Player did constituted a stamp and that it was therefore contrary to Rule 10.4(b). Notwithstanding that the Player's leg was being moved in a backward direction, i.e. towards him, the movement was sufficient to constitute a stamp.

The stamp was dangerous given the context in which the ball was positioned near to the face of Harlequins' 9. The Player's movement exposed Harlequins' 9 to considerable risk of injury and was dangerous.

### Player's Representative

Mr Jenkins, representing the Player, contended that in circumstances where the Players are coached to target the ball in a breakdown situation and to win the ball quickly if possible, particularly in turnover situations, the actions of the Player were legitimate. The Player saw the ball and went for the ball. It was entirely accidental that the Player's foot came into contact with the face of Harlequins' 9.

## **Discussion**

In Law Clarification 1 of 2005 it was ruled that rucking which was directed at the person of an opposing player to remove a player as an obstruction or impediment from securing possession of the ball in a ruck is illegal. The ruling went on to advise, in the fourth part, that inadvertent or unintentional contact with players in a ruck as an incident of legitimate rucking for the ball (reckless and patently dangerous rucking apart) is considered legal and within the laws of the game.

However, the affirmative answer to the fourth part of clarification 1 of 2005 was subject to the exception that such rucking was not within the laws of the game if it was "reckless and patently dangerous".

In this case, the Player had ample opportunity to identify the whereabouts of the head of Harlequins' 9 in relation to the ball. He must necessarily have seen the head of Harlequins' 9 when he first reached over and attempted to extract the ball from the ruck using his hand. Having decided not to continue using his hand, the Player then stretched over his left leg seeking to ruck the ball which was manifestly being held by the Player on this chest and in the vicinity of his face.

To attempt to ruck the ball in these circumstances was "reckless and patently dangerous". It was likely to place Harlequins' 9 in danger of being rucked on his face with the boot of the Player which is precisely what occurred. The Player ought not to have attempted to ruck the ball when the ball was in such a proximate position with the head of Harlequins' 9.

Law 10.4(b) provides that:

"A Player must not stamp or trample on an opponent."

The Law is stated in stated in definitive terms. As with the other provisions of Law 10.4 it does not require that there be intent on the part of the transgressing Player for a breach of the relevant Law to be constituted.

It may be possible for a player who has stamped or trampled on an opponent to argue that such stamping or trampling was wholly accidental but this is not such a case. In this case, the dangers associated with rucking or attempting to ruck the ball were clear and obvious. It is not sufficient for a Player who stamps on an opponent to argue that he should not be held guilty of foul play by reason of application of Law 16.3(f) when in the act of rucking, as here, the Player concerned puts another player in clear and obvious danger of injury to his head or some other part of his body by rucking which is reckless and patently dangerous.

Accordingly the Judicial Officer found that the act of Foul Play for which the Player had been cited had been committed by the Player and upheld the citing.

### **Decision as to Disposal**

The Judicial Officer noted that the offence of stamping/trampling on an opponent was listed within IRB recommended sanctions for offences within the playing enclosure (found at Appendix 3 of the Disciplinary Rules) as follows:

- Low end, 2 weeks.
- Mid range, 5 weeks.
- Top end, 9+ weeks.
- Maximum sanction 52 weeks.

It was argued by Mr Jenkins on behalf of the Player that the Player's actions did not constitute Foul Play which would have warranted a red card.

The Judicial Officer determined, for the purposes of DR 6.7.41, that, the risk and danger to Harlequins' 9 that the Foul Play in this occasion would have warranted a red card. The Harlequins' player was in a vulnerable position and there was a high risk that the boot of the Player would come into contact with the face, or at least the upper part of the body, of Harlequins' 9. The fact that the Player's boot came into contact with the face of Harlequins' 9 was a consequence of patently dangerous rucking on the part of the Player.

In determining the appropriate entry point for the purposes of DR 6.7.31 and DR 6.7.33 it was noted for the purposes of DR 6.7.32 that the offending of the Player in this case was reckless as described in DR 6.7.32(b), i.e. the Player knew or ought to have known that he was at risk of committing an act of Foul Play, as opposed to intentional or deliberate Foul Play within the meaning of DR6.7.32(a). Whilst the Player intended to ruck the ball and initially succeeded in so doing, he did not intend his boot to come into contact with the face of Harlequins' 9.

The Player was fully involved and his actions resulted in the offending. The part of his body used was his boot. There was no provocation or retaliation involved and no issue of self defence arose. The offending was not premeditated.

There were no injuries to the victim player who carried on after brief medical attention. The victim player suffered no impediment to training after the match. Other than the yellow card given to the Player, there was no effect on the match. Harlequins' 9 was vulnerable at the time of the commission of the act of Foul Play.

The Judicial Officer determined that on the basis that the Player's actings had been reckless,

as provided in DR6.7.32(b), and that there had been no significant injury occasioned to the victim player, it was appropriate that this matter be dealt with as a low end entry point case.

Per appendix 3, the entry point is therefore two weeks.

There were no aggravating factors for the purposes of DR 6.7.34.

In relation to off-field mitigating factors under DR 6.7.35, the Player had an exemplary disciplinary record and was relatively young and inexperienced. The Player had conducted himself excellently during the course of the hearing and had demonstrated remorse to Harlequins' 9 at the time of the incident on the field of play.

However, there had been no acknowledgement of culpability/wrongdoing by the Player who had contended that there had been no Foul Play involved and in any event that any Foul Play which did take place did not warrant a red card.

For the purposes of DR 6.7.36, it was accordingly not appropriate to afford the Player the full 50% mitigation which was possible and having regard to the absence of an acknowledgement of culpability/wrongdoing by the Player, only 30% mitigation could be given in this case. Since applying 30% to two weeks would result in a suspension which is not in complete weeks, the sanction is rounded up, DR 6.7.38, to two weeks.

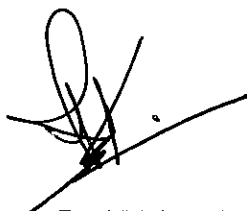
For the purposes of DR6.7.44, Mr Jenkins, appearing for the Player, confirmed that he considered the Player otherwise fit and ready to play and that he would have played in the Heineken Cup during weekend commencing 18<sup>th</sup> October and in the Pro 12 during weekend commencing 25<sup>th</sup> October were he not suspended.

The Player was accordingly suspended from play for a period of two weeks represented by the period from Monday 14<sup>th</sup> October 2013 (when he was provisionally suspended) up to and including Sunday 27<sup>th</sup> October 2013; representing two matches which were not inconsequential or friendly matches for the purposes of DR 6.7.44(c).

The Player was found liable for costs amounting to one third of the Judicial Officer's travelling and accommodation costs. The Judicial Officer dealt with two other disciplinary cases on 17<sup>th</sup> October 2013.

The Judicial Officer reminded the Player that the Disciplinary Rules afford him the right to appeal against this decision.

There being no further matters to consider, the proceedings were closed.



Rod McKenzie  
22<sup>nd</sup> October 2013