

# DECISION OF THE INDEPENDENT JUDICIAL OFFICER

EPRC

Held at Sofitel Hotel, Heathrow, London on 20<sup>th</sup> January 2016

In respect of:

**Tim Swinson** of Glasgow Warriors (“**the Player**”)

and

**The citing of the Player in the match played between Northampton Saints –v– Glasgow Warriors on 17<sup>th</sup> January 2016 at Franklin’s Gardens, Northampton for an alleged act of foul play of striking an opponent with his fist contrary to Law 10.4(a) of the Laws of Rugby Union.**

Judicial Officer appointed to hear the case:

**Simon Thomas (Wales)** (“**the Judicial Officer**”)

**Decision of the Judicial Officer:**

- (i) The Player admitted both the Citing Complaint and that his act of foul play warranted a red card. Accordingly, the Judicial Officer upheld the Citing Complaint and determined that the act of foul play contrary to Law 10.4(a) of striking an opponent had merited an ordering off
- (ii) The Player is suspended from taking part in the Game of Rugby up to and including 25<sup>th</sup> January day 2016. This represents one week’s suspension commencing 17<sup>th</sup> January 2016.

## **Introduction**

1. The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the EPCR's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Champions Cup, 2015/2016. The Judicial Officer was appointed to consider the citing against the Player ("the Complaint") in the match played between Northampton Saints and Glasgow Warriors on 17<sup>th</sup> January 2016 in the Champions Cup 2015/2016.
2. Mr Jeff Mark had been appointed as the independent Citing Commissioner to the match and had cited the Player for an act of striking an opponent (Mike Haywood, N16) whilst both players were involved in a maul. The law cited by the Citing Commissioner was Law 10.4(a).
3. Present at the hearing in addition to the Judicial Officer were the following persons:-
  - i Mr Liam McTiernan, Disciplinary Officer, EPCR
  - i Mr Tim Swinson ("the Player")
  - i Mr John Manson, Rugby Operations Manager, Glasgow Warriors

## **Preliminary Matters & Procedures**

4. At the commencement of the hearing, the Judicial Officer noted the identities of all present and narrated the complaint reminding the Player that the complaint was in respect of an allegation that the Player had committed an act of foul play by striking an opponent with his fist contrary to Law 10.4(a).
5. The Judicial Officer reminded all parties that the EPCR Disciplinary Rules found in the Participation Agreement of the Champions Cup, 2015/2016 ("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.
6. The Judicial Officer established what evidence had been 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 before him. The evidence for consideration was as follows:-
  - i The Citing Complaint.
  - i The referee's report of M. Romain Poite
  - i The assistant referee report of Cyril Lafon
  - i The assistant referee report of Stephane Boye
  - i TMO report of Philippe Bonhoure

- i Statement of Paul Shields, Team Manager, Northampton Saints
- i Statement of Michael Haywood (N16)
- i Photograph of the face of Michael Haywood
- i The Player's statement in response to the standing directions
- i Match footage

7. The Judicial Officer invited the Player and the Disciplinary Officer to confirm whether or not they had any preliminary issues that they wished to raise. Each confirmed there were none.
8. The Judicial Officer noted that the terms of the Player's response to standing directions found at Appendix 3 of the Disciplinary Rules was as follows:

"I admit the citing.

I accept it was a red card offence.

I will explain myself at the hearing where I will be accompanied by John Manson, Glasgow Warriors' team manager."

#### **The Citing Complaint**

9. The Judicial Officer explained that he would put the Citing Complaint to the Player and ask him to confirm whether he maintained the position as set out in the response to standing directions.

The Citing Complaint confirmed that in the second half after 74 minutes of the match had been played:

"N16 (Haywood) joins a maul on Northampton 10-metre line by driving in, with arms around G19 ("the Player") who reacted with a punch which was immediately flagged by the assistant referee. The referee spoke to the assistant referee and decided yellow card. Immediately after the match, I spoke to Northampton management who had already taken a photo of the victim player showing an injury under the left eye and which he confirmed had been caused by a punch to the face. On reviewing in the truck, there is a clear punch to the N16 whose immediate reaction was to hold his face and to confirm that the punch landed to the face causing the injury shown."

10. The Player confirmed that he admitted it.
11. In accordance with DR 7.8.23, the Judicial Officer informed the Player that the Citing Complaint would therefore be upheld and the Judicial Officer would proceed to hear the

evidence surrounding the facts of the case to determine what sanction (if any) should be imposed upon the Player in accordance with the sanctioning provisions to be found under DR 7.8.52 to 7.8.35.

12. The evidence was presented by the Disciplinary Officer as follows:

### **The Match Footage**

13. The match footage produced by the Disciplinary Officer showed the incident occurring after the elapse of approximately 74 minutes of the match when the scores were Northampton Saints 12 and Glasgow Warriors 15.
14. Glasgow were in possession of the ball and a driving maul was taking place within about 2 meters of the Glasgow right-hand touchline very close to the halfway line. The Glasgow players make good progress of about 10 metres, driving back the Northampton players. As it progresses the ball remains protected on the Glasgow side at the back of the maul.
15. As the maul moves over the Northampton 10-metre line, Michael Haywood (N16) can be seen in position to defend the blind side of the maul before driving, legitimately, in a forward direction into the maul. He does so from an onside position. As he joins the maul, the Player, who had been advancing as part of the front of the maul in the opposite direction, rotates in an anti-clockwise motion so that at the point of N16 joining, the Player's back is angling towards the touchline and almost at 90 degrees to Haywood drives in. As N16 drives with his head looking downwards, N16 grasps the Player with his left hand on to the back of the Player's shorts, binding on.
16. At this stage, the Player is in a more upright position and can clearly be seen letting go of his own binding on a teammate with his left hand before withdrawing his elbow, clenching his fist and swinging a punch with a closed fist into the downward looking face of N16. Immediately, N16 can be seen putting his open hand up to his face. He also detaches his right hand binding. The Player pushes with his left hand to Haywood's shoulder area moving him away from the maul. At this point, the assistant referee is seen raising his flag to indicate foul play. The footage then ends and there was no further footage showing the aftermath of the incident.
17. The additional evidence comprised the following:

### **Match Official Reports**

18. The report of assistant referee Cyril Lafon had been on the opposite touchline and he had not observed this foul play.

19. The assistant referee report of Stefan Boyer stated "... I saw 19G that was in the maul put a fist on 16N but I was not on the body of the party received the 16N to the punch. That is why my recommendation to Romain was a YC."
20. TMO report. Mr Bonhoure stated as follows: "Live I did not see the punch. Stefan flagged and after a full and explicit narrative Romain decides to penalise the act with a yellow card. Then the reply shows that the punch probably affects the face. But given that the sanction was already given, I could not ask for a video review."
21. In addition to the match official reports, there was evidence from Northampton Saints which included the following:
- (i) Mike Haywood.
- "It was a Glasgow lineout around the halfway line, they won the ball and started a maul. I was on the blind side defending and when the ball turned a bit, I hit it to try and stop it. I then felt something hit me in the face and I came out of the maul. The physio checked me and I am fine. Tim called me this morning to apologise and also sent me an email."
- (ii) The report of the Northampton team manager, Paul Shields read as follows:
- "... Mikey was checked out by the physios and was cleared. He was not injured and was able to continue in the match."
- (iii) Finally, there was a close-up photograph of the left side of the face of Michael Haywood which appeared to show a very small cut just beneath the left eye.
22. The Judicial Officer therefore invited the Player to give his evidence concerning the incident in accordance with the match footage.

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

23. The Player explained that the match was a very important one for his team and for himself personally. He had not played much rugby this season due to injury. He explained that he had been "on the bench" until around the 65<sup>th</sup> minute and at the time he entered the field, he described his frustration levels were quite high. He explained that as he progressed in the maul to the Northampton 10-meter line, from the actions of Mike Haywood he felt a blow into his ribs. He reacted to this with the punch. He accepted that it was a bad reaction. Immediately afterwards he said that he regretted his actions. He described the effects of his temporary suspension on the game. As a consequence of what had happened, Glasgow had been in a

very strong position but then had a penalty awarded against them. Northampton went on to score and win the match. This meant that there was no possibility of Glasgow Warriors progressing through to the quarterfinals of the competition. After the match, he met with his parents before going to sit on the team bus on his own to reflect upon what he had done. It was not until the next day that he made contact with Mike Haywood to apologise for what he had done.

24. Upon questioning by the Judicial Officer, the Player clarified that his violent reaction was not because of any blow to the ribs which had caused him discomfort, but was more to do with the fact that he believed that Haywood had entered the maul from an illegal position. He accepted, having now seen the video, that he had been wrong. The Player himself had rotated in an anti-clockwise motion with his back to the touchline whereas Haywood had entered in a directly forwards motion up field (i.e. onside). However, that had been his mindset at the time and he bitterly regretted it.
25. In answering the questions from the Judicial Officer, the Player acknowledged the following:
  - (i) That he had withdrawn his left arm and punched Haywood to the face in what might be described as an “upper cut” and that he accepted that Haywood would have had no expectation or anticipation of this punch or ability to defend himself.
  - (ii) He clarified that he has played against Mike Haywood on several occasions in the past and they have never had any altercations. He clarified that there had been a post-match meal for the players of both teams which he had briefly attended. His mindset, at the time, had been simply to sit with his parents for about five minutes before going off on his own to sit in the team bus to reflect. He realised that his actions had probably cost his team very dearly and that was the focus of his attention.
  - (iii) The following morning, before he had become aware of any Citing Complaint, he had tried to make contact with Haywood via Snapchat and Facebook. He then managed to obtain Haywood’s telephone number from a mutual friend, also a player, and he telephoned Haywood to apologise directly. He explained that Haywood had received the call well and there had been no ill feeling between them. He had then sent an email to Haywood apologising sincerely for his actions. This email had been sent after he had become aware of the Citing Complaint.

## **Sanction**

26. The Judicial Officer explained to the Player that his function was now to make determinations as to the facts of the case and apply them in accordance with DR 7.8.32 to 7.8.35 but firstly

look at what is commonly known as the entry point criteria and thereafter consider the existence of any aggravating or mitigating features.

27. The Judicial Officer invited the Disciplinary Officer to make submissions on sanction.
28. By reference to DR 7.8.32, the Disciplinary Officer submitted the following:
  - (a) & (b) The foul play had been intentional and not reckless.
  - (c) The Player's actions were not particularly grave as any strike of this nature would have had to have been deliberate.
  - (d) As to the nature of the actions and the manner in which the act of foul play was committed, the strike had been a blow with the hand.
  - (e) The Disciplinary Officer suggested that there may have been some evidence of provocation in the mind of the Player at the time although in fact the belief that Haywood had been acting illegally was without foundation.
  - (f) & (g) This had not been a matter involving retaliation or self-defence on the part of the Player.
  - (h) There had been a limited impact upon the victim who had not suffered any real injury.
  - (i) As to the effects of the Player's action on the match there had been no breakdown of order as a consequence of his strike. Rather, his actions had resulted in his own team being disadvantaged by the yellow card and a penalty against them very close to the conclusion of the match which they had ultimately lost.
  - (j) As to the vulnerability of the victim, this had been a strike to the head which Haywood had not been expecting and that the head is a vulnerable part of the body.
  - (k) The Disciplinary Officer did not seek to suggest there had been any premeditation.
  - (l) The conduct had been completed.
  - (m) There were no other features of relevance connected with the offending.

29. Turning to aggravating factors, the Disciplinary Officer accepted that he was aware of none.
30. As far as off-field mitigating factors were concerned, the Disciplinary Officer acknowledged that each of them were present apart from the youth and inexperience of the Player because he was neither young nor inexperienced.

### **Player's Submissions as to Sanction**

31. Mr Manson on behalf of the Player invited the Judicial Officer to start at the lower end. He explained that whilst the Player's conduct was wrong, it was reactionary to the actions of Mr Haywood. The strike, he submitted, was slight. There had been no real malice in it and no real injury. He was fine to play on and there had been no history of bad blood.
32. The Judicial Officer was presented with testimonials from the Player's national team coach, Mr Vern Cotter and his club head coach Mr Gregor Townsend. Both spoke of him in glowing terms, both insofar as his work ethic and his overall character as an individual.
33. Upon questioning by the Judicial Officer, the Player also confirmed that he was 28 years of age and had been playing professional rugby for ten seasons. The first six of those have been with Newcastle Falcons and the last four with Glasgow Warriors. He had achieved 17 caps for the Scottish national side and had been selected for the forthcoming Six Nations squad.

### **Decision as to Sanction**

34. When considering sanction, the Judicial Officer noted that the World Rugby sanctions for foul play found in Appendix 3 of the Rules for striking another player with his hand, arm or fist are as follows:

Lower end – 2 weeks

Mid range – 5 weeks

Top end – 8+ weeks

Maximum - 52 weeks

35. In determining entry point, the Judicial Officer concluded the following.
  - (a) & (b) The offending had been intentional rather than reckless.
  - (c) The Player's actions had been moderately grave in that the strike had been quite forceful.

- (d) The Player's actions had involved the striking with a fist.
- (e) The Judicial Officer did not find that there had been any provocation on the part of Haywood who had been acting in a perfectly legitimate manner when joining the maul.
- (f) & (g) There had neither been retaliation or self-defence in this matter.
- (h) Whilst reference had been made to an injury, the evidence from the photograph and from the Northampton team manager and player was that this had been very slight indeed and was not significant. He had not required any stitches to the small cut or scratch and had been able to play on.
- (i) The only effect on the Player's actions on the match was that his team had been significantly disadvantaged from a dominant and attacking position in the last 5 minutes of the match to having a penalty awarded against them and thereafter conceding a score and losing the match. There had been no breakdown in order.
- (j) As to the vulnerability of the victim, the Judicial Officer found that Haywood had been particularly vulnerable. He would have been completely unsuspected and unaware that he was about to be punched and in no position to defend himself.
- (k) There had been no premeditation.
- (l) The act of foul play had been completed and not merely attempted.
- (m) There were no other feature of the Player's conduct in relation to or connected with the offending.

36. The Judicial Officer retired in private to consider his decision. He viewed the video evidence in detail again both in slow motion and in real time. After a great deal of consideration, the Judicial Officer concluded on the particular facts of this case that as the act was an unpremeditated single punch which had not caused any real injury notwithstanding that Heywood had been vulnerable, the appropriate entry point was lower end. The Judicial Officer was of the view, however, that if there had been any injury of significance then he would have had little hesitation in finding that the act merited a mid-range entry point.

37. The starting point for lower end entry point for this act of foul play is one of two weeks.

38. The Judicial Officer was satisfied that there were no aggravating factors present.

39. As far as mitigating factors were concerned, the Judicial Officer was satisfied that the Player was entitled to maximum credit. The Judicial Officer reminded himself that he was entitled to apply a maximum of 50% off the entry point but reminded himself that in accordance with DR 7.8.36 that when assessing the level of reduction from the entry point suspension, he should start at 0% and work up to the maximum of 50%.
40. The Judicial Officer found the following mitigating factors present:
- (a) The Player had immediately and in an unqualified manner, admitted at a very early stage his wrongdoing and culpability.
  - (b) The Player had an unblemished disciplinary record over 10 years which was very much in his favour.
  - (c) Whilst the Player could not claim to be either young or inexperienced, the absence of this mitigating factor could not properly be held against him in light of his clean record over a long and distinguished career to date.
  - (d) The Player had impressed the Judicial Officer as an honest and remorseful witness. When he had been asked direct questions by the Judicial Officer, he had been entirely frank when giving his replies about the incident even when they put him in a bad light.
  - (e) In considering the timing of the apology and remorse shown by the Player to Haywood, the Judicial Officer had explored whether the Player could have done more on the evening to apologise rather than leave it until the following day. The Player had offered his explanation that his mindset had been one of abject disappointment and that when he had had time to reflect on the implications of what he had done, he made numerous efforts to contact Haywood which he had done before he had become aware of the citing. The Disciplinary Officer had accepted that he had done all that he reasonably could in the circumstances of the case and accordingly the Judicial Officer was satisfied the Player had not contacted Haywood until the following day did not go against him in the circumstances.
41. There were no other off-field mitigating factors which the Judicial Officer considered relevant.
42. The Judicial Officer was satisfied that the Player was entitled to the full 50% discount from the entry point of two weeks which meant a resultant suspension of one week.
43. Applying the one-week suspension to the Player's pattern of games, he and his team are due to play Racing 92 on Saturday, 23<sup>rd</sup> January 2016.

44. Accordingly, the Judicial Officer announced his decision and suspended the Player up to and including Sunday, 24<sup>th</sup> January 2016 which means he is free to play on Monday, 25<sup>th</sup> January 2016.
45. The parties are reminded of their right to appeal under DR 8.1.

Simon Thomas  
Judicial Officer