

# Decision of Appeal Committee

ERC

Meeting by telephone conference call  
16<sup>th</sup> December 2011 at 10.00am

The Appeal was dealt with by way of written submissions of both parties

In respect of an appeal by

**Steven Shingler (“the Player”)**

Against

The decision of Robert Morris (“the Judicial Officer”) dated 28 November 2011 (“the Decision”) to suspend the Player from 18<sup>th</sup> November 2011 up to and including 18<sup>th</sup> December 2011

**Members of the Appeal Committee (“the Appeal Committee”):-**

Professor Lorne D Crerar (Scotland) (Chairman)  
Mr Pat Barriscale (IRFU)  
HHJ Jeff Blackett (RFU)

**Decision of the Appeal Committee:**

- (i) that the Appellant failed to establish that the decision challenged was in error; and
- (ii) the Appeal Committee determined that the decision should not be overturned or varied and the appeal was accordingly refused.
- (iii) that both the Appellant and ERC should bear their own costs.

## Introduction

The Appeal Committee was convened by Professor Lorne D. Crerar, Chairman of the ERC, Disciplinary Panel, pursuant to the Disciplinary Regulations in the Participation Agreement of the Heineken Cup 2010/2011 ("DR") in respect of an ordering off of the Player by the Referee for an offence contrary to Law 10.4 (j) of the Laws of the Game in the match between Cardiff Blues and London Irish played at the Cardiff City Stadium on 18<sup>th</sup> November 2011. The Appellant was suspended from taking part in the game of Rugby up to and including 18<sup>th</sup> December 2011, which represented a 4 week suspension commencing on 18<sup>th</sup> November 2011.

The Appellant appealed by Notice of Appeal dated 6<sup>th</sup> December 2011 in accordance with DR 7.2. Further written submissions were received from the Player together with responses and further submissions from ERC.

The Appeal Committee met by telephone conference call on 16<sup>th</sup> December 2011 to consider the Appeal.

This is a case in line with a series of other recent Rugby discipline cases involving Law 10.4(j) of the Laws of the Game which concern offences of "lifting a Player from the ground and dropping or driving that Player into the ground whilst that Player's feet are still off the ground such that the Player's head and/or upper body come into contact with the ground".

In his Decision the Judicial Officer, after considering the seriousness of the offence pursuant to DR 6.7.32 determined that:

- a) the offence should be considered "Mid Range" for the purpose of the entry point of the sanction and a starting point of a six-week suspension should be imposed upon the Appellant in accordance with the list of IRB Recommended Sanctions for offences contrary to said Law 10.4(j);

- b) in order to deter what the JO considered to be a pattern of tip-tackles within the game, and to take account of a Memorandum issued by the IRB in relation to such tackles in June 2009 the offence should also be considered "aggravated" for the purposes of Rule 6.7.34(c) of the DR and an extra two-week suspension should be imposed;

In view of factors including the Appellant's exemplary conduct and disciplinary record, the total period of suspension was reduced by the JO by 50% and from 8 weeks to 4 weeks; and

- c) the Appellant's suspension be effective between 18 November and 18 December 2011.

### **The Aspects of the Decision being appealed**

The Appellant appealed against two elements of the decision further to DR 7.4. These two elements were:

1. that the JO suspended the Appellant for 4 weeks running from 18<sup>th</sup> November to 18<sup>th</sup> December 2011 which was accordingly longer than 4 calendar weeks, (Appeal Ground 1) and
2. that the Decision imposed an additional 2 week period of suspension upon the basis that the offence was an aggravating factor further to DR 6.7.34 (c) (Appeal Ground 2).

### **Appeal Ground 1**

The Appellant withdrew Appeal Ground 1 in view of the written submissions of the Disciplinary Officer of ERC. The essence of the Player's argument was that because his suspension started on a Friday, it should finish on a Friday. The decision provided for the suspension commencing on a Friday and ending on the conclusion of the Sunday 4 weeks later.

The Appeal Committee considered that it would be appropriate to clarify their position in respect of this matter. DR 6.7 44 provides that the JO requires to take into consideration "all playing consequence of such a suspension" and "must consider the meaningful playing consequences for the Player".

The Appeal Committee commend the practice as outlined in the guidance note issued by the Chairman of the Discipline Panels of 6Nations Ltd and ERC, following the 6Nations Conference in Dublin on 1<sup>st</sup>/2<sup>nd</sup> October 2006 which stated as follows:-

*"In both the ERC tournaments and the 6Nations, matches are not always played on the same days over the course of a "weekend". It has correctly been recognised that this could lead to inconsistency in application of sanctioning.*

*Match Commissioners and Committees should bear in mind two principles under-pinning the application of suspensions:-*

- i. whenever a suspension is considered, thought should be given to the playing consequences of a particular length of suspension.*
- ii. a suspension must always be stated with reference to a particular date; for example, "the player is suspended from all rugby for a period of ... up to and including Sunday 27<sup>th</sup> November".*

*The consequence of these two rules is that all Match Commissioners and Committees must, having considered the sporting consequences, suspend a player until a fixed date.*

*By way of guidance any proposed suspension should include the whole weekend of the last week of suspension. Therefore, where a player sent from the field of play on Friday 1<sup>st</sup> is suspended for "two weeks" the suspension would extend to and include Sunday 17<sup>th</sup>.*

*To achieve consistency in approach and application, it is recommended that wherever possible suspensions be expressed as lasting until and including any given Sunday".*

The Appeal Committee also noted the acceptable practice of some Discipline Committees in other tournaments of commencing sanctions at the end of the relevant weekend thereby encompassing the Sunday of the final week of suspension.

## **Appeal Ground 2**

The following is an ad longum narrative of the 2<sup>nd</sup> ground of appeal:-

*"The Judicial Officer misinterpreted the IRB Memorandum and/or its relationship with Rule 6.7.34 of the Disciplinary Rules.*

The JO wrongly considered the IRB Memorandum to be tantamount to a directive from the IRB that required him to impose a further period of suspension over and above that provided for in the Disciplinary Rules. Such consideration was inconsistent with the rationale underpinning the IRB Memorandum and other IRB memorandums, the IRB's own guidelines on sanction, the decisions issued by the IRB's Judicial Officers and the submissions made by the IRB's own legal counsel.

Had the JO properly interpreted the IRB Memorandum he would have identified that, rather than being intended as a directive to Judicial Officers to treat such offences as in some way "aggravated", its intention was simply to ensure that spear and tip-tackles were dealt with appropriately and consistently. The IRB Memorandum was issued following a period when the feeling in the game was that such offences were not being dealt with properly by referees or Judicial Officers. During that period referees were not necessarily issuing yellow or red cards for such tackles and when they came before Judicial Officers they were not necessarily imposing sanctions at a Mid or even Low entry point. The IRB's intention was therefore to ensure that such tackles were recognised as being serious matters and were dealt with appropriately, albeit within the tariffs it had already set in its rules. In particular, the IRB sought to ensure that such tackles should not go without punishment, and where necessary, they should be sanctioned at a Mid rather than Low Entry point. As the IRB's Judicial Officer recently stated in his decision in *Waguaniburotu* (20 September 2011):

*"The purpose of the [IRB] Memorandum was to emphasise that they [lift and tip tackles] must be dealt with severely by referees and all those involved in the off-field disciplinary process .... In light of that and my factual findings I am driven to conclude that the offending cannot properly be categorised as meriting a low-end entry point."*

The IRB's views on the appropriate sanction to be imposed for offences contrary to Rule 10.4(j) based on Mid Entry point are clear. In its Recommended Sanctions, which are also appended to the ERC's Disciplinary Rules, the IRB make plain that such offences will attract a suspension of 6 weeks.

Had the IRB intended offences contrary to Rule 10.4(j) to be treated as "aggravated" by Judicial Officers in addition to its normal sentencing guidelines, it could easily have done so in the IRB Memorandum. In its further circular on the issue on 4 August 2011 in the decisions of its Judicial Officers during IRB tournaments including the Rugby World Cup, or in the submissions of its legal counsel in cases involving spear or tip-tackles. However, it did not do so.

Indeed, by contrast, in its memorandum of 10 July 2009 concerning "Contact with the Eyes or Eye Area" ("the Eye Memorandum") as well as stating their view that eye related offences were serious and "must be dealt with severely", the IRB specifically directed Judicial Officers *"in all proven cases where appropriate"* to impose a *"sanction which clearly denounces the player's conduct"* in view of *"the increasing number of incidents"*. Even in the Eye Memorandum, however, the IRB made clear its view that *"[t]here is ample scope within the existing tariff structure to impose sanctions which accord with the gravity of the offence"*.

On any view, the Eye Memorandum is in stronger terms than the IRB Memorandum. Notwithstanding this, it is submitted that even the Eye Memorandum does not encourage or mandate sanctions for deterrence, but rather simply asserts the need for a robust approach to be taken by Judicial Officers under the existing sanctioning regime.

However, even if the Eye Memorandum can be taken to encourage or mandate deterrent sanctions over and above those already available under existing tariffs, this must derive from its more strident terms than the IRB Memorandum, terms which the IRB has plainly chosen not to endorse in respect of tip-tackles.

*The Judicial Officer misinterpreted Rule 6.7.34 of the Disciplinary Rules*

The JO wrongly considered that Rule 6.7.34(c) of the Disciplinary Rules is intended to apply to "patterns of offending" within the game of rugby generally. This is not the intention of the Rule and its proper construction is clear both from the context in which it appears in the Disciplinary Rules, and from its treatment by Judicial Officers in other authorities.

Rule 6.7.34(c) is concerned with the determination of sanction in relation to a particular player by reference to that player's conduct, not his conduct within the sport generally. The provision appears among a list of other factors in Rule 6.7.34 which are directly relevant to the player's individual conduct, including whether he was remorseful and whether he has a good overall disciplinary record. Rule 6.7.34(c) is intended to be another factor to be considered in this determination i.e. in addition to the player's overall disciplinary record, it is also relevant to consider whether there is any other pattern in the player's offending history which may aggravate the offence.

To treat Rule 6.7.34(c) as concerning the Judicial Officer's personal view as to what he considers to be a problem in the game is incorrect. This approach would (and has) led to an inconsistent application of the law and the imposition of arbitrary and unfair sanctions against players.

The proper interpretation of Rule 6.7.34(c) has been recognised both in authorities of the IRB and the ERC, including in *Waqaniburotu* (20 September 2011), *Hufanga* (3 October 2011), *Estebanez* (3 October 2011), *Gugava* (3 October 2011), *Warburton* (17 October 2011), *Brits* (16 November 2011) and *Marty* (17 November 2011).

In the alternative, even if Rule 6.7.34(c) allows for the subjective assessment of individual Judicial Officers as to what they consider to be problems within the game, the authorities demonstrate that Judicial Officers will only treat offences as aggravated where the offending player also had a poor disciplinary record. See for example, the Judicial Officer's comments in *Warburton* (17 October 2011) at paragraph 23.

In the light of this, and as explained further below, for the Judicial Officer to have arrived at the Aggravation Decision in circumstances where he was aware of the Appellant's exemplary disciplinary record, is not only unfair but inconsistent with the relevant authorities".

### **The Judicial Officer's Determination**

In considering these issues the JO stated in the Decision as follows:-

"There were no other potentially aggravating factors to consider except that set out in DR 6.7.34 at (c) which states:

*Aggravating factors include the following:*

*..... (c) The need for a deterrent to combat a pattern of offending"*

The JO had been made aware by the Disciplinary Officer, both at the hearing and in his responses to the Standard Directions, that there appears to be a debate within the game about the appropriateness of the application of this provision in cases of this type.

However, the JO considered the matter to be straightforward and stated:

"The wording of 6.7.34 (which reproduces exactly the wording of IRB Regulation 17.14.3) is plain:

*Aggravating factors include .... the need for a deterrent to combat a pattern of offending"*



The JO considered there to be two questions which required consideration.

First, is there a pattern of offending?

The JO stated "that offending in this particular case involved the execution of what started as a legitimate "leg tackle" in which the tackler aims to take hold of his opponent around the thighs, to lift him from the ground and drive him backwards. The inevitable consequence of that action, as the Player and his coach both appeared to recognise, is that sometimes the tackle will go wrong and what started as a legitimate exercise ends up as a foul. The problem, as medical opinion within the game urges the game to acknowledge, is that the foul play so perpetrated leads to an unacceptable risk of catastrophic injury".

The JO further stated "that offences of this type should be taken seriously is illustrated and highlighted by the memorandum referred to by the Disciplinary Officer and issued by IRB, dated 8<sup>th</sup> June 2009. Whether that memorandum, of itself, should lead disciplinary tribunals to find there is a "pattern of offending" may be a matter for semantic debate". The question the JO posed to himself was, "why on earth would the IRB, the custodians of the worldwide game, have issued such a memorandum unless it had concerns not only about the consequences of such offending but also the prevalence of it?"

In any event, and whether or not the IRB Memorandum alone should lead to the conclusion that there is a pattern of offending, it was in the JO's view, that such a pattern exists is more than adequately illustrated by the frequency with which such cases have come before disciplinary tribunals, not only since the memorandum was issued ( as demonstrated by the three cases already heard in this ERC season and the schedule produced by the Disciplinary Officer) but also before.

The JO stated that he had heard a case in the season before the Memorandum was written which concerned a tackle similar to that in this case (*ERC v Ross Rennie*). That player and his coach described a method of leg tackle requiring the tackler to grasp his opponent around the thighs, lift him and drive him backwards. They both acknowledged that this method of tackling might result in a tip tackle and therefore a foul. Since then, it is clear that similar fouls have been committed and with frequency.

The JO concluded that there is a clear pattern of offending in terms of DR 6.7.34.

Secondly, the JO addressed himself to the second issue is there the need for a deterrent?

He took the view that the threat of catastrophic injury from a particular mode of behaviour requires the game as a whole constantly to consider whether there is a need for a deterrent to reduce that threat. In the JO's view, the possibility of serious injury makes out that need in this case.

Although this begs the question as to whether the entry point itself should be used as the weapon of deterrence, the JO rejected that because he considered his role was to deal with matters in accordance with the relevant Regulations and the Regulations clearly place the "need for a deterrent" in DR 6.7.34 (c).

In the JO view the purpose of a deterrent must be to make players and coaches think again about the manner in which they approach tackles, particularly, although it should not need emphasis, where players are exposed to the threat of such serious injury.

The JO concluded there was clearly a need for a deterrent to emphasise the seriousness of these matters by way of imposing an additional sanction.

Accordingly, the JO considered that an additional period of two weeks' suspension should be imposed.

The key IRB Memoranda are from Paddy O'Brien, IRB Referee Manager and Tim Gresson, IRB Judicial Panel Chairman and dated 8 June 2009 and 4 August 2011. The Memoranda are included in this Decision as Appendices I and II ("the Memoranda").

### **Conclusion of the Appeal Committee**

The Appeal Committee concluded that the JO was entitled to approach the methodology of sanction in the manner he did and that he had not erred in his assessment as to whether or not there was a pattern of offending nor indeed whether or not there was a need for a deterrent. He exercised his judgement in this matter wholly reasonably and the Appeal Committee was of the view that the decision should not be overturned or varied further to DR 7.4.8.

However the Appeal Committee considered that in light of the series of conflicting cases that have arisen in the recent past whereby different principles had been applied by a variety of very senior Judicial Officers that it would be helpful to clarify the Appeal Committee's consideration as to the appropriate methodology that should be employed in considering offences contrary to Law 10.4(j).

DR 6.7.31 lays out the methodology by which a Judicial Officer shall apply the IRB's "recommended sanction for offences within the playing enclosure". It is clear and was acknowledged by the Disciplinary Officer in this case that there had been an inconsistent approach in ERC tournaments and elsewhere to the question of whether there is a pattern of offending that warrants a deterrent (an increased period of suspension) in relation to tip tackles.

The ERC Disciplinary Officer had stated in his written submissions that he considered that the inconsistency “could be due to a number of factors, such as the way in which the relevant IRB Memoranda have been drafted, the competitions where the cases have been heard, and the information available to the tribunals”.

The IRB Council approved amendments to Law 10.4 (j) on 23<sup>rd</sup> November 2010 with the amended Law 10.4 (j) now reading “lifting a Player from the ground and dropping or driving that Player into the ground whilst that Player’s feet are still off the ground such that the Player’s head and/or upper body come into contact with the ground is dangerous play”. The amended table of sanctions provides for a low end entry point of 3 weeks, mid range 6 weeks and top end 10 plus weeks.

In light of the inconsistency of approach in consideration of the appropriate methodology that should be employed in considering offences contrary to Law 10.4 (j) the Chairman through the auspices of the Tournament, approached the IRB for clarification of the intention of the relevant Memoranda in relation to “tip” or high” tackles. It appeared to the Appeal Committee that there was merit to the different approaches by Judicial Officers by either reflecting the importance of the Memoranda in assessing the seriousness of the players conduct further to DR 6.7.32 and thereby 6.7.33 or by considering the Memoranda as evidence of “the need for a deterrent to combat a pattern of offending” – DR 6.7.34 (c).

The questions posed to the IRB in clarification of the Memoranda together with their responses are noted in full below. Disciplinary Regulation references are of course to IRB Regulation 17.

Q1. Do the IRB Memoranda remain in force until withdrawn?

- A. Yes, the Memoranda remain in force until they are update or replaced. It is important to note that where a Memorandum is issued in respect of a particular type of offending e.g. tip tackles or contact with the eye or eye area, it is only one aspect of the evidential material that must be considered in assessing if there is a pattern of offending. Memoranda also serve an educational purpose e.g. to highlight new trends or types of Foul Play emerging in the Game e.g. Tackle Memorandum of 8 August 2011 which draws attention to the emerging trend of Dangerous grasping of the head or neck area of Players.

It is important to look at the content of the Memoranda to assess the underlying purpose of the document. It is strictly a matter for the Judicial Officer / Judicial Personnel to make their assessment in all the circumstances of a particular case and in light of trends within the Game and/or their particular Tournament to determine if a particular pattern of offending is or has emerged which warrants the application of a deterrent because of aggravating features.

The Memoranda are not necessarily written specifically with the purpose of mandating that the offences highlighted be treated in an aggravating fashion however, they do emphasis the degree of concern the IRB has for a particular category of Foul Play.

In summary therefore, IRB Memoranda are one aspect of the evidence that can be considered in relation to whether there is a pattern of offending, but this will depend on amongst other factors, the content of the Memorandum, any prevailing trends in Foul Play within the Game and/or a particular Tournament, and other relevant evidential features in any assessment as to whether a deterrent is warranted. There is nothing at all to prevent ERC issuing its own Memoranda in circumstances where as a Tournament Organiser the view is taken that a pattern of offending is or has emerged within their Tournament.

Q2 Is the correct methodology in applying the Memoranda to sanction to consider the issue as an aggravating factor (DR 17.14.3) namely "the need for a deterrent to combat a pattern of offending"? If that is the case it would accordingly follow that it is not a matter for consideration of the "seriousness of the offence" at the juncture of setting the "entry point" (DR 17.14.2).

A. Yes. Where there is a need to combat a pattern of offending it should be treated by the Judicial Officer / Judicial Personnel as an aggravating factor in accordance with DR 17.14.3 and should not be taken into account at the earlier stage of the process namely at the assessment of the seriousness of the offending (DR 17.14.2).

Q3. If the correct approach in Q2 is to treat the Memoranda in relation to "tip" or "high" tackles as an aggravating factor, does it follow that DR 17.14.4(b) can never apply as an "aggravating factor" will always exist?

A. Yes. This must be the case as there will be an add-on to the lower end entry point to specifically address the pattern of offending for which a deterrent is warranted, following which, in the usual ay, the sanction can be discounted for mitigating factors where they exist.

### **Cost of Appeal**

The Player applied for an award of costs (paragraph 6.1(d) of the Appeal Submission). The Disciplinary Officer in his response to the Appeal Submission at paragraph 4.7, while reserving the right to make a further submission for costs at some future time anticipated "that the Disciplinary Officer will make an application to recover costs from the Player given that the paperwork that had been generated on the Players behalf in his Appeal (25 pages of submission and 98 pages of exhibits) and the work that has been required to respond".

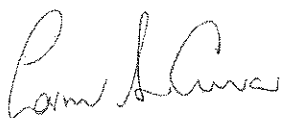
The Appeal Committee were cognisant of the DR provisions in relation to costs and in particular DR 7.4.22 which states as follows:

*“in exercising the discretion to award costs as set out in clause 7.4.20, above, in any case in which the Appellant was a Player, Person or Club and failed to show the decision below as in error and should be overturned or varied, the Appeal Committee should have regard to ERC’s intention to recover all its costs wherever it is just and reasonable to do so in order that such costs are not otherwise left as an expense of the Tournament and therefore shared, indirectly, by all of the Tournament’s participants. In exercising the discretion to award costs as set out in clause 7.4.20, above, in any case in which the Appellant was a Player, Person or Club and succeeded in showing that the decision below was in error and should be overturned or varied, the Appeal Committee should have regard to the Disciplinary Officer’s regulatory function and his obligations to bring/defend proceedings, for the good of the Tournament, in accordance with these Disciplinary Rules”.*

However, this case does clearly demonstrate the legitimate and well argued divergence of views of senior Judicial Officers in the ERC Tournaments and elsewhere in relation to the issues raised in this case. Indeed at para 37 of the Disciplinary Officer’s submission he states “The Disciplinary Officer readily acknowledges that there has been an inconsistent appeal in ERC Tournaments and elsewhere to the question of whether there is a pattern of offending that warrants a deterrent (and increased periods of suspension in relation to tip tackles). That inconsistency could be due to a number of factors such as the way in which the relevant IRB Memoranda have been drafted, the competitions in which the cases have been heard and the information available to the tribunals. The Disciplinary Officer strives to have the Disciplinary Rules applied in a consistent a way as is reasonably practicable in the circumstances”.

This case in highlighting the inconsistency of approach to sanctioning enables the Appeal Committee to clarify the approach that should be employed for this Tournament in future cases and for the benefit of all those involved in the Tournament.

In these circumstances the Appeal Committee considers it both just and equitable that notwithstanding the provisions of DR 7.4.22 each party should bear their own costs.

A handwritten signature in cursive script, appearing to read 'Lorne D Crerar'.

**Professor Lorne D Crerar  
Chairman**

**17 January 2012**





## MEMORANDUM

**To:** Referees  
Citing Commissioners  
Judicial Officers  
Non-legal Judicial Committee Members

**From:** Paddy O'Brien, IRB Referee Manager  
Tim Gresson, IRB Judicial Panel Chairman

**Date:** 8 June 2009

**Subject:** Dangerous Tackles

In 2007, the IRB Council approved a Laws Designated Members Ruling which essentially made it clear that tackles involving a player being lifted off the ground and tipped horizontally and were then either forced or dropped to the ground are illegal and constitute dangerous play.

At a subsequent IRB High Performance Referee Seminar at Lensbury referees were advised that for these types of tackles they were to start at red card as a sanction and work backwards.

Unfortunately these types of tackles are still being made and the purpose of this memorandum is to emphasize that they must be dealt with severely by referees and all those involved in the off-field disciplinary process.

Attached is a recent decision of the Judicial Officer Jannie Lubbe SC, in which the differences between the application of the red card test by referees and judicial personnel is highlighted.

In our view, this decision correctly highlights that the lifting of players in the tackle and then either forcing or dropping them to the ground is dangerous and must be dealt with severely.

To summarise, the possible scenarios when a tackler horizontally lifts a player off the ground:

- ∞ The player is lifted and then forced or "speared" into the ground. A red card should be issued for this type of tackle.
- ∞ The lifted player is dropped to the ground from a height with no regard to the player's safety. A red card should be issued for this type of tackle.
- ∞ For all other types of dangerous lifting tackles, it may be considered a penalty or yellow card is sufficient.

Referees and Citing Commissioners should not make their decisions based on what they consider was the intention of the offending player. Their decision should be based on an objective assessment (as per Law 10.4 (e)) of the circumstances of the tackle.

Appendix II

**AMENDED**  
**MEMORANDUM**

**TO:** Referees  
Citing Commissioners  
Judicial Officers  
Non legal Judicial Committee Members

**FROM:** Paddy O'Brien, IRB Referee Manager  
Tim Gresson, IRB Judicial Panel Chairman

**DATE:** 4 August 2011

**SUBJECT:** (i) **DANGEROUS TACKLES (HIGH TACKLES) and**  
(ii) **DANGEROUS GRASPING OF NECK AND/OR HEAD AREA**  
**OF PLAYER NOT IN POSSESSION OF THE BALL**

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***NOTE: THIS MEMORANDUM REPLACES THE MEMORANDUM OF  
21 JANUARY 2011 RELATING TO DANGEROUS TACKLES (HIGH TACKLES)***

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This is a further memorandum in relation to Dangerous Tackles and the illegal taking out of players who are not in possession of the ball.

Law 10.4(e) in relation to Dangerous Tackles provides as follows:

**A player must not tackle an opponent early, late or dangerously.**

**A player must not tackle (or try to tackle) an opponent above the line of the shoulders even if the tackle starts below the line of the shoulders. A tackle around the opponent's neck or head is dangerous play.**

**A stiff-arm tackle is dangerous play. A player makes a stiff-arm tackle when using a stiff-arm to strike an opponent.**

**Playing a player without the ball is dangerous play.**

**A player must not tackle an opponent whose feet are off the ground.**

***High Tackles:***

At an IRB Medical Seminar held in November 2010 at Lensbury the results of studies by the Rugby Football Union and New Zealand Rugby Football Union concluded that most injuries in Rugby in the elite Game are now occurring as a result of high tackles. The participants generally recognised that tackles above the line of the shoulders have the potential to cause serious injury and noted that a

trend had emerged whereby players responsible for such tackles were not being adequately sanctioned.<sup>1</sup>

***Dangerous Grasping:***

A further trend has recently emerged in the Game whereby players not in possession of the ball are being grasped and/or grabbed by an opponent in and around the neck and/or head area, principally in an effort to clear out players from the breakdown. While such behaviour does not come under the definition of a tackle, as no ball carrier is involved nevertheless, it is dangerous play under Law 10.4(e) and/or Law 10.4(f) (playing an opponent without the ball).

The purpose of this revised Memorandum is to emphasise that as with tip tackles, (see Memorandum of 8 June 2009) this type of dangerous play must be dealt with severely by Referees and all those involved in the off-field disciplinary process. As with other types of Illegal and/or Foul Play, depending on the circumstances of the high tackle or the illegal and dangerous taking out of players not in possession of the ball, the range of sanctions can extend from a penalty kick to the player receiving a red card.

An illegal high tackle to the head and/or neck area of the opponent (in particular involving a 'stiff arm' or swinging arm), bears all the hallmarks of an action which should result in a yellow card or a red card being seriously considered.

The grasping and twisting of the neck and/or head area of a player to effect either a tackle or to clear out a player not in possession of the ball should also be regarded as constituting serious Illegal and/or Foul Play and Match Officials and Judicial Personnel have a responsibility to ensure that the appropriate action is taken by them.

Referees and Citing Commissioners should not make their decisions based on what they consider was the intention of the offending player. Their decision should be based on an objective assessment (as per Law 10.4(e) and Law 10.4(f)) of the overall circumstances of the tackle or the clear out.

Paddy O'Brien  
Tim Gresson

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<sup>1</sup> This was the subject of the earlier Memorandum of 21 January 2011, now replaced by this Memorandum of 4 August 2011.