

# Decision of the Independent Judicial Officer

ERC

Held at Huguenot House, St Stephen's Green, Dublin.

On 9<sup>th</sup> April 2014

In respect of:

**Jared Payne of Ulster ("the Player")**

And

**The ordering off of the Player in the match played between Ulster –v- Saracens on 5<sup>th</sup> April 2014 at Ravenhill, Belfast for an offence of dangerous charging contrary to Law 10.4(g) of the Laws of Rugby Union and tackling a player in the air contrary to Law 10.4(i)**

Judicial Officer appointed to hear the case:

**Simon Thomas (Wales) ("the Judicial Officer")**

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

- (i) The Player contested the issuing of a red card and sought to argue that the referee's decision was wrong. The Judicial Officer however found that the Player had not discharged the burden of proving on the balance of probabilities that the referee's decision was wrong and accordingly upheld the red card. The Judicial Officer found that the Player had committed an act of illegal and/or Foul Play contrary to Law 10.4(i) and that this merited an ordering off.
- (ii) The Player is suspended from taking part in the game of rugby up to and including 20<sup>th</sup> April 2014. This represents a two week suspension commencing 5<sup>th</sup> April 2014.
- (iii) The Judicial Officer made an award of costs against the Player limited to the Judicial Officer's travel and accommodation expenses for the hearing

## **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 ordering off ("the Complaint") against the Player in the match played between Ulster and Saracens on 5<sup>th</sup> April 2014 in the Heineken Cup 2013/2014.

M. Jerome Garces was appointed as match referee to this match and had ordered off the Player for a dangerous charge and/or tackling Alex Goode (S15) whilst Goode was in the air whilst both players were attempting to catch a ball from a high Ulster kick up field. The laws cited by the referee in his written report were 10.4(g) (dangerous charging) and 10.4(i) (tackling a player in the air).

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

- Mr Roger O'Connor, Disciplinary Officer, ERC
- Mr Liam McTiernan, Regulations Executive, ERC
- Mr Jared Payne ("the Player")
- Mr David Humphreys, Ulster Director of Rugby
- Mr David Millar, Ulster Team Manager

## **Preliminary Matters & Procedures**

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 a dangerous charge and/or a dangerous tackle upon Alex Goode (S15)

The Judicial Officer reminded all parties that the ERC Disciplinary Rules found in the Participation Agreement for 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 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:-

- Referee's report
- Report of the TMO M. Eric Gauzins
- Report of Assistant Referee Mathieu Raynal
- Statements of Alex Goode (2)

- Statement of Joe Collins, Saracens Medical Officer
- A GPS graph showing data for the Player during the passage of play concerned
- Various video clips of the incident

The Judicial Officer noted the terms of the Player's response to the Standing Directions found at Appendix Six of the Disciplinary Rules ("the Directions") as follows:-

" The referee told me he was sending me off for a dangerous tackle as the opposing player was in the air. He also indicated that the opposing player had landed on his head. In his report he states the reason for awarding a red card is a "dangerous charge on a player in the air". The Referee, I believe, misread the situation and I will expand on this at the hearing...

I do not accept that the official report is a true and accurate report on the incident that resulted in the showing of the red card and the facts surrounding the incident.

I do not accept that I committed an act of Foul Play as set out in the official report.

I do not accept that the alleged act warranted a red card.

I will try to show that the referee's decision to show me a red card was incorrect;

The referee stated that I tackled the player in the air. I had an accidental collision with my opponent (Mr Goode) when both of us were travelling at speed in opposite directions both attempting to catch a high ball. My eyes were at all times fixed on the ball and I would have been directly under the ball if I had not collided with my opponent. I thought I had timed my kick chase perfectly and that I was just about to catch the ball when I collided with Mr Goode and we both ended up on the ground. I did not believe that I needed to jump in the air to win the ball and I was not aware that Mr Goode had left the ground when we collided. It is not possible to tackle or charge a player without intent and looking at the player. Not until we collided did my eye leave the ball and at no time did I intend to tackle or charge into my opponent.

Further detailed evidence will be given on this point".

The Judicial Officer invited the Player and Disciplinary Officer to confirm whether or not they had any preliminary issues that they wished to raise.

The Player's representatives confirmed there were no preliminary issues other than noting that the referee had said when dismissing the Player "Dangerous tackle" which was different to that in his report which read "dangerous charging".

The Judicial Officer commented that under DR 8.8 he had power to amend the charge at any time and so that, of itself, did not affect the validity of the proceedings and was something the Player could question the referee about if need be.

The Judicial Officer reviewed the referee's report in full and asked the Player whether he accepted that:

- the referee's report was a true and accurate account of the incident and the facts surrounding the incident;
- the red card should be upheld (namely whether he had committed the alleged act(s) of Illegal and/or Foul Play); and
- the alleged act of Illegal and/or Foul Play warranted a red card.

The Player responded that the referee's account was not accurate, and that he had not committed an act of Foul Play. He further stated that he wished to demonstrate to the Judicial Officer that the referee's decision was wrong.

The Judicial Officer reminded those present that, pursuant to DR.6.2.10, the burden was on the Player to demonstrate, on the balance of probabilities, that the referee's decision was wrong. This was accepted by the Player.

## **Evidence**

In terms of the procedure to be followed, it was agreed that the Disciplinary Officer would present the video evidence, the Judicial Officer would then read the written evidence and then the Player would be given the opportunity to present his case.

A summary of the evidence given before the Judicial Officer was as follows:-

### **Video footage of the incident**

The footage showed the relevant passage of play from a number of angles. There were three main pieces of footage in all. The first was one provided by the Player which was wide angle footage taken from behind the Ulster posts which showed the entirety of the field and demonstrated the motions of the Player and Mr Goode from the beginning of the passage of play to the moments after the impact between them.

The second angle was also a wide angle view from the halfway line which was focussed on the high kick by Ulster, the forward running by the Player and his team mates. Towards the later part of the footage Mr Goode can be seen approaching the area where the ball is to land. The other footage showed close ups from a number of other angles of the moments immediately before and during the impact.

In summary, the footage shows that Ulster are in possession of the ball on their left hand side of the pitch midway between their 10 metre and 22 metre lines. The ball is passed back to their number 10 who executes a high kick up-field. The ball is airborne for about 5 seconds and lands midway between the Saracens 10 metre and 22 metre lines midfield. The Player has run from behind his own 22 metre line and appears to be totally focussed on the ball and seems unaware that Goode is also in a position to and intends to compete for it. As the ball descends Goode jumps for it, raises his left knee and begins to rotate slightly to his right. As Goode catches the ball, the Player runs into the airborne Goode so that his head comes into contact with Goode's left hip and his right shoulder is under or alongside Goode's left buttock. Due to the greater forward movement of the Player and the relative body positions at the point of impact, Goode's legs are swept from under him so that as he falls his feet are higher than his head and shoulders which take the impact of the fall to the ground. Goode is knocked unconscious for a short period and treated by his medical team before being stretchered off from the field of play 7 minutes after the incident. The Player is unhurt and is ordered off by the referee after he has consulted with this Assistant and the TMO.

The written evidence comprised the following:-

### **The Referee's Report**

Mr Garces stated that the incident occurred after four minutes of the first half and that at that time there had been no score by either side. The narrative in his report read as follows:-

"the Saracens player was in the air and challenging the ball when the Ulster Player on the ground charged his opponent in the air. After this charge the body and the feet of the Saracens player passed below the shoulders and the head contacted the ground. With these observables I decided to send off the number 15 (Mr Jared Payne) from Ulster for a dangerous charge on a player in the air trying to catch the ball".

The TMO Report additionally there was the statement from the TMO which read as follows:-

"At the fourth minute of the game Ulster –v- Saracens there was an incident when 15 from Saracens jumped in the air to catch the ball and 15 from Ulster, being late challenged his opponent. Referee requested TMO. to review the action on the big screen".

After my review Jerome asked me to describe and give decision, as big screens were not showing any replay. Report was done as follows:-

"15 Ulster, late, do not jump in the air to catch the ball and tackle dangerously his opponent who is in the air. 15 Saracens grounded on his side. I advised yellow".

Then Jerome asked clarification on intention from 15 Ulster and to be very precise on which part of the body from 15 Saracens touched the ground first. I replied:-

"15 Saracens first grounded on his shoulder and then his head hit the ground. At this moment in time big screens went up again and Jerome took the lead to make his own decision".

The report from Mathieu Raynal the assistant referee, confirmed the following:-

"After the PK, Jerome calls T.M.O. and during two minutes we don't have any clips on the stadium's screen. So during this time Jerome asked me what I think about this tackle. I answer "even if the Player looked at the ball during his race, he is in late, he charges a player in the air, hips passed above shoulders and head enter en contact with ground So with regard to the observables of IRB and ERC, red card was on my mind best option"

### **Medical Evidence**

The report of the Saracens Physiotherapist, Joe Collins, stated as follows:-

"In the third minute myself and our other physio attended to Alex who was supine, snoring and unconscious. We performed a jaw thrust for one minute whilst protecting his cervical spine. He then became agitated as he became more responsive. We were then able to extricate the player from the field safely once he became more compliant. After the Doctor cleared his cervical spine in the medical room he had a residual headache but no other associated injuries".

### **Alex Goode**

The Statements from Alex Goode confirmed the following:-

"I remember running towards the ball but have no recollection of anything else until I was on the stretcher towards the changing rooms. Apologies I cannot tell you more".

He then made a second statement which states:-

"I would just like to say that Jared Payne came up to me when I was by the bench and apologised to me as well as asking about my health, checking I was ok. I know Jared is not a dirty player and certainly not malicious".

### **Player's Defence**

Having considered the above written evidence and reviewed the video footage without sound, the Player and his representatives were asked by the Judicial Officer to give evidence as to what had occurred.

The Player spoke in conjunction with the video footage. First he wanted to explain his decision making process by reference to the wide angled footage from behind his own posts which showed both his and Goode's lateral and forward movements during the entire passage of play.

It was explained that prior to the kick the Player, a full back, had been standing at the outside centre position rather than the traditional full back position and that this was because a high kick had been planned and he is the best Ulster runner/catcher to target the ball upon its descent. The Player drew the Judicial Officer's attention to the movement of Goode immediately before the kick was executed. The Player stated that because of the prevailing wind direction at Ravenhill, Goode would have expected to have been moving towards his left hand touch line anticipating a long kick. Indeed immediately before the kick Goode begins to run towards his left hand touch line. As the kick goes up from Ulster 10, the Player stated that he began to run and observed Goode moving in this direction. At that point he concluded that if the kick was executed per the Ulster plan, because of his speed and position he was confident of reaching the ball first and that Goode would not have been in a position to challenge for it.

He described that when he looked ahead as the kick went up he saw no one else able to challenge him for the ball.

He described how in rugby he had always been taught to track the high ball and never to take his eye off it. Having made his initial assessment of the situation he described how he had visually "locked on the ball" and had timed his run perfectly so that there was no need for him to jump to catch the ball. Furthermore, he was confident that had he caught ball at full speed on the run then there was a good prospect of scoring a try.

At this point that the Player's representatives made reference to the Player's GPS printout during this movement.

This document, a one page graph, was broken down into six and a half seconds of play. It demonstrated the acceleration and the speed of the Player during the passage of play and also showed the Player's footsteps over the six and a half seconds.

It demonstrated that the Player had run a distance of 35.4 metres to the point of impact. It also showed that the Player had increased his speed from the start of his run to the point of the collision so that immediately prior to the collision he was running at his fastest which was 8.7 metres per second. The Player's representatives drew this to the Judicial Officer's attention to demonstrate that the Player clearly had no belief or anticipation of Goode being in a position to compete for the ball as otherwise the Player's speed would not have continued to accelerate to the point of impact.

Mr. Humphreys also referred to the close up footage of the impact in which it can be shown that there was no change of body angle by the Player leading up to the impact which would have suggested the Player was expecting another player to be competing or jumping for the ball because he was running front on and had not for example, dropped his shoulder.

Mr Humphreys commented that by the time that the Player had realised Goode was in the air competing for the ball there was nothing the Player could do to withdraw from the situation and there was no evidence that the Player had tried to defend himself from the impact.

In summary, the Player's evidence was that he had made an assessment at the time the kick had gone up. That assessment was that there was nobody else likely to be challenging him for the ball and having made that assessment he had kept his eyes on the ball at all times and timed his run perfectly to catch the ball at full speed.

The Judicial Officer asked the Player whether he had at any time reassessed the position of the defending players and in particular Goode during the course of his run. The Player repeated that he had not and reiterated that his rugby training was that when you were chasing high ball you would lock onto it and not take your eyes off it. If you got into the mind set of being concerned about the positioning of other players and reassessing the situation then that would reduce your effectiveness as an attacker.

The Judicial Officer also asked the Player about interpreting Goode's movement immediately before the kick. The Player volunteered that it was not uncommon for full backs to bluff the opposing team into making them believe that the full back intended to defend a certain area of the field which would then influence the area of the field which the team in possession would then attack. The Judicial Officer asked the Player if he had considered after his initial assessment that that might be the case here i.e. that Goode might have been moving to his left wing as a bluff. The Player said that he had not thought this was the case. Ulster had the prevailing wind and it would have been expected of Goode to have wanted to defend his left touch line.



The Judicial Officer asked the Player why he had not jumped for the ball. He stated that because he had formed the view that there was no one else competing with him, a jump was unnecessary and his chances of scoring were better if he had caught the ball on the run.

The Judicial Officer put to the Player that even if he had caught the ball on the run, was it not likely that upon observing the ball in flight Goode would have changed his angle of running towards the area where the ball was to land if not to compete for it but to defend. The Player accepted this but he was still satisfied he would have got to the ball before Goode.

The Judicial Officer then asked the Player to consider the side on wide angled footage and to observe himself running up field as he crossed his 10 metre line. In particular the Judicial Officer pointed out that whereas immediately prior to this his face could be seen looking upwards, it appeared that his head dropped momentarily before looking up again towards the ball. The Judicial Officer put to the Player that this might suggest that he had taken his eyes off the ball and looked up field to reassess the situation. The Player stated that he did not remember taking his eyes off the ball at any time. Mr Humphreys commented that the footage was perhaps more suggestive of the Player's head looking to his left rather than looking up field.

The Judicial Officer asked the Disciplinary Officer whether he had any questions to put to the Player but he confirmed that they had all been covered by the Judicial Officer's line of questioning.

The Judicial Officer next invited the Player and his representatives to present their application to introduce additional evidence in the form of two video clips of similar incidents in other matches which they felt had importance because neither incident had resulted in a red card and therefore they demonstrated the correct method of refereeing. This issue had been raised in the Player's response to standing directions and the Disciplinary Officer had responded stating that such an application would be opposed on the basis that it is not satisfactory to compare one incident with another, particularly where some of the incidents relied upon by the Player have not resulted in judicial hearings or a careful analysis of the facts surrounding them. The Disciplinary Officer had produced the ERC judgment of Florian Fritz in which the Judicial Officer, Robert H P Williams (Wales) had ruled on a similar application that permitting a player to do so would be "opening up a can of worms" which could then result in a situation whereby both the Player and the Disciplinary Officer come armed to hearings with a series of video clips of similar incidents which they would then ask a Judicial Officer to take into account.

The Judicial Officer ruled that the Player's application to adduce two video clips should be denied using the rationale of Fritz. There could be so many factors which the parties and the Judicial Officer would be wholly unaware of and where such cases have not been the subject of judicial

scrutiny so as to make them properly evaluative. Accordingly introducing them would not be of assistance.

The Judicial Officer invited the Player and his representatives to ask questions of the match referee. The Player and his representatives declined as they understood the Judicial Officer was considering the matter in the context of Laws 10.4(g) and 10.4(i).

#### **Law 10.4(i)**

At this point the Judicial Officer invited the Player's representatives and the Disciplinary Officer to comment upon Law 10.4(i) which states as follows:-

**"Tackling the jumper in the air** "a player must not tackle not tap, push or pull the foot or feet of an opponent jumping for a ball in a line out or in open play".

The Judicial Officer invited the parties to comment on the fact that although the offence is described as: "Tackling" the jumper in the air, it goes on to refer not only to tackle but also to "tap", "push" or "pull the foot or feet of" an opponent jumping for the ball in a line out or in open play".

The Judicial Officer asked the Player's representative and the Disciplinary Officer whether they accepted that the exertion of force in a forward motion by one player upon another could constitute a push and whether they considered that this did or did not require the use of the hands or arms.

Mr Millar stated that the words "pull or push" should be interpreted in a consistent manner which suggested that a push would need to be with the hands in the same way that a pull would be.

#### **Submissions on whether to uphold the Complaint**

Mr Millar summarised the Player's case. Having heard the Player give evidence and seen the video footage, he submitted that the conclusion to be reached by the Judicial Officer was that this was nothing more than an accidental collision. It was fast moving and it was a freak incident of its type. Mr Goode had jumped into the Player. Both had been chasing hard and running for the ball. It was apparent that the Player had not taken his eye off the ball and it was clear from the GPS and from the close up footage that he was completely unaware that Goode was approaching the ball. The Player had been continuing to accelerate and it was a fair contact. From the video footage it was apparent that the Player was not late in arriving for the ball. He had timed his run perfectly and was anticipating catching the ball on the run. There was simply no way that the Player could have avoided the collision. Both he and Goode are very experienced players and he honestly believed that Goode was coming from a different part of the field and that he, the Player, would have got

there first. Both players were 100% committed to catching the ball and whilst the situation was misjudged it was not reckless.

In considering the specific allegations against the Player the referee had been wrong to conclude that the Player had been guilty of an offence contrary to 10.4(g) because there had been no charging by the Player. It was the Player's case that there can be no accidental charging into a player as the charge requires an element of intent. Additionally, 10.4(i) was not engaged because it could not be said that this was a tackle situation and 10.4(i) refers to tackling a player in the air.

Mr Millar explained that the Player had played approximately 140 professional games. He had an extremely good disciplinary record having only one previous yellow card for a technical offence. There had been no red cards. He had captained Northland in New Zealand and had also captained Ulster on a number of occasions.

He invited the Judicial Officer to conclude that the Player had discharged the burden of demonstrating on the balance of probabilities that the referee's decision to award the red card was wrong.

The Disciplinary Officer stated that this was a difficult case and that there was a lot of public debate from eminent persons within the rugby fraternity that had diverging opinions. Having said that, Mr Garces is an experienced referee that acts at international level and he had considered that the actions constituted an offence contrary to Law 10.4(g) and/or 10.4(i) of the Laws of rugby union and merited a red card.

The Disciplinary Officer readily accepted that there was no suggestion in this case that the Player had intended Foul Play but the question that had to be considered was whether he had acted recklessly i.e. whether he had known of the risk of Foul Play or whether he reasonably ought to have known that by his actions there was a risk of Foul Play.

### **Decision as to whether or not the ordering off should be upheld**

The Judicial Officer thanked the parties for their submissions and retired to deliberate in private in respect of whether the Player had discharged the burden of demonstrating on the balance of probabilities that the referee's decision to order off the Player was wrong. The first task of the Judicial Officer was to establish his factual findings in relation to the incident.

Having heard the Player's evidence, read the various written statements and report and having viewed all the angles on numerous occasions, the Judicial Officer's conclusions of the facts were as follows:

Four minutes into the match Ulster had possession of the ball inside their own half. The ball is passed back to their outside half who places a high kick intending to land the ball centre field giving the Player the best opportunity of challenging for it. The Judicial Officer accepted the Player's evidence that this was a planned move as it could be seen that he was positioned in the traditional outside centre position who had moved to the full back position in the three quarter line. The Judicial Officer concluded that as the kick went up Goode, who was the full back for Saracens, was standing in a central position but he began to run in an arching movement across field initially closer to his left touch line, probably anticipating a kick to that area which he felt the need to defend.

As the kick goes up and the Player begins to accelerate up field passing his 22 metre line, it can be seen that the Player looks up field momentarily to assess the situation. The Judicial Officer compared the wide angled side on clip with the wide angled "end on" clip and was satisfied that the Player was correct in his evidence that at the time he looked up Goode's movement was indeed towards his left touch line.

The Judicial Officer was also satisfied from what he observed and from the GPS that the Player began to accelerate as he ran up-field chasing the kick. As he did so Goode can be seen arcing in a forward motion away from his touch line back towards centre field.

As the Player runs up-field towards the kick with his face looking upwards at the ball and crosses his ten metre line, the Judicial Officer was satisfied that he took his eye off the ball, that his head dropped and that he was looking up field. This can be seen at 5 minutes 38 seconds of the longer of the three video clips. The Judicial Officer was therefore satisfied that at this point either the Player had observed Goode now approaching centre field where the ball was likely to land or that the Player should have realised that this was the case. Furthermore the Judicial Officer was satisfied that the Player knew or ought to have known that Goode was going to be in a position to compete for the ball.

The Judicial Officer found that the Player then looks upwards again and continues to fix on the ball until immediately before the impact between he and Goode.

Goode, in order to compete for the ball, had taken the orthodox action of leaping for it whilst at the same time rotating his body slightly so that he was side on. The Player's hands were open in anticipation of catching the ball but by the time that he had realised Goode was in a better position to do so it was too late for him to withdraw and unfortunately the Player's head and right shoulder connected with Goode's left hip and buttock.

This resulted in a destabilisation of Goode at high speed causing him to rotate and fall so that his head came heavily into contact with the ground. Goode was knocked unconscious for a period and was removed from the field for approximately seven minutes. He took no further part in the game.

The Judicial Officer considered whether the offence fell within 10.4(g) of the Laws of the Game or 10.4(i).

10.4(g) necessarily involves charging or the knocking down of an opponent carrying the ball without trying to grasp that player.

10.4(i) concerns tackling another player who is jumping for the ball. Goode was removed from the field as a result of an incident which occurred when he was jumping for the ball in open play. The Judicial Officer noted that the detailed definition under Law 10.4(i) is not limited to tackling but also includes a "push" to a player jumping for a ball. The Judicial Officer concluded on that basis that the proper classification for this type of incident is 10.4(i).

The Judicial Officer was also satisfied that the application of force by way of forward motion by one player to another could constitute a push for the purposes of 10.4(i) and the crux of the question in this case was whether the actions of the Player were accidental, in which no offence would be made out, or whether they were reckless in which 10.4(i) had been contravened.

The Judicial Officer concluded that the Player's actions were reckless in this instance. The Judicial Officer was satisfied that the Player had looked up-field as he had crossed the ten metre line and he was aware that Goode was in a position to challenge for the ball or he reasonably ought to have been aware of that. Furthermore it is obvious that if two players are challenging for a high ball, one or more of the players may be expected to jump for the ball to gain possession of it before the other. It was therefore, in the Judicial Officer's view, reasonably foreseeable that Goode would jump to challenge for the ball. The events that followed in this instance were also reasonably foreseeable by the Player continuing his run without regard for Goode.

In the circumstances the Judicial Officer was not satisfied that the referee's decision to order the Player off was wrong.

### **Decision as to disposal**

The Judicial Officer reconvened and confirmed that the ordering off by the Referee had been upheld for an offence contrary to Law 10.4(i), in particular for pushing an opponent, jumping for the ball in open play. He therefore heard representations from the Disciplinary Officer and Player as to sanction.

## Submissions as to sanction

The Disciplinary Officer confirmed that he did not advocate any particular sanction in this case but would draw to the Judicial Officer's attention the provisions of DR 6.7.32 which deals with the entry point for such offences. The Disciplinary Officer considered that the following factors relevant:-

- That the Player's actions had been reckless.
- That the victim player had been removed from the match as a consequence of the incident.
- The victim had been vulnerable

He also commented that the Player's actions had also adversely affected the team by losing a man for virtually the entire match.

The Disciplinary Officer confirmed there were no aggravating factors in the case.

The Player's representative stated that by virtue of the fact he had been sent off at the very beginning of the most important match for Ulster during this season he had already in effect served a match ban. It was a very high profile match and the incident had become highly emotive. It was not an absolutely clear cut matter and he invited the Judicial Officer to conclude that the red card was sufficient punishment in itself and that the provisions of DR 6.7.37 (wholly disproportionate) could be found so that the Disciplinary Officer could reduce the sanction to more than 50% of the entry point of three weeks and indeed reduce it to zero. The Player's representative also referred once again to his record and good character. He also referred to his conduct at the hearing. He also confirmed that his remorse and apology to Goode had been shown at the earliest possible opportunity during the match when both he and Goode were watching the remainder of the game from their respective benches.

The Judicial Officer retired to deliberate in private in respect of what, if any, sanction would be appropriate. In this regard the Judicial Officer considered the terms of Disciplinary Rules including DR 6.7.29 through to DR 6. 7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

The Judicial Officer noted that the offence of pushing an opponent jumping for the ball in play in contravention of law 10.4(i) was listed within the IRB Recommended Sanctions for Offences Within the Playing Enclosure (found in Appendix Three of the Disciplinary Rules).

The Judicial Officer determined that the following factors were relevant to entry point:

- A) The offending had not been intentional or deliberate

- B) The offending had been reckless, that is the Player knew (or should have known) that there was a risk of committing an act of foul play.
- C) The Player's actions were not particularly grave as even though he had acted recklessly he was genuinely attempting to catch the ball.
- D) There was nothing about the nature of the Player's actions in particular the part of the body used which made the offence more serious.
- E) There was no question of provocation.
- F) The Player had not acted in retaliation.
- G) The Player had not acted in self defence.
- H) The Player's actions of the victim had been significant in that the injury resulted in him losing consciousness and he had been removed from the match.
- I) The Player's actions had an effect on the match in that his own team had been reduced to fourteen men for the remainder of the game, and whilst the victim had been removed from the match his team was able to replace him.
- J) The victim was vulnerable and had been unable to protect himself.
- K) The level of participation in the offending was not a particularly relevant factor here but there had been no premeditation.
- L) Whilst the Player's conduct was completed (not simply attempted) there was no actual intent to take the player out in the air.
- M) There was no other feature of the Player's conduct in relation to or connected to the offending.

Based upon the assessment of the seriousness of the Player's conduct the Judicial Officer was satisfied that a low end entry point was appropriate which prescribed a starting point of three weeks.

Having taken into account the mitigating factors on behalf of the Player and in particular his disciplinary record and good character, his conduct at the hearing and the remorse he had demonstrated to the victim at the earliest opportunity, the Judicial Officer considered that he should have one week deducted from the three week entry point. The Judicial Officer had listened to the representations from the Player's representatives but did not consider in this case that it could be said that a sanction of two weeks would be "wholly disproportionate to the level and type of offending".

### **Announcing the decision**

The hearing was reconvened and the Judicial Officer announced the decision as follows:-

- 1) That having upheld the referee's decision to award a red card for the offence contrary to Law 10.4(i) the Player would be suspended for two weeks which would take effect from the

day the he was sent off up to and including Sunday 20<sup>th</sup> April 2014. He is free to play on Monday 21<sup>st</sup> April 2014.

- 2) The Player would be ordered to pay travel and accommodation costs of the Judicial Officer to be assessed if not agreed.

## **Appeal**

Both parties were reminded of their right of appeal under DR 7.1.1.

**Simon Thomas**  
**Judicial Officer**

**14 April 2014**