

EUROPEAN PROFESSIONAL CLUB RUGBY (EPCR)

DECISION OF THE APPEAL COMMITTEE

IN RESPECT OF THE APPEAL BY FRANCOIS STEYN

Held via Conference Call

on 1 February 2017 ("the Hearing")

In respect of:-

An appeal by Francois Steyn ("the Player") against the Decision ("the Decision") of the Disciplinary Committee on 18 January 2017 (written decision dated 23 January 2017) which held that the Player:

- (a) accepted that he had carried out the act of foul play for which he received a red card and that the foul play warranted the awarding of a red card; and
- (b) is suspended for four weeks, namely from 13 January 2017 to 5 March 2017 inclusive. He may play again on 6 March 2017.

1. MEMBERS OF THE APPEAL COMMITTEE ("the Appeal Committee"):-

Rod McKenzie (Chairman) (SRU)

Roger Morris (WRU)

Simon Thomas (WRU)

2. DECISION OF THE APPEAL COMMITTEE:

That the appeal be refused.

3. GROUNDS OF APPEAL

That the Disciplinary Committee erred by imposing a sanction which was excessive and disproportionate having regard to the facts admitted or found established by the Disciplinary Committee and, in particular, that the Disciplinary Committee:

1. incorrectly characterised the nature of the tackle which should not have been treated as involving strike to the head of the opposing player and which should have been characterised as a stiff-arm tackle;
2. failed to have proper regard to World Rugby's recent Directive on Dangerous Tackling;

3. concluding that World Rugby's amendment to the sanctioning table at Appendix One of World Rugby Regulation 17, that the offending in this case fell within the category of being "*a dangerous tackle which results in a strike to the head shall result in at least a mid-end [sic] entry point sanction*";
4. that the offending in this case ought to have been characterised as "lower end" stiff-arm tackle to the neck and therefore not within a category of offending which required at least a mid-range 'entry point'; and
5. in not applying 50% mitigation in this case due to the Disciplinary Committee having wrongly and unfairly utilised the Player's disciplinary record which includes only one previous period of suspension for an act of Foul Play,

and that on the basis of any one or more of these grounds of appeal the sanction imposed on the Player should be reduced.

In substance the Player sought to have the Appeal Committee substitute a finding that the offending admitted by him should be categorised as "low-end" offending, rather than mid-range and separately that the Disciplinary Committee's finding of 40% mitigation should be substituted with 50%. If wholly successful the practical effect would have been to reduce the period of suspension from 4 weeks to 1 week. If only the first part of the appeal was successful the result would have been a reduction in the period of suspension to 2 weeks. If only the second part was successful the result would have been a reduction in the period of suspension to 3 weeks.

The Player's Grounds of Appeal and the responses from the Legal Representative of the Disciplinary Officer are principally comprised in Appendix 1 of this Appeal Decision:

- 1 Player's Grounds of Appeal (with supporting material not copied with this Appeal Decision); and
- 2 response for and on behalf of the Disciplinary Officer comprised an email dated 31 January 2017, 19:17 (with supporting material not copied with this decision).

There were additional emails and material submitted which were considered by the Appeal Committee but it is not necessary to copy these in order to have a clear understanding of the grounds on which the Appeal was argued.

4. APPEAL HEARING

The Appeal Committee was convened by Professor Lorne D Crerar, Chairman of the EPCR Disciplinary Panel, further to DR 8.3.1 and DR 8.4.3 in respect of a Red Card shown to the Player by Match Referee J.P. Doyle Esq. for a breach of Law 10.4(e) of the Laws of the Game (dangerous tackling) in the European Rugby Champions Cup Match between Leinster Rugby and Montpellier

Herault Rugby played at RDS Dublin on 13 January 2017 ("the Match"). The Red Card was considered by a Disciplinary Committee at a hearing on 18 January 2017 and the Chair of the Disciplinary Committee issued the Disciplinary Committee's written decision on 23 January 2017. ("the Decision")

The Player accepted before the Disciplinary Committee that he had committed an act of Foul Play that warranted a red card and the Disciplinary Committee categorised the offending as "Mid-Range" with an entry point of six weeks. The Disciplinary Committee applied mitigation of 40%, which resulted in a disciplinary sanction comprising a period of suspension of 4 weeks from 13 January 2017 to 5 March 2017 (inclusive).

The Player appealed by Notice of Appeal dated 27 January 2017. The Player chose to appeal only the level of sanction. On 1 February 2017 the Appeal Committee sat to consider the appeal. By agreement of all involved the hearing took place by telephone conference call. The decision of the Appeal Committee refusing the appeal was advised by email on the same date.

In addition to the members of the Appeal Committee, there was present during the Hearing:-

The Player;

Christian Chevalier, Avocaat, appearing for the Player;

Mathieu Charpentier, Director, Montpellier Herault Rugby;

Liam McTiernan, Disciplinary Officer, EPRC;

Max Duthie, Solicitor, appearing for the Disciplinary Officer;

Danny Rumble, Regulations and Compliance Executive, EPCR; and

Jennifer Rae, Solicitor, Clerk to the Disciplinary Panel and to Appeal Committee.

The documentation and other materials which were available and considered by the Appeal Committee included inter alia:-

1. The documents, video and other materials before the Disciplinary Committee; as listed in the Decision.
2. The Written Decision of the Disciplinary Committee dated 23 January 2017.
3. The Player's Notice of Appeal.
4. A response from the Legal Representative of the Disciplinary Officer to the Standing Directions.
5. A response from the Legal Representative of the Player to the Legal Representative of the Disciplinary Officer's response to the Standing Directions
6. A response from the Legal Representative of the Disciplinary Office to the Legal Representative of the Player's response.
7. The decision of ERC Appeal Committee in respect of *Marius Tincu* (November 2008)
8. Six Nations Rugby Limited decision of the Appeal Committee in respect of *Mauro*

Bergamasco (March 2008)

9. RFU in respect of *Brad Barritt* (January 2017).

In reaching its decision on the appeal by the Player the Appeal Committee carefully considered the Decision, all of the documentation and submissions before the Disciplinary Committee and all of the oral and written submissions and material provided by or on behalf of parties. Only such documentation, submissions and material relevant to the Appeal Committee's decision on the appeal are referred to in this Appeal Decision.

There was no request for a *de novo* hearing in terms of DR 8.4.8 and, in terms of the same DR, it was for the Player to prove that both the Decision was (i) in error; and (ii) should be varied.

5. DISCUSSION

(a) The Foul Play

In the referee's red card report he advised that:

"The tackle was reviewed through the TMO and was found to be high, striking to the head and with force."

In the red card report the referee does not tell us whether he personally saw where the strike took place, in the sense of what part of the victim player's person was struck by the Player during the high tackle, or whether the referee relied on what was advised to him by the TMO and/or what the referee saw on the screen within the stadium.

The referee gave a separate email report to the Disciplinary Officer in which he advised:-

"From this and through conversation with AR1 Barnes was (sic) could see that M10 had made an illegal tackle that was high, with force and the first contact was directly with the head of L10."

This might imply that the referee did not personally see where the victim player was struck during the course of the high tackle.

Mr Terheege, the TMO, advised in an email of 16 January 2017 that he had:-

"Observed a potentially dangerous tackle and asked the production team to provide me with clips to view... With the assistance of the production team I provided the TV footage available from which the referee determined the Montpellier 10 had committed a high tackle which

made direct contact with force to the head of Leinster 10."

The other touch judge, Mr McConnell, advised in an email to the Disciplinary Officer of 16 December 2016 that he had seen the tackle made by Montpellier 10 but was not able to see where the contact was made. He goes on to advise that on review of the video record in support of the TMO the tackle was seen to be high, with force and to the head.

The other touch judge, Mr Barnes, does not say anything about what he personally saw of the incident but talks about having reviewed the incident with the TMO who talked through what the TMO was seeing on the screen. Mr Barnes goes on to say:-

"I confirm that what I was seeing was a high tackle which made direct to the head (sic) and the contact was with force."

All four of the Match Officials therefore agree that the tackle was "high" and contact was made with the head of the Leinster 10 during the course of the high tackle. Although it appears that in the case of each of them this was largely, if not entirely, based on their view, or the view of the TMO, of the video record.

It would be helpful if Match Officials could explicitly state in their reports whether they personally saw the relevant acts or omissions of a red carded or cited player during an incident of alleged Foul Play or whether their conclusions as to what occurred during an incident is based on the video record. Disciplinary bodies are able to review and reach their own conclusions on the video record but the personal recollections of Match Officials of what they saw during an incident is often of great evidential value.

The victim player, Mr Sexton (L10), advised in an email of 16 January 2017 that he:-

"felt a heavy impact on my neck and lower jaw on the right hand side..."

He goes on to advise that he had initial soreness in his neck and lower jaw and that he subsequently, post the Match, suffered from some mild neck stiffness.

Dr James O'Donovan, the Leinster team doctor, advised in a letter of 15 January 2017 that Mr Sexton:-

"Received a tackle that made contact with his neck/head area."

In the Decision, the Disciplinary Committee made a factual finding in the following terms:-

"The contact is made between the Player's right forearm and bicep and the right lower jaw and neck of L10. L10 is knocked to the ground. The contact is with considerable force."

The Disciplinary Committee goes on to record in the first paragraph in section 9 of the Decision that the Player's position at the hearing was that he:-

"...accepted that contact was with the neck and lower jaw and that he had 'hit the guy in the wrong place'."

At paragraph 16 of its Decision the Disciplinary Committee states:-

"It is probable that, having made those findings, [here referring to the factual findings made in paragraph 15 above] the Committee would have determined the offending to be at the low end of the scale of seriousness. The Panel (sic) applied the World Rugby Directive and held that a mid-range entry point was required."

In a note to the Decision the Disciplinary Committee stated there were two matters in respect of which it might be prudent to consider further clarification:-

"1. In the sanctions table in Appendix 3 to the EPCR Disciplinary Regulations, there are two 'boxes' for tackles under law 10.4(e). On a strict interpretation, there may be argument that the Directive does not apply to the 'stiff-arm tackle' as propounded by Mr Chevalier. For the reasons previously set out, the Committee did not accept that this was a stiff-arm tackle, but had it done so, it would have had to consider Mr Chevalier's point further; and

2. On 5 January 2017 the World Rugby Chief Medical Officer defined 'eye' and 'eye area'. We can find no similar definition of 'head'. The Committee took the view that the head in this case should be defined as the upper part of the body which contains and protects the brain and sensory organs of eyes, mouth, nose and ears and as the mandible protects the mouth, it should be included in the definition of 'head'. It may be prudent to have this matter clarified and also that a strike to the neck which would seem to have a similar potential for concussive head injury was intended to be encompassed by the Directive."

At paragraph 14 of the Decision the Disciplinary Committee made a finding that the tackle in this case was not a:-

"stiff-arm tackle but a tackle above the line of the shoulders, even if started below, and accordingly the Directive would apply."

The Disciplinary Committee went on to say that even if it had categorised the offending as a stiff-arm

tackle then:-

"...it would, in the view of the Committee, be perverse and illogical to say that the Directive would not apply."

There are a number of factual findings made by the Disciplinary Committee with which there is no basis for the Appeal Committee to interfere. Appeal Committees have repeatedly said that first instance Committees are entitled to a 'margin of appreciation' in making discretionary judgements and factual determinations with which Appeal Committees will not interfere unless a hearing proceeds in whole or in part as a *de novo* hearing or there has been a clear error by the Disciplinary Committee. Reference is made to decisions of Appeal Committees in the cases of *Tincu* 25 November 2008 and *Bergamasco* 14 May 2008. The Disciplinary Committee's finding that the strike was to the neck and the lower jaw is wholly consistent with the evidence of (i) the Match Officials (albeit primarily based on the video record), (ii) the Leinster 10, (iii) the Player and (iv) with the video evidence. It was not suggested that the Disciplinary Committee were in any way in error in including the 'lower jaw' in the area of a person's anatomy comprising their head. The implicit evidential finding that a person's neck is anatomically separate from their head is also not challenged and is consistent with the understanding of the members of the Appeal Committee, albeit that none of its members are medically qualified.

The Appeal Committee is in no position to question the Decision of the Disciplinary Committee that this was not a 'stiff-arm tackle' but in any event, for the reasons given below, we do not consider that a decision one way or another on that issue would have made any difference to the selection of the entry point.

It is, in effect, undisputed that the Player struck L10's jaw as part of a 'high tackle' whether the Player's arm was stiff or otherwise. We do not agree either with the submission for the Player nor with the Disciplinary Committee's hint of a reservation in its reference to 'a strict interpretation' of World Rugby's Sanctioning Table in Note 1 of the Decision.

"The Sanctioning Table" is Appendix 1 to World Rugby's Regulation 17, as per EPCR Disciplinary Regulation 7.8.31. The table is reprinted as Appendix 3 to EPCR's Disciplinary Rules. EPCR DR 7.8.33 relates to the process of the assessment of seriousness of the conduct of a Player which leads to the identification of the appropriate entry point for sanctioning purposes in an individual case. However, that exercise is now subject to the overriding inserted provision in DR 7.8.33 that:-

"(Where World Rugby's sanctions for Foul Play expressly provide for a particular entry point for certain offending, in which case the Disciplinary Committee shall apply such entry point.)"

The provision appears in parenthesis but, on a proper construction, it is a conditioning provision in

relation to the immediately preceding text and should be construed as if it was stated in advance of the immediately preceding text so that it conditions the process of the assessment of seriousness provided for at the beginning of EPCR DR 7.8.33. The process of assessment of seriousness must still be undertaken in every case, the result may be a conclusion of "top-end" offending where, in the case of Law 10.4(e), the conditioning provision directing a minimum entry point of 'mid-range' would have no practical effect.

The dangerous tackle law, 10.4(e), requires to be read in the context of the definition of a tackle at the beginning of Law 15, the Tackle Law. A tackle is defined as:-

"A tackle occurs when the ball carrier is held by one or more opponents and is brought to ground."

The definition goes on to provide that where a ball carrier is not held, he is not a tackled player and a tackle has not taken place. Opposition players who hold the ball carrier, bring that ball carrier to ground and who themselves go to ground are known as tacklers but opposition players who hold the ball carrier and do not go to ground are not tacklers. It follows that a tackle cannot have taken place where the former ball carrier is held by an opposing player but the exercise of holding does not commence until after the ball carrier has ceased to be in possession of the ball.

In the context of the dangerous tackle law, Law 10.4(e), a player attempting to tackle another player who does not have the ball is tackling late. That is regarded as one type of dangerous tackling. If the exercise of tackling, however it is carried out, is inherently dangerous for any purpose then that is dangerous tackling. Furthermore, there are five specific circumstances listed in 10.4(e) in which 'Dangerous tackling' takes place. The first four of these are:-

"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 an opponent's neck or head is dangerous play."

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

Playing a player without the ball is dangerous play."

There is a further category which is not relevant for the present purposes.

These five specified circumstances in which dangerous tackling is provided to have occurred are not

mutually exclusive. There may be circumstances where a tackle is late, high (in respect that it is above the line of the shoulders), a stiff-arm tackle and/or includes playing a player without the ball. Further, there may be a stiff-arm tackle which is dangerous play but which does not involve a strike above the line of the shoulders. Manifestly there may be a late tackle and/or playing the player without the ball, both of which are dangerous, but where the tackling does not take place above the line of the shoulders and is therefore not *'high-tackling'*.

These different permutations of potential dangerous play in the context of tackling or attempted tackling require to be considered when construing World Rugby's Table of Sanctions and the references in the Table of Sanctions to Law 10.4(e).

We construe the two entries for Law 10.4(e) in World Rugby's Table of Sanctions in the following way. The first entry is a general entry, the first row for Law 10.4(e), applying to all forms of dangerous tackling identified in Law 10.4(e) under exception of those listed in the second column of the immediately succeeding row.

The offending described in the second column in the first row for Law 10.4(e) is:-

"Dangerous tackling of an Opponent including early or late and including the action known as the "stiff arm tackle."

The two descriptions in the second column in the second row for Law 10.4(e) are:-

'Dangerous tackling of an Opponent including: (i) a tackle or attempted tackle above the line of the shoulders even if the tackle starts below the line of the shoulders; (ii) grabbing and rolling-twisting around the head-neck area even if the contact starts below the line of the shoulders.'

Two particular points require to be borne in mind with reference to the descriptions in the second column of the second row for Law 10.4(e):-

- (a) the first action described includes both tackling and attempted tackling; and
- (b) both actions described involve contact with the opponent above the line of the shoulders.

There is nothing, for example, in description (a) which would prevent it applying to a stiff-arm tackle above the line of the shoulders. There is nothing in (a) or (b) which would prevent either applying to a late tackle. If a tackle or attempted tackle involves contact of whatever nature with an opponent player above the line of the shoulders, however that contact may occur, then the second row for Law 10.4(e), and its associated provisions apply. In all other cases the immediately preceding first row for

Law 10.4(e) and its associated description in column two of that first row applies.

The only respect in which there may be scope for some difficulty is in the third column in the second row. The column is headed:-

"Entry point based on the scale of seriousness of the Player's conduct that constitutes the offending:"

The entry point periods are the same in row one and row two for Law 10.4(e). The practical difference in terms of sanctioning between the two rows is the additional text in column 3 of the second row. This provides:-

"A dangerous tackle which results in a strike to the head shall result in at least a mid-end (sic) entry point sanction."

The reference to 'mid-end' is clearly incorrect and should be construed as being to 'mid-range'. The potential difficulties arise with the words 'strike' and 'head'.

Since the stated purpose of the Directive is the protection of players from risk of injury and since concussive injuries are a particular concern, the introduction of the changes in the Table of Sanctions will have been intended to give regulatory effect to the directive's underlying policy. However, it is not clear why the second row should be limited, in the context of requiring a mid-range entry point, to strikes and moreover only to strikes to the head. It is axiomatic that trauma other than strikes to the head may have concussive effects. The most common sources of concussive injuries involving the neck may be a strike to the neck but indirect trauma such as whiplash type movements involving the neck and/or head may also have concussive effects. Further the second entry in column two in the second row for Law 10.4(e) *"grabbing and rolling/twisting"* does not obviously involve a strike. It is unclear why a manoeuvre which is recorded as Foul Play, but which does not obviously involve a strike, should be included in the second row of the Table for Law 10.4(e). It is also not clear why an attempted tackle should not also be included in column two in row two for each described type of offence in row two for Law 10.4(e).

World Rugby may wish to consider whether in column 3 of the relevant entries in its Table of Sanctions the references to 'strike' and 'head' may more appropriately be extended to other actions and, in particular, that head should be extended to 'neck'.

Nothing turns on this so far as the present case is concerned. There was found by the Disciplinary Committee to have been a strike to the head, in the form of a blow to the lower jaw of L10, in the context of an attempted tackle which was 'high'. The sanctioning consequence is specifically provided for unless the Disciplinary Committee determines it to have been top-end offending, which it did not.

The second row, third column entry in respect of Law 10.4(e) applies and the Disciplinary Committee correctly identified that at least a mid-range entry point of six weeks was required to be selected in order to be compliant with the EPCR Disciplinary Rules which in turn require compliance with World Rugby's Table of Sanctions

(b) Culpability

That would be sufficient to deal with all of the grounds of appeal other than that relating to the percentage mitigation which is dealt with below. However, we would observe that we had reservations regarding the observation in paragraph 16 of the Decision that the Disciplinary Committee would probably have determined the offending to be at the low-end of the scale of seriousness had the Disciplinary Committee not applied the "World Rugby Directive" which meant that a mid-range entry point was required.

The first point to make is that it is not a question of the Directive being applied but rather applying the World Rugby's Table of Sanctions in accordance with the Disciplinary Rules of EPCR. The Directive is an expression of policy which is to be given effect to in a number of ways only some of which are relevant to disciplinary bodies such as the Disciplinary Committee.

It would be preferable if Disciplinary Committees did not make observations about what each would probably have done, in terms of a lower entry point, if the Disciplinary Rules were in terms other than they are. It was clear from the way this appeal was argued that this observation by the Disciplinary Committee was at the root of the primary Grounds of Appeal, albeit, for the reasons given above, those Grounds of Appeal are misconceived. In the view of the Appeal Committee the offending in this case should not have been regarded as low-end offending.

DR 7.8.32(b) concerns offending which is defined as "reckless". The provision goes on to say:- *'that is the Player knew (or should have known) there was a risk of committing an act of Foul Play'*. This definition of reckless, in a rugby context, in DR 7.6.30(b), comprehends offending across a contextual range which, at one end, comprises an act which is no more culpable than it results from a player having failed to apply due care. At the other end of the scale is conduct which is reckless in the 'classic sense'. That is offending committed in circumstances where the culprit is indifferent as to whether he offends or not.

It should be noted that this is a different issue from whether an incident may be regarded as "accidental". Accidental incidents may involve degrees of culpability ranging from carelessness to recklessness.

Offending, for the purposes of Law 10.4, comprehends offending which occurs in circumstances where the offending is (i) intended, that is where a player intends to commit the act which constitutes

the Foul Play; that is not the same as intending to commit Foul Play, the issue is whether the act which constitutes the Foul Play was committed intentionally; (ii) reckless, that is carried out in circumstances which fall significantly below the standard of conduct expected of a player and which demonstrate a reckless disregard for the consequences that might result from the player's conduct, (i.e. classic recklessness); through to (iii) careless conduct, that is carried out in circumstances where a player has failed to exercise reasonable care that he did not commit an act of Foul Play.

DR 7.8.32(c) requires Disciplinary Committees to consider, when fixing the entry point, *'the gravity of the Player's actions in relation to the offending'*. DR7.8.32(d) goes on to include, in the matters to be considered, the *'nature of the actions, the manner in which the offence(s) was/were committed including the part of the body used...'* All of this requires a Disciplinary Committee to make an assessment of the degree of culpability on the part of the offending player.

The Disciplinary Committee in this case was required to consider and determine what was the degree of culpability of the Player for the act of Foul Play admitted by him having regard to the Player's acts and omissions? Was the Player attempting to tackle in a manner which was reckless in the sense that he wholly disregarded the danger of tackling above the line of L10's shoulders and thereby caused danger to L10? Alternatively, was the Player being no more than careless in the sense that he was not taking reasonable care for the safety of the L10 in failing to ensure, as he could have done, that he attempted to tackle at a position on L10's body where there was no reasonable prospect of the attempt to tackle ending up above the line of L10's shoulders.

Disciplinary Committees require to make this determination in every case where the imposition of a sanction is in issue because the character of the offending in terms of the degree of culpability of the offending player forms a significant component in determining the seriousness of the offending and, as a consequence, the relevant entry point for the purposes of DR 7.8.33. This is the case even where World Rugby directs the minimum of a mid-range entry point or the minimum of the beginning of a top-end entry point since, in the former type of case, the offending might properly be characterised as top-end, with the subsequent need to then fix the entry point number of weeks suspension from the range, and in the latter, where the top-end is prescribed, the entry point number of weeks falls to be determined from the range.

It was apparent to the Appeal Committee that the degree of culpability on the part of the Player in this case was significant. In many, perhaps most cases, it is not enough to simply say the offence was "rugby reckless". That does not tell the informed reader what was the character of the offending on the scale of culpability.

Intentional Foul Play is fortunately a rather uncommon occurrence but a simple selection of reckless, in a rugby context, Foul Play does not properly inform the degree of culpability for the commission of the Foul Play on the part of an offending player.

We do not require to make a final determination on this matter in the context of this case because this issue is not determinative of the appeal and was not determinative of the case before the Disciplinary Committee. However, a reading of the Disciplinary Committee's decision, in particular paragraph 16, might give the impression that somehow the Player has been treated unfairly by receiving a sanction which was not merited. That would be a wholly incorrect impression. World Rugby has decided that there is an imperative need to remove from the game all forms of dangerous tackling above the line of the shoulders and other forms of Foul Play apt to result in concussive injuries. This, on any view, was a dangerous tackle which has necessarily been significantly sanctioned. The Player was culpable for the dangerous offending which occurred. There was a high risk of injury to L10 resulting from the significant force of the strikes to his head and neck imparted by the Player. L10 was at all times in full view of the Player who could have adjusted the direction of his tackling action so that if L10 changed his position as he passed the ball, which was to be expected, there would have been no significant risk of a strike by the Player to L10 above the line of L10's shoulders.

In our view Disciplinary Committees do not require to, and should not, indicate in oral or written decisions that it had been open to the Disciplinary Committee to make an entry level assessment which was less than an entry point directed by World Rugby in its Table of Sanction that it would have done so. The minimum mid-range entry point directed for strikes to the head in the context of the Foul Play of dangerous tackling reflects the seriousness of such offending and the imperative need to protect vulnerable players and the reputation of the Game.

(c) Mitigation

In his final ground of appeal the Player asserts that he has suffered a degree of unfairness because the percentage mitigation which he was afforded was 40% of the mid-range entry point. It should be noted that 50% from the entry point is, by DR7.8.36, the maximum possible reduction that can be applied from any entry point unless DR 7.8.37 applies. There was and is no suggestion of DR7.8.37 (the wholly disproportionate provision) applying in this case.

The maximum level of mitigation of 50% should be applied only in cases where all of the features which may be drawn to the attention of a Disciplinary Committee and which apply in a relevant case, in the context of mitigation, are present and established to their fullest extent.

One of the factors to be taken into account in deciding the level of mitigation, if any, per DR7.8.35(b) is *'the Player's disciplinary record'*. This Player does not have a clear disciplinary record. He has a relatively recent period of suspension recorded against him for an act of Foul Play. The question for the Appeal Committee in an appeal on sanction and in the case of this type of ground of appeal is whether the Disciplinary Committee could be said to have been in error in taking the existence of that disciplinary record into account in determining the percentage of mitigation to be applied to the

Player's entry point sanction in light of the consideration that the maximum which may be applied is 50% and having taken it into account deciding that the appropriate reduction from the entry point was 40%. A decision by the Disciplinary Committee that the percentage reduction to be applied in this case was 40% is considered by the Appeal Committee to be well within the margin of appreciation of the Disciplinary Committee when considering a case such as the Player's. It was inevitable in our view that some reduction from the maximum 50% mitigation would result from the Player's disciplinary record. The reduction was a modest one but any reduction inevitably increased the outturn period of suspension from 3 weeks to 4 weeks unless the % mitigation was 25% or less. The Disciplinary Committee were correct to arrive at a % mitigation of the mid-range entry point of less than 50% and the selection of 40% is considered by the Appeal Committee to be wholly reasonable and well within the margin of appreciation of the Disciplinary Committee.

In our determination there has been no error by the Disciplinary Committee in fixing the percentage reduction for mitigation at 40% of the entry point.

6. DISPOSAL

For the above reasons the Appeal Committee determined to refuse the appeal which is dismissed. No application was made on behalf of any party in respect of costs and no order is made.

Rod McKenzie - Chairman
Roger Morris
Simon Thomas
Appeal Committee
16 February 2017