

DECISION OF THE INDEPENDENT JUDICIAL OFFICER

ERC

Held at Huguenot House, St Stephens Green, Dublin

On 8 February 2011

In respect of:

Florian Fritz (“the Player”)

In relation to:

- The ordering off of the Player in the match between London Wasps –v- Stade Toulousain (“the Match”) on 23 January 2011 for an offence contrary to Law 10.4.(j) which provides that it is dangerous play to lift a player from the ground and drop or drive that player into the ground whilst that player’s feet are still off the ground so that the player’s head and/or upper body come into contact with the ground.

And also in respect of:

- A misconduct complaint in respect of the Player’s actions following the ordering off in the match pursuant to paragraphs 3.2, 3.3.9 and/or 3.3.17 of the Disciplinary Rules.

Judicial Officer appointed to hear the case:

Robert H P Williams, (Wales) (“the Judicial Officer”)

The decision of the Judicial Officer:

- The Judicial Officer determined the Player’s challenge to the referee’s decision to order him off should not be upheld
- As the Player’s challenge was dismissed, the Player was suspended from taking part in the game of rugby up to and including 13 February 2011. This represents a three week suspension which commenced on 23 January 2011

- The Judicial Officer determined that the Player, having accepted the misconduct complaint, should be fined 15,000 Euros
- The Judicial Officer made an award for costs against the Player, the costs to include the legal representation on behalf of ERC and the convening of the hearing, such costs to be assessed if not agreed.

Introduction

- The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of ERC's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2010/2011 ("Disciplinary Rules" and "DR "using the singular). The Judicial Officer was appointed to consider the ordering off of the Player in the match between London Wasps and Stade Toulousain on 23 January 2011 in the Heineken Cup 2010/2011 and also to consider the misconduct complaint against the Player in respect of his actions following the ordering off in the match
- Mr Alain Rolland ("the Referee") was appointed as a referee to this match and had ordered the Player off for contravening Law 10.4.(j) where he dismissed the Player as he had "spear tackled an opponent as he picked him up and drove him into the ground"
- It was also alleged that as the Player left the field of play following the ordering off, he made an offensive hand gesture in the direction of spectators and/or aggressively kicked at a chair in the Stade Toulousain dug out, which has resulted in a misconduct complaint
- Present at the hearing, in addition to the Judicial Officer, were the following persons:
 - Mr Roger O'Connor – Disciplinary Officer ERC
 - Mr Max Duthie of Messrs Bird & Bird Solicitors, London – Legal Representative on behalf of the Disciplinary Officer for ERC
 - Mr Florian Fritz ("the Player")
 - Mr Paul-Antoine Dumond – Intern with ERC
 - Mr Guy Noves – Stade Toulousain coach
 - Ms Gillian Carhil – Interpreter

- Ms Marie Delumean – Interpreter
- Mr Rene Bouscatel – President Stade Toulousain
- Mr John O'Donnell S.C. – Senior Counsel representing the Player.

Preliminary Matters & Procedures

At the commencement of the hearing, the Judicial Officer noted the identities of all present and their roles.

The offences for which the Player appeared before the Judicial Officer were:

- That during the match the Referee showed a red card to the Player for an infringement of law 10.4.(j) which provided that it is dangerous play to lift a player from the ground and drop or drive that player into the ground whilst that player's feet are still off the ground so that the player's head and/or upper body come into contact with the ground, in respect of which the Referee said that he had dismissed the Player for having spear tackled an opponent as he picked him up and drove him into the ground
- The misconduct complaint in that as he was leaving the playing area following receiving the red card during the match he made an offensive hand gesture in the direction of spectators and/or aggressively kicked at a chair in the Stade Toulousain dugout which would constitute misconduct pursuant to paragraph 3.2., 3.3.9 and/or 3.3.17 of The Disciplinary Rules.

The Judicial Officer reminded all parties that the ERC Disciplinary Rules would apply. The Judicial Officer outlined the procedure to be followed to determine the matter and all present agreed to proceed on that basis.

The Judicial Officer established that the evidence which had been placed before him prior to the hearing had also been received by all present prior to the hearing. He noted that the evidence which had been received prior to the hearing comprised:

- The complaint notice from the Disciplinary Officer to Professor Lorne Crerar dated 24 January 2011
- The copy of the report of the Referee
- The notice of the hearing from Professor Lorne Crerar dated 25 January 2011
- The Judicial Officer's Directions Order relating to this case dated 27 January 2011
- The statement of the Citing Commissioner Mr Ray Wilton dated 24 January 2011

- Copies of various press articles
- The statement of Tom Varndell of Wasps (“the Victim Player”) regarding the tackle dated 25 January 2011
- The report of the assistant referee Mr Mark Hamlin
- The memorandum from IRB concerning dangerous tackles
- Various cases:
 - (a) Case of Alexi Bales dated 25 March 2010
 - (b) Case of Sam Tuitupou dated 13 October 2010
 - (c) Case of Paul O’Connell (first incident hearing) dated 16 December 2010
 - (d) Appeal Case of Paul O’Connell dated 23 December 2010
 - (e) Case of Gareth Thomas dated 1 February 2007
 - (f) Rugby Football Union case of Schlack Britts dated 18 May 2010
 - (g) The letter from His Honour Judge Jeff Blackett to Mr Lemy dated 23 November 2009
 - (h) The Rugby World Cup case of Paul Emeric dated 11 September 2007.
- The Response of the Player which is in the form of a witness statement which had been e-mailed during the evening of 3 February 2011
- The Disciplinary Officer’s response to the Player’s witness statement and submissions received 7 February 2011
- Video clips of the tackle, the Player leaving the field and at the dugout

The Judicial Officer then enquired as to whether any additional evidence was to be presented before him and he was advised that Mr Noves the coach would be producing further video evidence.

The Judicial Officer noted the terms of the parties' responses to the Directions which he had provided and:

- In summary, the Player's Response stated that:

He accepted that the tackle made by him could well be interpreted as dangerous play and as such would have justified a penalty and on balance, perhaps, a yellow card. He did not agree, however, that such an act justified a red card and although he believed the official report was on the whole correct some of the terms used in it were not, in his opinion, appropriate descriptions for his actions. He intended to introduce video evidence of other tackles and of a television programme where an ex international referee had commented on the incident.

He accepted that he had committed the act of misconduct described in the complaint, but that the gestures were to himself and not meant as any disrespect to others.

- The Disciplinary Officer's response in summary was:

That ERC does not think that anything particularly turns on whether or not the Player's actions are correctly characterised as a "spear tackle". The Disciplinary Officer's response also made the point that it seemed to the Disciplinary Officer that "driving" a player into the ground is essentially the same as "forcing" or "spearing a player into the ground" which are the phrases referred to in the IRB Referee Managing and Judicial Panel Chairman in the memorandum of 8 June 2009 which was one of the documents which had been circulated before the hearing.

The Disciplinary Officer took issue on video evidence of other incidents and of a television programme.

The Judicial Officer invited the Player and the Disciplinary Officer to confirm whether or not they had any preliminary issues which they wanted to raise and he was advised there were none.

The Judicial Officer explained to the Player that he would put the allegation to him by first reading from the Referee's report and secondly by referring to the relevant law and that he would want the Player to answer personally to the allegation but that he would accept that Mr John O'Donnell S.C. would be entitled to put forward the basis on which any plea is made. The Judicial Officer therefore read from the Referee's report as follows:

"10.4.(j) I dismissed Toulouse 13 to have spear tackled the opponent as he picked him up and drove him into the ground"

The Judicial Officer read in full law 10.4.(j) which is set out above. He asked the Player whether he accepted that his tackle was contrary to law 10.4.(j) and that his action therefore warranted the red card.

The Player replied "Not guilty".

Mr John O'Donnell S.C. said that from the witness statement of the Player it can be seen that he accepted that he had made a tackle which may have been interpreted as dangerous and may have warranted a penalty but that it did not come within the IRB memorandum justifying a red card.

The Judicial Officer having noted the plea and the point made by Mr John O'Donnell S.C. then asked the Player whether he admitted the Disciplinary Officer's misconduct complaint in respect of his actions following the red card being shown in that as he was leaving the field, he made an offensive hand gesture in the direction of spectators and/or aggressively kicked a chair in the Toulousain dugout which would have been contrary to Disciplinary Regulations 3.2, 3.3.9 and 3.3.17.

The Player stated that he accepted that complaint.

Mr John O'Donnell S.C. said that the Player apologised for his actions which were in response to the red card, he had felt dejected, dismayed and there was a temporary and momentary loss of dignity on his behalf. Mr John O'Donnell S.C. said that the Player would wish to give evidence as to why he had reacted in the way he did so that there would be a clearer understanding as to what had occurred.

The Judicial Officer therefore noted that the Player had not accepted the red card but he had accepted the misconduct complaint although he would wish to explain his actions in due course. There would be a factual determination of the incidents.

Having noted the Player's responses to the showing of the red card and the misconduct complaint and that the Player was contesting the Referee's decision with regard to the red card but accepting the misconduct complaint, the Judicial Officer explained that he would want the Disciplinary Officer to produce the evidence with regard to the red card being shown to the Player but that it was for the Player to establish on the balance of probabilities that the Referee's reasons for showing him the red card were wrong.

The Judicial Officer explained he would deal with the red card issue before considering the misconduct complaint.

He said that if the Player established that the Referee's reasons for showing the red card were wrong, he would not be facing any sanction in respect of that matter but if he failed to establish that the reasons for the Referee showing the red card were not wrong, the Judicial Officer would consider what further sanction, if any, the incident merited.

Evidence supporting ordering off

The Judicial Officer noted the documents which had already been presented to him prior to the hearing and although the burden of proof lay on the Player to establish that the Referee's reasons for showing him the red card had been wrong, he would initially ask the Disciplinary Officer to produce

the evidence supporting the decision. Mr Max Duthie said that he would wish to make submissions on the video evidence and also with regard to the Victim Player's statement. It was agreed that his submissions on the evidence as a whole would be dealt with after the Player and his witnesses had produced their evidence.

The Judicial Officer therefore directed that the video footage of the incident which had already been provided should be shown with the sound off (DR 6.2.9). The parties watched the video and Mr Duthie pointed out that there were several angles of the incident and that these were as follows:

Angle 1:

"This shows the Player, Tom Varndell, collecting the ball and stepping inside – Florian Fritz is seen to be behind Tom Varndell – and the Referee is behind again. Varndell is seen to be stationary. Florian Fritz bends down – his left hand grabs Varndell's right leg – the right leg points to the sky. The momentum is forcing Varndell backwards. The upward and backward momentum is generated by Florian Fritz. The second Toulouse player participates – he seems to be holding the head of Varndell – this may be a benign gesture – Varndell twists in the air – ball is in his hand, then his arm and shoulder – the Referee very quickly blows whistle and shows red card – Varndell gets up quickly".

Mr Max Duthie referred to the second angle as follows:

Angle 2:

"In this angle, Florian Fritz bends down from a normal standing position and the second Toulouse player is holding Varndell's head."

Mr Max Duthie referred to the third angle and described it as follows:

Angle 3:

"Varndell's leg at its apex is at shoulder height or higher."

The fourth angle is described as follows:

Angle 4:

"This shows the full incident – one can hear the Referee speaking in French".

Mr John O'Donnell S.C. objected to this conversation being introduced into the proceedings because it is not clear as to what is being said nor to whom the Referee is speaking. The Judicial Officer accepted Mr John O'Donnell S.C.'s submission.

The Judicial Officer called upon the Player to produce his evidence and that of his witnesses, to establish why on the balance of probabilities that the reasons for the Referee's decision were wrong.

The Player's Case:

The Player gave evidence as follows:

"I had played for the whole of the match. It wasn't a dirty game, I hadn't received any warnings from the Referee. It was a game being played in good spirit.

I remember the incident. Toulouse were losing the ball and we are being outnumbered – Varndell tries to sidestep with the ball – it is an important moment – just after half time and we were losing – it was a real opportunity for Wasps to score.

I catch up with Tom Varndell and my objective is to stop the action and to stop Wasps from scoring.

My objective is to perform a defensive tackle for the ball to come back on the Toulouse side.

Given the dynamic of the Wasps team which is to move forward the best solution for the defending team is to break the dynamic.

My objective is to make the offensive tackle and to give time for my team to come and defend. It is a tackle I perform while moving forwards and is by no means dangerous.

I was holding onto Varndell at all times. I did not drop him. I did not force or spear him into the ground. I was using my strength to move forward and not push him into the ground.

I lift one of his feet but only to break his balance to move forward – at no time I'm looking to bring him upside down.

My right arm is underneath holding the Player. After the game, there is no complaint to me nor to the Toulouse team. "

Mr Max Duthie put questions through the Judicial Officer and the questions and answers were noted as follows:

Q. "Why did you not just push the Player back?"

A. "Varndell is very quick – I'm chasing – he has almost overtaken me with the sidestep – best solution is to break balance and move forward – the outcome would then be in my favour and I lifted foot in the air to break the balance to move forward."

Q. "Varndell's right leg is above the height of your head. Do you accept you caused that?"

A. "Yes. I cannot deny it.....but I'm raising the leg in the air to win the challenge with Tom Varndell – the simplest way to move forward is to lift or raise one of the legs – he is then less solid on the ground – he is more vulnerable – I have two feet on the ground and he will have one.

If my intention was to cause him harm, I would have used the other arm to bring him into an upside down position – once he loses his balance I'm moving forward and not continuing the action and am not lifting his leg upside down"

Q. "Varndell's left leg is also in the air."

A. "Yes but this leg is in horizontal line – lower line than Tom Varndell's body".

Q. "You also caused the left leg to be in the air".

A. "Indirectly yes – but not intentionally"

Q. "Right leg is above your head and you were intending to knock him off balance – did you need to do this?"

A. "It is in the spur of the moment and difficult".

Q. "You say it's by no means a dangerous tackle".

A. "Yes and Tom Varndell recognised it".

Q. "You say in your statement you are trying to control the fall – why are you trying to bring him down to the ground more slowly?"

A. "If I had dropped him – the tackle would have been more dangerous – while moving forward and not dropping him the Player is not falling with full weight to ground and I am not falling heavily over the player".

Q. "Were you concerned that he might have been hurt?"

A. "The action is not dangerous – the player did not say anything – he stood up".

Q. "Did you look to see if he was injured?"

- A. “No – it was not dangerous – one does not look to see the player”.
- Q. “In your statement you said you sought to control his fall but you did not check afterwards – why not?”
- A. “It was not dangerous and one does not then look to see the player”.

There were no further questions and the Judicial Officer had already been advised that Mr Guy Noves wanted to take the Judicial Officer through the incident to demonstrate what would otherwise be a dangerous tackle as per law 10.4.(j) and that this incident did not come within that law.

Mr Guy Noves therefore addressed the Judicial Officer and explained that law 10.4.(j) was dealing with a situation where the player is upside down and the legs are in the air and the player is speared and dropped and the player falls on his head with the shoulder or upper part of the shoulder coming to the ground putting the player’s health and wellbeing at risk. The Referee, in his opinion, sees it and acts on the spur of the moment and Mr Guy Noves therefore also went through the video clips and pointed out to the Judicial Officer the following:

“In the first clip – the tackler grabs the player’s leg and the shoulder is as normal in a tackle – the line of hip is as normal in a tackle, he brings one leg off the ground to unbalance the player and needs to break the player’s balance for him to be brought to the ground.

The Referee is twenty metres away. He sees one foot high in the air. It needs to have both feet in the air for there to be a dangerous tackle.

Once the balance of the Player has been broken the objective is to move forward.

All his (the player’s) strength is not geared to pushing or spearing the player to the ground nor turning him upside down but the objective is to move forward. “

Mr Guy Noves said that he wanted to draw the Judicial Officer’s attention to the hip line and shoulder of the Player and the victim player says:

“The hip line and shoulder are horizontal and not vertical nor upside down. Florian Fritz’s position is also horizontal as in a move to go forward – it is impossible to put the player [Mr Tom Varndell] upside down – the first point to reach the ground is the elbow – Mr Varndell is not in a dangerous position and he manages the ball – the second point of the body that has come into contact with the ground is the side of the upper body.

The Toulouse players objective is to move forward for the ball to be on the Toulouse side. The elbow and upper part of the body come into contact at the same time.

At no time was his [the Player's] intention to put Varndell in danger."

Mr Guy Noves then wanted to draw the Judicial Officer's attention to how the Referee had reacted and said:

"The first reaction of the Referee when seeing one foot in the air is that it signalled to him in his mind - a dangerous tackle. The Referee blows his whistle and it is only after that that the assistant referee starts to raise his flag. The assistant referee is reacting to the Referee – but the field referee does not consult with the assistant referee."

Mr Guy Noves concluded by saying that he had the utmost respect for the Referee but had he consulted with the assistant referee, the sanction would have been different.

The Judicial Officer was informed by Mr Max Duthie that he had no questions of Mr Guy Noves.

Further evidence which the Player wished to introduce

Mr John O'Donnell S.C. informed the Judicial Officer that Mr Guy Noves would produce video clips of other tackles in other matches to highlight the evil which the IRB memorandum sought to address. The memorandum, he submitted, refers to three types of tackles and in the first it deals with a player being lifted and speared whereas the tackle in this incident did not constitute a spear tackle and the second refers to a player being dropped to the ground from a height with no regard to his safety. The memorandum makes it clear that if a player is speared or dropped from a height the red card is justified. For other types of dangerous lifting tackles a penalty or a yellow card is sufficient.

Mr John O'Donnell S.C. went on to submit that even though the Player's tackle in his and the Player's opinion would not even have warranted a yellow card but yellow cards are often awarded for such tackles, it was important that the Judicial Officer look at the examples of other tackles to highlight how they were dangerous as opposed to what had occurred in this incident. The videos which they would produce would show how much worse those tackles were than that of the Player.

Mr Guy Noves interjected by saying that the Player was not guilty and even though they respected the Referee's decision the examples which they wanted to produce would show what is a real spear tackle or what a dropping meant.

The Judicial Officer considered the matter but ruled that he would not allow the Player to adduce video clips of other incidents. There may be many examples of incidents which are worse than those of the Player and some may be more benign. If one reached a situation where video evidence of incidents in different games were to be produced so that one would compare one incident with another, it would mean the Disciplinary Officer would be entitled to have the same right. The Judicial Officer said that in his view "it would be creating a dangerous precedent and opening up a can of

worms” and he was not therefore prepared to allow the Player to produce video clips of other incidents.

Mr John O’Donnell S.C. then informed the Judicial Officer that he also wanted to introduce a video clip of a television programme which had taken place in France where the incident had been analysed and an ex-international referee, Mr Joel Judge, was said to have assessed that the subject matter of the red card did not, in fact, merit a red card.

Mr Max Duthie in response to this request indicated that it was for the Judicial Officer to decide whether he would look at the video clip but that on behalf of ERC he would be submitting that the Judicial Officer should attach little weight to it. The opinion expressed in the programme would not be evidence of fact, one did not know what had been placed before Mr Joel Judge, one did not know what was his brief nor his motivation. Also, Mr Max Duthie said that his understanding was that in fact he [Mr Joel Judge] said something quite different from what it was purported on behalf of the Player that he said.

The Judicial Officer ruled against the introduction of the video clip of a TV programme. He agreed with the points made by Mr Max Duthie. The Judicial Officer also referred to the principles expressed in the IRB regulations regarding the introduction of expert evidence and, although not replicated in the Disciplinary Rules for ERC they were, in his opinion, the correct way for dealing with such a matter. In his view, one should always apply the best evidence rule which meant that first hand accounts from persons present at the hearing as to their observations of the incident in question should be preferred and not looking at video clips of what someone has said on a television programme. One should not permit the introduction of opinion evidence other than expert evidence and, insofar as expert opinion is concerned, it should only be permitted when the evidence falls outside the everyday knowledge of those participating in the proceedings e.g medical or legal advice. IRB Regulations, make it clear that the evidence from referees (and in this instance the Judicial Officer was being asked to hear from an ex-referee) should only be evidence of fact and not opinion. The Judicial Officer therefore ruled in the same way as he had with regard to the request to introduce video clips of incidents in other games that to permit the introduction of a video clip of a television analysis would be creating a dangerous precedent and he would not therefore permit it.

The Judicial Officer was advised that there was no further evidence to be brought on behalf of the Player.

Submissions on whether the Referee had erred

The Judicial Officer invited both the Player and the Disciplinary Officer to make submissions on whether or not the ordering off should be upheld.

The Submissions on behalf of the Disciplinary Officer

Mr Max Duthie reminded the Judicial Officer that the burden of proof is on the Player to establish on the balance of probabilities that the reasons for him being shown the red card were wrong and no decision should be made which would undermine the role of the referee as being the sole judge of fact and law during the match.

Mr Max Duthie referred the Judicial Officer to the evidence which had been produced (the Referee's report, the video evidence, the ERC responses to the Player's submissions) and he highlighted some points on the evidence which had not been addressed in the proceedings up to that point.

Firstly, he dealt with the assistant referee's report which has already been set out in full earlier in this judgment and, in particular, he wanted to draw the Judicial Officer's attention to the phrase in the assistant referee's description of the incident when he stated "the tackle was completed".

Mr Max Duthie then went on to deal with the victim player's e-mail in which he said it did not "feel" that it (the tackle) warranted a red card and did not "feel he did it with the intention of causing me any harm and it would be wrong for him to be given any further punishment". The victim player was, as far as Mr Max Duthie was concerned, expressing an opinion and no greater weight than that should be placed on his statement.

Mr Max Duthie dealt with the IRB memorandum dated 8 June 2009, but submitted that there had been very few guidelines on the test of a red card. The memorandum summarises the possible scenarios when a tackler horizontally lifts a player off the ground in that:

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

Mr Max Duthie expressed the view that based on the evidence, it was open for the Judicial Officer to come to the conclusion that in this case the Player had been forced into the ground. Mr Max Duthie also went on to express the view that with regard to the third scenario, the use in the memorandum of the word "may" in the context of a penalty or yellow card being sufficient for other types of dangerous tackles, did not mean that only penalties or yellow cards are awarded for other types of dangerous lifting tackles. The use of the word "may" in Mr Max Duthie's view meant "can" i.e the referee can

award a penalty or a yellow card, not that he has to award in those circumstances a penalty or a yellow card and it does not, therefore, mean that the referee cannot award a red card.

Mr Max Duthie drew the Judicial Officer's attention to the case of Tewis De Bruyn which was attached to the memorandum dated 8 June 2010. In this case, the assistant referee had agreed with the referee that a yellow card should be awarded to the player who the assistant referee had said in his report "had lifted, twisted and then dropped [the player] during a passage of general play", but that "the foul play did not include a driving motion into the ground". The player was subsequently cited and the judicial officer accepted, in favour of the player, that he did not drive his opponent into the ground, but the judicial officer came to the conclusion that the incident had still passed the red card test.

On the basis that the victim player was not dropped to the ground from a height, the question remained as to whether he was forced or speared or another type of dangerous lifting tackle had occurred. The Player's case is that there was none and Mr Max Duthie posed the question "is that, however, consistent with the evidence?" and he drew the Judicial Officer's attention to the last part of 8 June 2009 memorandum which, although referred to referees and Citing Commissioners, would in Mr Max Duthie's opinion also include judicial officers, and the memorandum makes it clear that they should not make their decisions based on what they consider was the intention of the offending player and their decision should be based on an objective assessment as per the law of the circumstances of the tackle.

Mr Max Duthie accepted that where the tackled player comes into contact with the ground as a result of an accident, there is no foul play. If, however, the tackled player is forced into the ground, it is a red card matter. Even if it is not as a result of force, it may still be a red card. The memorandum is in effect addressing the issues of dangerousness and a referee does not make an error if the tackle itself is dangerous.

Mr Max Duthie dealt with the point raised by Mr Guy Noves whose view is that for the tackle to be dangerous, both feet have to be in the air. Mr Max Duthie submitted that there is no IRB ruling which says that both feet have to be in the air for it to be dangerous. There should be a common sense approach. If one foot is in the air and one lands on an elbow, the tackle can still be dangerous.

Mr Max Duthie submitted that the danger started "when Mr Fritz lifted his [Victim Player's] leg so high – and the question is – did he try to bring Mr Varndell down safely." Mr Max Duthie's submission was that in this case the Player did not bring the victim player down safely.

Mr Max Duthie pointed out that there were lots of elements to a referee's decision and if a part is wrong, it does not mean or follow that the decision itself is all wrong.

The Judicial Officer asked to be addressed on the decision in the case of Paul O’Connell and he was referred in particular to paragraphs 14 and 17 of the Judicial Officer’s decision dated 16 December 2010 which point out that when a judicial officer examining the evidence to establish whether the referee was wrong to send a player off, there is a reference to “reasons for that decision” and in the Paul O’Connell decision the judicial officer said that the phrase “is a matter of terminology which should not detract from the real issue. The referee in that case saw what he thought was an infringement of the law which merited an ordering off.”

Mr Max Duthie referred the Judicial Officer in particular to paragraph 17 of the Disciplinary Officer’s decision in Paul O’Connell which states:

“The purpose behind the Disciplinary Rule permitting a Judicial Officer to, in effect, dismiss or caution a red card only if he determines the referee’s reasons are wrong is to uphold the principle that the referee is the sole judge of fact and law during a match and his decision should not be interfered with subsequently. The meaning of the phrase, however, is that a red card should only be overturned if the referee made the wrong decision perhaps where he mistook the identity of the player committing the act of foul play, or there was no foul play. The latter might be where he thought he saw a player stamp on an opponent’s head, but later in a review it is clear the player stamped on the ball and there was no contact with the opponent. Where a referee determines that there was an act of foul play which merited an ordering off, it is not fatal that all of the detail in his report is not completely accurate, provided it sufficiently describes an incident which is serious enough to merit ordering off.”

Mr Max Duthie also made the point in the written submissions that “driving a player into the ground” is essentially the same as “forcing” or “spearing” a player into the ground, which were the phrases used in the memorandum dated 8 June 2009. It was open therefore for the Judicial Officer to come to the conclusion that the tackle which the Player made came within the first of the scenarios in the memorandum, that the Judicial Officer should adopt a common sense approach as to whether or not the tackle was dangerous and, if so, warranted a red card.

The Submissions on behalf of the Player were

Mr John O’Donnell S.C. referred initially to the IRB memorandum dated 8 June 2009 and this, in his view, was addressing the evil of spearing someone from a height with force or recklessly dropping a player from a height and neither of those had occurred in the case of Florian Fritz.

With regard to the third scenario in the memorandum, the use of the word “may”, in his view, is that the IRB does not suggest that a red card is appropriate in other types of tackles. He submitted that it was straining the English language to interpret “may” in the way that had been put forward by Mr Max

Duthie and that therefore the only sanctions for tackles not coming within the first and second scenarios were a penalty or yellow card.

He drew the Judicial Officer's attention to the way in which the Referee's report had been written and in particular that in his opinion the referee had originally recorded an offence of 10.e and then altered it and he felt that this was significant. The Referee had also used the phrase "spear tackled" and "drove him into the ground". There was no "spear" and that was an error. The "dropping" scenario did not arise in this instance and the tackle, therefore, did not fit within the IRB suggested red card offences. The Referee, therefore, made an error because he believed it was a spear and it was not.

Referring to the evidence of the Player, Mr John O'Donnell S.C. submitted that it was a legitimate objective of any player who is tackling another player to drive or force the tackle player to the ground. He said "it cannot be the case that this is outlawed". It is also inevitable, in his opinion, that there are occasions when one or both legs are off the ground and that of itself cannot be illegal.

Mr O'Donnell S.C. said that the video evidence showed:

"Mr Fritz is driving Mr Varndell back – holding him at all times – the hips are not above the horizontal and the only part which hits the ground first is the lower arm or elbow and then the side of the body and this happens in any tackle".

It was significant in Mr John O'Donnell S.C.'s view that "the tackled player made no complaint at the time or subsequently nor did any other players nor the Wasps Club".

The Judicial Officer asked Mr John O'Donnell S.C. to deal with the issues raised in the Paul O'Connell case and in particular to paragraph 14 page 4 which says that insofar as the "referee's reasons" are concerned, those words are a matter of terminology which should not detract from the real issue.

With regard to the Paul O'Connell case, Mr John O'Donnell S.C. said:

"..... here unlike as in O'Connell, the referee saw a specific type of tackle for which the IRB uses the word "may" and he [the referee] saw something for which he thought he had no option but to show a red card. The Referee had a mandatory obligation to send the Player off because of what he thought had occurred."

Mr John O'Donnell S.C. also distinguished the Paul O'Connell case by referring in particular to the last sentence in paragraph 16 when the referee said that although he did get that element wrong (he had sent Mr Paul O'Connell off for striking with the elbow, whereas the video evidence showed that it was a strike with the arm), he would still have sent off Mr Paul O'Connell had he seen the strike was with the arm rather than the elbow, because the dangerous part of the act was the strike to the face.

The action which the referee believed had happened warranted a red card, but the action which actually happened also warranted a red card.

This is not what occurred in the tackle made by the Player. The Referee believed that there was a spear tackle and a driving into the ground, whereas the evidence is that what actually happened was neither a spear tackle nor a driving into the ground.

Mr John O'Donnell S.C. also rejected Mr Max Duthie's assertion that "all of the details do not have to be accurate if it merits a sending off". Mr John O'Donnell S.C. said his response to that is that if a referee makes a mistake which is more than a detail and miscategorises the event, which automatically justifies a red card and where this does not happen, a red card cannot be justified".

He reiterated that he did not accept the interpretation of the third scenario in the memorandum, which had been put forward by Mr Max Duthie in saying that a red card could still be justified in circumstances other than the first two scenarios. In his view, the IRB clearly indicated that there should, in those other circumstances, be a yellow card or a penalty and there would need to be an additional or aggravating circumstance to justify a red card in what would otherwise be non red card incidents.

He also expressed the view that for players and clubs to have confidence in the judicial process, there must be occasions where it is demonstrated that the reasons that the referee had for showing a red card had been proved to be wrong and the red card should not be upheld. In his view, this was such an instance.

In essence, therefore, Mr John O'Connell S.C. was submitting that the evidence of the Player, his witness Mr Guy Noves and the statement of the Victim Player had established the Referee's reasons were wrong. The incident did not come within the first two scenarios of the IRB memorandum. In so far as other tackles which occur which are deemed to be dangerous, the only sanction should have been a penalty or at the most a yellow card.

The Judicial Officer informed the parties that he would deliberate in private on whether the Referee's reasons were wrong and therefore whether he had erred in finding the Player had committed an act of illegal and/or foul play for which he should have been ordered off.

The Decision as to whether or not the ordering off should be upheld:

The Determination of the Judicial Officer

The Judicial Officer reminded himself of the procedure to be followed in cases arising out of a player being shown a red card as set out in DR 6.2.2, which provides that one should:

- Review the showing of the red card
- Including the referee's reasons (the referee's reasons are therefore just one part of the process)
- Review the circumstances surrounding the red card
- Determine what further sanction (if any) should be taken. (The Appeal Committee in the Paul O'Connell case dated 23 December 2010 had pointed out that the issue was, whether or not any further action should be taken and that not to determine whether or not the decision of the referee should or should not be upheld)
- Have in mind that the burden of establishing that the reason for the referee making the decision was wrong is on the player
- Establish whether or not the referee's reasons for showing the red card were wrong. (In the Paul O'Connell appeal the committee pointed out that the reasons for the referee's decisions are not necessarily wrong on the basis of an erroneous factual understanding in one part of the reasoning)
- Have in mind that the Judicial Officer should not make a finding contrary to the referee's decisions unless, on the balance of probabilities, the reasons were wrong.

The Judicial Officer therefore first considered the Referee's report. The report did not contain a full factual account of the incident but it stated that insofar as the red card is concerned, it was: Contrary to Law 10.4.(j), that the Player was Toulouse number 13, that there was a spear tackle, that the opponent is picked up, that the Player drove him [the Victim Player] into the ground.

The Judicial Officer, therefore, in considering the written witness statement of the Player and the evidence which he gave at the hearing and also having considered the points raised by Mr Guy Noves, noted that the Player's case was that:

- He needed to imbalance the Victim Player for him to be brought to ground
- The objective was to move forward
- All of the Player's strength was in achieving the objective to move forward and not to push or spear the tackle player into the ground
- The hip line or shoulders were horizontal
- The Player was also horizontal going forward
- The parts reaching the ground are first the elbow and second the side of the upper body before the head
- There was no intention to put the Victim Player in any danger.

The Judicial Officer noted that Mr Guy Noves had pointed out that the Referee was some 20 metres away from the incident when he saw one foot high in the air and the Referee very quickly blew his whistle.

The Judicial Officer considered the e-mail which had been received from the Victim Player and accepted that:

- It had been unsolicited by the Player
- It made it clear that there was no injury to him
- That there was no intention to cause injury.

The Judicial Officer's conclusions, however, on the video evidence were:

- The Player had lifted the Victim Player with his left hand
- The Player's right hand arm becomes the fulcrum
- The lifting caused the Victim Player to tip around the fulcrum
- The right leg is pointing to the sky
- At its apex, it is at least shoulder high
- The left leg is also in the air
- The Player was driving into the Victim Player, which added momentum to the tip, although he did not deliberately drive the Victim Player into the ground
- As a result of the tackle, the Victim Player's upper body was first to hit the ground, discounting the elbow
- Because of diving into the tackle, the Player ended up on top, so had the Victim Player fallen more awkwardly the Player's weight would have added to the problem
- There was no apparent effort to bring the Victim Player safely to the ground, although the Player's team mate seemed to be cradling the Victim Player's falling head.

The fact that the Referee seemed to have made an alteration insofar as the offence is concerned and may originally have been recorded 10.E, but was corrected to 10.4.(j). Is not, in the Judicial Officer's opinion, of any consequence. It is quite clear what offence the Referee was dealing with.

The Judicial Officer also considered the submissions made on behalf of the Player and the Disciplinary Officer and concluded that:

- The memorandum issued by IRB dated 8 June 2009 identified in the first two of the scenarios the incidents for which it is mandatory that a red card be shown and in the third scenario the use of the word "may" in the context of a penalty or yellow card being sufficient for other types of dangerous tackles, did not mean that only penalties or yellow cards are awarded for other types of dangerous lifting tackles. "May" insofar as the Judicial Officer is concerned provides the authority for the referee who makes the decision to award either a penalty or a yellow card but also the referee may decide that it warrants a red card. He did not therefore accept the arguments put forward by Mr John O'Donnell S.C. with regard to the interpretation of the

memorandum whereby Mr John O'Donnell S.C. was submitting that for "other types of dangerous tackles" the referee was in effect precluded from awarding a red card.

- As had been submitted by Mr Max Duthie, had to adopt a common sense approach and ask himself whether or not the tackle had been dangerous.
- He could take specific note of the points made in the Paul O'Connell case (both at first instance and on appeal) that the purpose behind the Disciplinary Rules forbidding a Judicial Officer to in effect dismiss or caution a red card would only arise if he determined the referee's reasons were wrong because the overarching principle is that the referee is the sole judge of fact and law during a match and his decision should not be interfered with unless the decision itself is wrong. The referee can come to the right decision even if an element or some elements of what he saw, or thought he saw, were wrong.
- The question which the Judicial Officer should therefore pose to himself was did the incident come within the ambit of the law for which he was sent off.

Having reviewed all of the evidence and considered the points made on behalf of the Player and the Disciplinary Officer, the Judicial Officer concluded that the Player's challenge on the Referee's decision for ordering off could not be sustained and further sanction would therefore be considered.

Decision as to disposal

The Judicial Officer therefore reconvened the hearing and announced his decision and explained (as above) how he had arrived at that decision.

As a result, he invited the Player and the Disciplinary Officer to address him on sanction and as the Player had already accepted the misconduct complaint, he asked that he be addressed on sanction as to both matters.

The submissions as to sanction

The ordering off

Mr Max Duthie said that although this was a dangerous tackle within law 10.4.(j) meriting a red card, it was accepted that the Victim Player had not been injured, it had had no effect on the game and that although the Player had been disciplined previously, this was several years ago for an entirely separate matter, and that the only aggravating feature therefore which the Judicial Officer might wish to take into account would be that the sanction should demonstrate a need for a deterrent to a pattern of offending.

It would be accepted by ERC that the sanction would be backdated to the date of the sending off i.e. 23 January 2011.

The Judicial Officer asked Mr Max Duthie if he would address him on the principle of the increase in the sanction insofar as the need for a deterrent to a pattern of offending was concerned. He asked in particular if Mr Max Duthie would address him on the points set out in the Atoub case in which His Honour Judge Blackett in his decision dated 18 January 2010 referred to an increase of 25% from the entry point and that this was not overturned on appeal. Mr Max Duthie expressed the view that a percentage increase was not the correct approach and that it should always be expressed in weeks.

The Misconduct Complaint

Before Mr Max Duthie made his submissions, the Judicial Officer asked if he would address him on the process by which the sanction for misconduct should be addressed. The Judicial Officer explained that he was mindful of the views expressed by the Appeal Committee in the decision dated 2 February 2010 concerning Mr Lee Byrne wherein it was said one should apply the analysis as set out in paragraphs 6.7.31, 6.7.32 etc.

Mr Max Duthie reminded the Judicial Officer that paragraph 6.7.41 had now addressed that issue and that he need not necessarily comply with 6.7.31 and assess entry point, mitigating and aggravating factors by reference to the criteria in those paragraphs but that he could at his discretion determine the appropriate sanction pursuant to 6.7.29 which enables the Judicial Officer to impose sanctions such as caution, fine but also including suspension from playing.

The Judicial Officer also asked Mr Max Duthie to address him on the Gareth Thomas case dated 1 February 2007 when he had accepted he had committed an act of misconduct in making an offensive hand gesture by raising his middle finger towards spectators as in this case and that he had committed a further act of misconduct in aggressively attempting to enter one of the seating areas of the stadium, which was not what occurred in the present case and for which he had received a suspension of twelve weeks but the Disciplinary Committee in that case took a holistic approach and reduced it to four weeks because of character and remorse etc. but in addition, imposed a fine of 7,500 Euros. In that decision, it stated that the appropriate sanction was to be a combination of a fine and a suspension so that a clear message would be sent to the game at large that such behaviour was entirely unacceptable.

Mr Max Duthie submitted that it would be inappropriate for the Judicial Officer to approach the matter in the same way as the Disciplinary Committee had in the Gareth Thomas case. His view was that the Gareth Thomas case should be set against the context of other incidents which had occurred in the game and which had been the subject of disciplinary proceedings. This particular case was not.

The Judicial Officer therefore noted that insofar as ERC was concerned this particular case was not in the same league as the Gareth Thomas incident.

Mr Max Duthie referred the Judicial Officer to the case of Mr Schlack Britz dated 18 May 2010 when the player admitted that he had committed an act contrary to good sportsmanship in that he made a

foul and abusive gesture to the crowd. Mr Schlack Britz received a reprimand and warned as to future conduct.

The Judicial Officer was also referred to the incident involving a Mr D Lemi who had received a letter dated 22 September 2009 from His Honour Judge Blackett when he had been seen jumping in the air gesticulating at players at the end of a match for which he received a warning as to future misconduct.

Mr Max Duthie submitted on behalf of ERC that in this instance the misconduct could be dealt with by way of a financial and not a suspension penalty and in this respect, the Judicial Officer was again reminded of disciplinary rule 6.7.29.

The Player's Response on sanction

Mr John O'Donnell S.C. asked if the Player could address the Judicial Officer and he did so as follows:

"I was astonished to receive the red card. I was in shock and dismay. It was all done very quickly. I was deeply upset to be leaving the team and I was upset at myself. I meant no disrespect to players or ERC when I did what I did. I was releasing my frustration. I know that it is not an appropriate way to behave. I do the gestures but they are not directed at a player, an official nor at the spectators.

I acknowledge I lost control but the anger is at myself and I released the anger on the chair. I did not realise the consequences of my actions at the time. It was only afterwards I realised.

I missed one match in the French Championship and the consequences to the Club were that as a result of losing the game, when I was not there to help them, it lost a home draw.

I feel responsible for what has happened and the effect it has had on the Club, myself, fellow players, the President and staff. I have played nineteen times for France but I am not now considered for the Six Nations because of the red card.

There has been widespread publicity about the my inglorious actions.

I have not had a red card before and the only other incident was for a punch in 2009 when I was suspended for three weeks. I had no misconduct matters against me.

I would like to apologise publicly."

There was a short recess to enable Mr John O'Donnell S.C. to take further instructions.

After a recess, the Player read from a statement stating that he wanted to apologise for his inappropriate gesture while leaving the pitch and stated his conduct was unacceptable but also asked that his behaviour was not how he usually acted. He recognised that it gave a bad image of the sport and it should not be repeated by others.

The Player also provided some brief details of his financial circumstances.

Mr Guy Noves gave a testimony on behalf of the Player, explaining that:

“I have coached him for seven years and he is recognised as an exemplary player and is one of the captains of Toulouse. The red card had had a major impact on the Club. The Player was definitely not himself following the red card. He felt he had been treated unfairly but accepts the decision of the Referee. What was difficult for him is that he was booed for something that was unfair. He felt lost, he was abandoning his fellow players, he reacted inappropriately, he wanted to jump into a river – it was entirely out of character. The gesture was that the decision was unfair. He has apologised to me and everyone and the apology is genuine. He has volunteered to attend local schools”.

Mr Rene Bouscatel the President of Stade Toulousain wanted to draw the Judicial Officer’s attention to the financial impact which the Club had suffered as a result of not having the home draw.

Closing submissions

The ordering off

Mr John O’Donnell S.C. submitted that insofar as sanction for the red card was concerned that the incident should not be seen as an intentional one and that the Judicial officer should take note of the fact that the Victim Player had not been injured and continued to take part in the game immediately following the tackle. If, therefore, the Judicial Officer was considering a sanction of a suspension from playing the game, it should be at the low end.

With regard to any aggravating factors, the Player, although he had one previous disciplinary matter, had not been red carded before and had no disciplinary record for any matter which was currently before the Judicial Officer.

With regard to the mitigating factors, he was apologetic for what had occurred, he is a good role model, his remorse is heartfelt and genuine. He blamed himself for the loss of the match, the loss of the home draw for the quarter final and has lost the chance of playing in the Six Nations Championship.

Misconduct

Insofar as the misconduct complaint was concerned, he accepted the approach of ERC that the misconduct should not result in an additional playing sanction and also submitted that a costs order would be a sufficient financial sanction and that there should not therefore be a fine in addition to a costs order.

Mr John O'Donnell S.C. concluded by stating:

- The Player had pleaded to the misconduct complaint
- He had accepted that he had committed an act which was tantamount to foul play even though he did not accept that his tackle had merited a red card
- He and the club had already suffered significant loss as a result of the incident
- He will in any event have to meet the costs which would not be insignificant
- Insofar as the misconduct issue is concerned, a costs order would be sufficient.

Application for costs

Mr Max Duthie reminded the Judicial Officer of DR 6.7.47 which provides for the order for costs. The cost should be against the Player because otherwise it would mean that the costs of the hearing are being shared amongst all of the participants to the competition which would not be fair. It was reasonable for the Disciplinary Officer to engage the services of a legal representative as the red card was being challenged and there was also the additional factor of the misconduct complaint.

Mr John O'Donnell S.C responded by re-stating that, in his opinion, if there was a costs order, that should be the only financial sanction. If, however, the Player was to face a financial sanction, there should be no order as to costs. He submitted that it was not necessary for Mr Max Duthie to be present. The Player had already suffered as a result of the incident.

The deliberations and conclusions of the Judicial Officer

The Parties withdrew to allow the Judicial Officer to deliberate in private and to consider what, if any, sanction would be imposed against the Player in light of the fact that the red card had been upheld and that the Player had accepted the misconduct complaint.

The Judicial Officer considered the ERC Disciplinary Rules 6.7.29 – DR 6.7.44.

The ordering off

The Judicial Officer firstly had to consider the entry point and under the checklist in DR 6.7.32, he concluded that:

- The offending was not intentional

- The Player's actions were reckless in that he knew or should have known that by lifting the Victim Player, he would or could have taken him above the horizontal and placed him in a dangerous position
- This was not a case where the Player's actions were more grave in that he had not used his fist, elbow, knee or boot or that it was less serious where there had been provocation or that he was acting in retaliation or self defence
- There was no effect of the offending Player's actions on the Victim Player and, in this case, the Victim Player got up and carried on playing as was evidenced by the written note which he had sent to the Disciplinary Officer
- The effect of the Player's actions on the game were, insofar as the Player was concerned, that his team which were weakened by him not being present, lost the match.
- The Victim Player was vulnerable to a serious injury as a result of the tackle but in this incident there was no injury and to that extent the Player was fortunate
- There was no premeditation in the dangerous tackle which had taken place
- The conduct of the offending was completed and not attempted
- There was no other feature of the Player's conduct which constituted the offending

Having taken all of these matters into account, the Judicial Officer found that this was a case where the appropriate entry point was low range and the starting point for low entry offences under law 10.4.(j) is three weeks suspension.

The Judicial Officer considered the existence of any aggravating features as per 6.7.34 and concluded:

- The Player does have a disciplinary record but the Judicial Officer concluded that this was not so significant as to make a material impact on the period of suspension
- There is, however, a need for the sanction to demonstrate a deterrent to combat a pattern of offending
- There were no other aggravating features

The Judicial Officer having considered 6.7.34 determined there is a need for a deterrent to combat a pattern of offending. Dangerous tackles of this type are not uncommon and the consequences can be very serious. The Judicial Officer found the guidelines or principles set out in the Attoub case (25% increase for a deterrent) very helpful and in the circumstances, he concluded it was appropriate to increase the entry point of three weeks by one week to take into account the aggravating features which are referred to above.

The Judicial Officer then considered the mitigating factors as per the criteria in 6.7.35 and noted:

- The Player had not accepted the red card and had challenged the decision
- The Player does have a reasonable record and is of good character

- He is an experienced player and should perhaps have known better
- The Player conducted himself well at the hearing and accepted the adverse finding in good grace.
- Although he had not spoken directly to the Victim Player after the incident nor after the game, he had received an unsolicited letter of support from the Victim Player
- The Player prepared to make a public statement that players should not react in the way that he did when they have been penalised by match officials

Taking all matters into consideration the Judicial Officer felt that having increased the entry point of three weeks to four weeks for the reasons set out above, it would be appropriate to reduce the suspension by a period of one week to reflect the mitigating factors.

Mr John O'Donnell S.C. on behalf of the Player had sought to persuade the Judicial Officer to consider a reduction of 50% as is provided in DR 6.7.36 but as there had been at least one aggravating factor, that was not the correct approach. This meant, therefore, that the Player would be suspended from all playing rugby for three weeks.

The Judicial Officer accepted that the Player had been suspended from playing from the date of the red card which was 23 January 2011 and the suspension would therefore be effective until midnight on 13 February 2011.

Misconduct

The Judicial Officer had seen the video evidence of the actions of the Player as he left the field and had also listened to the Player's explanations. The Judicial Officer concluded:

- The one finger gesture was in the Judicial Officer's view to the crowd and was not an act of the Player in any way berating himself. Prior to the finger gesture, the Player had been seen beating his head with his hands and that was an act of berating himself unlike the finger gesture which is away from his head
- The anger which the Player felt was at the decision of the Referee and that was not appropriate
- The misconduct also involved the aggressive kicking of a chair which could be seen by the crowd and television viewers
- The Judicial Officer was not impressed by the submission that the boos from the crowd in some way justified the Player's reaction. The Judicial Officer pointed out that, sadly, in all walks of life one meets situations where one feels that the way in which one has been treated is unfair

- The contrite statement which the Player read was produced after a recess and had not therefore been volunteered by the Player at the outset

The Judicial Officer reminded himself of DR 6.7.29, which provides that where a misconduct complaint is upheld, he is entitled to impose any one or more of the sanctions set out in DR 6.7.29 as shall be deemed to be appropriate having regard to all of the circumstances of the case and these include:

- Caution, reprimand and/or warning as to future conduct
- Fine
- Suspension from playing

The Disciplinary Officer had been referred to some decisions where a reprimand was deemed to be sufficient but having looked at those particular cases, he concluded that this case was much more serious. In the case of Schalk Britz he had also raised a middle finger towards the crowd, but it resulted in there being an audible cheer and prior to that it was said there had been offensive remarks having been directed from the crowd towards him. He was not looking directly at the crowd. He made an immediate apology to the crowd which had defused the situation and at the final whistle he had located a gentleman in the crowd whom he might have upset. It was also said that he had sustained a head injury. He had made further apologies through a journalist. In so far as the Judicial Officer is concerned, the present instance had the possible effect of inciting the crowd and the incident was compounded by the kicking of the chair. Also, the Judicial Officer had concluded that the anger was at the decision of the Referee.

The Judicial Officer was being urged by ERC not to impose a sanction of a suspension.

Also, the Judicial Officer did not accept the submissions made on behalf of ERC that he should not have regard to the cases of Lee Byrne and Gareth Thomas. Lee Byrne was fined 5,000 Euros and Gareth Thomas received a combination sentence of being suspended for four weeks and a fine of 7,500 Euros. Insofar as the Lee Byrne matter was concerned, the misconduct was based on a mistaken belief that the Referee had given him permission to enter the field of play and was not for anything which would have incited the crowd. It was accepted by the Judicial Officer, however, that insofar as Gareth Thomas was concerned, there was the additional feature of his attempting to get into the crowd but he had become incensed as a result of the way in which a fellow player had been allegedly treated by the crowd whereas here the Player's reactions were because of a disciplinary matter imposed on him by a match official.

Having considered the matter and taking into account the fact that the Player was already facing a sanction of three weeks suspension the Judicial Officer accepted that insofar as the misconduct was concerned a financial penalty would be proportionate.

On behalf of the Player, it had been submitted that an award of costs against him would be a sufficient financial penalty. As in ERC cases, costs normally follow the event. Merely to impose a costs order would in effect mean there is no financial penalty for the misconduct.

The Judicial Officer concluded that any sanction must send a message to players at all levels and particularly those playing at the top in front of many thousands of people and in front of a wider television viewing audience, as to how they should conduct themselves when faced with decisions from match officials with which they disagree. In this instance the misconduct would have been witnessed by many people, some of whom would be starting their rugby careers either in the amateur or the professional game. One cannot ignore the adverse effect which such conduct has on the image of the game and in the circumstances, therefore, it is not unreasonable to impose a pecuniary penalty of 15,000 Euros. Lee Byrne had been fined 5,000 Euros for something which the Appeal Committee had themselves described as "a mistaken belief". In the present case there was no mistake. The level of seriousness is such that the fine should be considerably more than was imposed in Lee Byrne's case.

Announcing the decision

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

- That having upheld the Referee's decision to award a red card for the offence contrary to law 10.4.(j) the Player would be suspended for three weeks which would take effect from the date he was sent off on 23 January 2011 up until midnight on 13 February 2011 and
- That insofar as the misconduct complaint was concerned to which the Player had pleaded guilty, he would be fined 15,000 Euros and
- The Player would also be ordered to pay the costs of ERC to include the costs of convening the hearing but not those of the interpreters, such costs to be assessed if not agreed.

Appeal

Both parties were reminded of their rights of appeal.

DATED this 14th day of February 2011

Robert H P Williams