

# DECISION OF THE INDEPENDENT JUDICIAL OFFICER

ERC

Held at Huguenot House, St Stephens Green, Dublin.

Thursday 6 January 2011

In respect of:

**David Attwood of Gloucester Rugby (“the Player”)**

And

A citing in respect of an allegation that **the Player had been guilty of an offence contrary to law 10.4(b) of the Laws of Rugby Union (stamping or trampling on an opponent)**

Judicial Officer appointed to hear the case:

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

## **Decision of Judicial Officer:**

- 1) The Player accepted that the Citing Complaint against him should be upheld. The Judicial Officer therefore found the Player had committed an act of illegal and/or foul play as alleged in the Citing Complaint in that he had been guilty of an offence contrary to law 10.4(b), i.e stamping on an opponent.
- 2) The Player accepted that the act of illegal and/or foul play merited a red card. The Judicial Officer was therefore satisfied the act of illegal and/or foul play merited a red card and the Player should have been ordered off for the offence.
- 3) The Player is suspended from taking part in a game of rugby up to and including 20 February 2011. This represents 9 weeks suspension which had commenced on 19 December 2010.
- 4) The Judicial Officer made an award of costs against the Player, limited to the administrative costs of convening the hearing.

## **Introduction:**

- 1) The Judicial Officer was appointed by Professor Lorne D Crear Chairman of ERC's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Heineken Cup 2010/2011.

The Judicial Officer was appointed to consider the citing complaint (~~the~~ ~~Complaint~~) against the Player in the match between Gloucester Rugby and La Rochelle on Sunday 14 December 2010 at Kingsholm, Gloucester in the Amlin Cup 2010/2011.

- 2) Mr Tom McCormack (IRFU) was appointed as a Citing Commissioner in this match and had cited the Player for the offence contrary to law 10.4(b) . stamping on an opponent
- 3) Present at the hearing, in addition to the Judicial Officer, were the following persons:
  - a) Mr Roger O'Connor . Disciplinary Officer ERC.
  - b) Max Duthie . the Legal Representative of the Disciplinary Officer from Messrs Bird & Bird Solicitors.
  - c) Paul Antoine . an observer from ERC.
  - d) Richard Smith Q.C . Counsel for the Player.
  - e) David Attwood . the Player.
  - f) Carl Hogg . Coach, Gloucester Rugby.

#### **Preliminary matters and procedures**

- 1) At the commencement of the hearing, the Judicial Officer noted the identities of all present. The Player had confirmed that he was the player referred to in the Citing Complaint. The Complaint having been narrated, the Player was reminded that that the Complaint was in respect of an allegation that the Player had been guilty of an offence of stamping on an opponent contrary to law 10.4.(b).
- 2) The Judicial Officer reminded all parties that ERC Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2010/2011 (the Disciplinary Rules and DR in the singular) would apply. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.
- 3) The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was as follows:
  - a) Letter from the Disciplinary Officer dated 21 December 2010 notifying Professor Lorne Crerar the Chairman of ERC Disciplinary Panel of the Citing Complaint.
  - b) The Citing Complaint of the Citing Commissioner Mr Tom McCormack.
  - c) The hearing notice and standard directions.
  - d) The statement of Petrisor Toderasc (the victim player) together with the English translation.

- e) The handwritten statement from the victim player (unclear).
- f) A Citing form received from La Rochelle Rugby.
- g) The medical report of Dr Cyril Glappier dated 23 December 2010, together with the English translation.
- h) Two photographs of the said victim player showing the injury.
- i) The Player's response to the standard directions.
- j) Two reports from the referee Leighton Hodges.

In addition to the above, a DVD clip of the alleged incident had been produced and was available at the hearing.

4) The Judicial Officer noted the terms of the Player's response to the standing directions found at Appendix 6 of the Disciplinary Rules (the Directions) as follows:

- The Player accepted that his conduct, the subject of the citing, constituted foul play meritorious of a red card.
- The Player accepted using his foot in an attempt to free himself having been held back after a completed tackle.
- In so doing the Player had no intention to make contact with the opposing player's face but accepts that he inadvertently did so.
- The Player has been suspended by his Club.
- In a separate e-mail from Richard Smith Q.C. it was confirmed that there were no preliminary issues.

The Disciplinary Officer had indicated prior to the hearing that he would refer the Judicial Officer to the cases of:

- Jamie Cudmore heard on 13 October 2010.
- Vincent Roux heard on 22 December 2010.

5) The Judicial Officer invited the Player and the Disciplinary Officer to confirm whether or not they had any other preliminary issues that they wished to raise and they said there were none.

6) The Judicial Officer advised the Player that as he had stated in the response to the standard directions that his conduct, the subject of the citing, constituted foul play meriting of a red card, he would put the citing complaint to him and on the basis that it is admitted, he would move to the sanction issues immediately when he would

see, hear and review all the available evidence and when the Player would be given an opportunity to explain his actions and make submissions on sanction.

7) The Judicial Officer put the allegation to the Player:

Do you admit the citing complaint of Mr Tom McCormack wherein he states that at the Kingsholm Ground, Gloucester on Sunday 19 December 2010 at a game between Gloucester Rugby and La Rochelle you did stamp on an opponent contrary to Law 10(4)(b) which provides that no player should stamp or trample on an opponent?+

The Player said that he was admitting the citing complaint.

Richard Smith Q.C advised the Judicial Officer that their case was that there was no intention to stamp on the face of the opponent. The Judicial Officer advised that he had noted the point made by Mr Smith and the points set out in the response to the standard directions wherein the Player accepted that he used his foot but did so in an attempt to free himself having been held back by his opponent after a completed tackle and in so doing, the Player had had no intention to make contact with the opponent's face and did so inadvertently.

8) The Judicial Officer therefore recorded that the Player had accepted:

- The complaint would be upheld (namely that he had committed the alleged act of illegal and/or foul play) and;
- The alleged act of illegal and/or foul play would have warranted a red card.

In order to dispose of the matter, however, the Judicial Officer would be requiring the Disciplinary Officer to present his evidence regarding the complaint.

**The evidence supporting the complaint:**

9) Max Duthie referred the Judicial Officer to:

- The citing complaint of Tom McCormack was noted as follows:

From loose play in the Gloucester half on their 10 metre line, following a kick ahead by La Rochelle, the Gloucester number 4 Dave Attwood, carried the ball into contact and was fairly tackled low by La Rochelle's number 1, Petrisor Toderasc and higher by Jonathan Garcia.

Attwood was able to offload the ball and then he brought his left foot backwards with force and stamped on the facial area of Toderasc . whose body position was low due to the tackle and he had a grasp on Attwood's shorts. Toderasc immediately held his face and medical attention was received. Attwood took off his recognisable white scrum cap while referee and touch judge conferred.

The La Rochelle players were incensed with the damage done to their player and because the match officials were unsighted. They found it difficult to maintain their discipline and gave away a kickable penalty almost immediately.+

- The video footage of the incident was played and there were three separate clips as follows:
  - (i) The first clip shows the Player receiving the ball in the Gloucester half on about the 10 metre line and carrying the ball forward for several metres before coming into contact with two La Rochelle players
  - (ii) The second clip shows the incident itself. La Rochelle Number 1 (the victim player) tackles David Attwood low and the other player (said to be Jonathan Garcia) tackles him higher. The Player has offloaded the ball. Petrisor Toderasc is immediately behind the Player, he is prone on the ground, gripping the Player's shorts. Mr Duthie pointed out that the clip shows the Player bringing his boot in a downward and slightly backward motion. The boot comes into contact with the victim player's face and then onto his shoulder.
  - (iii) In the third clip, the victim player is seen having medical treatment and the referee, Mr Leighton Hodges, is heard to say that neither he nor the assistant referee had seen the incident and if he had known the culprit, then that player would have been sent off. The victim player is seen leaving the field.
- The statement of the victim player was read and this stated:

On the sixteenth minute of the match between Gloucester and La Rochelle, following a defensive action on my part against the player Daru Atwood, I tackled him at the legs but he does not fall to the ground and passes the ball at the moment I want to release him, but he kicked me right in the face.

Following this kick, I lost a tooth (the 24<sup>th</sup>) and suffered a very deep cut in the face, 2cm away from my right eye, which required four internal stitches and three external ones.

Done in Paris on 22 December 2010.+

- The medical report from Dr Glappier dated 23 December 2010 was read and it stated as follows:

Dr Glappier, doctor of the Stade Rochelais, hereby confirm that I examined Mr Toderasc, the Stade Rochelais prop, for an injury sustained during the first half of the Gloucester v La Rochelle (Sunday 19 December).

I noticed the following injuries:-

- A 5cm long cut approx. on the right side of the face, starting 2cm from the eye down to the labial commissure. The cut was very deep and required surgery and there was a risk of damage to the nerve (more or less around the Stenoduct).

- o Loss of a pivot tooth (tooth number 24).

The player was treated in hospital and received a total of seven stitches and it was confirmed that the nerve had not been damaged and urgent dental work had to be done (to extract the remains of the broken tooth).

Afterwards, Mr Toderasc had a ten day sick leave and will need further dental care (pivot tooth).

As a whole, the player suffered severe facial trauma during a rugby match from which he has not recovered yet and is still being treated. The aesthetic functional consequences will be known at a later date.

Signed Dr Glappier.+

The Judicial Officer advised that he understood that a pivot tooth is a crown on a post and Mr Duthie and Mr Richard Smith Q C confirmed that that was their understanding.

Mr Duthie advised the Judicial Officer that the victim player had however already returned to the game and took part in the La Rochelle game on 2 January 2011 when he came on as a substitute.

Mr Duthie referred to the Judicial Officer to the two photographs showing the butterfly sutures on the right hand side of the victim player's face.

Mr Duthie referred to the citing report which had been put in by La Rochelle and he explained that it was accepted that La Rochelle were not entitled of themselves to put in a citing report but that he wanted the Judicial Officer to see it because it gave an indication as to the strength of feeling that the La Rochelle club felt about the incident.

Mr Duthie referred to the two referees reports and it was noted that the irrelevant parts are as follows:

- i. The report dated 19 December 2010 following the game refers to the match as being:

an ill tempered affair with outbreaks of off the ball incidents some of which needed sanctions with one yellow card being given for foul play. There were four yellow cards in total all against La Rochelle players, the La Rochelle number 12 received two yellow cards and was also therefore red carded. La Rochelle won the fixture 24 . 18.+

The referee goes on to describe what had occurred and his description was as per the video clip.

- ii. In the second dated 5 January 2011 the referee Leighton Hodges (the Referee) states:

the tone, tenor and temper of the game changed after the incident when I had to give several warnings to players and eventually the captains regarding the discipline in general after some off the ball incidents, holding and grappling after the whistle and a yellow card for a punch by the La

Rochelle number 12. I have to say that the majority of the incidents of ill discipline were on the La Rochelle side, which with hindsight might have been as a result of the injury to their number 1+

Mr Duthie referred the Disciplinary Officer to:

- (i) the case of Vincent Roux dated 22 December 2010. Vincent Roux is a La Rochelle player who had played in the match against Gloucester on 19 December 2010 and who had received two yellow cards the first of which was in the 60<sup>th</sup> minute of the match for an offence contrary to Law 10.4.9(a) of punching and then in the 73<sup>rd</sup> minute of the match for an offence to 12.1(e) a deliberate knock-on. Mr Duthie drew the Judicial Officer's attention to the player's explanation wherein he stated:

The first offence, the punch, had again been a thoughtless act in the heat of the moment and as a reaction to one of his teammates being, as he saw it, assaulted by a Gloucester player.

- (ii) The case of Jamie Cudmore of 13 October 2010 who had been guilty of an offence contrary to Law 10.4(d) of stamping on an opponent. In this case, the Judicial Officer concluded that holding onto a player is a very minor element of provocation.

### **The Player's position**

- 10) The Player gave evidence which the Judicial Officer noted as:-

I am 23 years old, I have been a professional for about 4 or 5 years. Previously I had played at junior and University level. I have been capped twice (by England). I have had two yellow cards which made a red. One yellow card was for a technical offence and the second was for swearing.

- 11) With regard to the incident, the Player said:-

I was in possession of the ball when I offloaded it. I was being held around my midriff (by one player) and also being held by (the injured player). I was in a stationary position. It was a quick phase transition and in the forefront of my mind was that I had to get to the next phase of play. I was being held back. I therefore brought my leg back so that I could be freed from the hold. After being freed from the hold, he (the tackler) has no motivation to let me go and referees do not always referee such matters. There was no intention to come into contact with the face. I did not know where I was going to hit him. I had not appreciated that the other player was in that position i.e. prone behind me. I had not realised that I had made contact.

I was horrified when I realised that I had caught him (the victim player) in his face. I felt deflated. I immediately went over to see how he was.

I was substituted during the game and I immediately went to speak to the medical staff (La Rochelle's medical staff) and was told that he (the Player) had gone to hospital. I offered my sincere apologies and asked the medical staff to pass on my thoughts.

On 23 December 2010 my club held an internal disciplinary meeting when I admitted my responsibility for the incident and I was suspended for two weeks.+

- 12) Having concluded his evidence in chief, he was questioned by Mr Duthie about his actions of trying to break the bind+and about the area of the victim player that he thought he was coming into contact with.

The Player's response was:

To break the bind I was pushing him off with my boot . I was pushing him away . to catch him in the stomach - trying to make contact with his midriff . I had a sense of where he was . I knew he wasn't standing up.

When I look at it now, I realise I was likely to make contact with his head . it was a lack of judgment.+

- 13) Mr Duthie pointed out to the Player that in the videoclip, he is seen removing his white head gear which is distinctive and had he removed it in a deliberate attempt to conceal his identify.

The Player responded:

made eye contact with ref . I expected the ref was going to have a serious conversation with me . I needed to convey sincerity . I took off my cap and gum shield as I always do when speaking to officials. I did not do it to avoid detection+.

- 14) Mr Duthie questioned the Player about the disciplinary proceedings of Gloucester Rugby and whether he had, as a result of the suspension, missed any meaningful games.

The Player responded:

The Club has a disciplinary process and I accepted that I had committed an act of foul play but that it was not intentional. I admitted that I had stamped (on the victim player). I received a two week suspension which means that I would be free to play this coming weekend. The Club had been due to play Northampton and I would have expected to have been selected, (that game was cancelled because of the weather), the Club played against Leeds and I would have expected to have been selected for that game as well+.

Mr Richard Smith Q.C interjected and said that the coach could confirm that, and Mr Carl Hogg stated that the Player would have been selected for both games.

- 15) Mr Carl Hogg gave evidence as follows:

am the assistant coach at Gloucester Rugby responsible for the forwards. I am an ex-international. I have coached for 7/8 years. David Attwood is a model professional having come through the Bristol Academy and is now on the fringe of international recognition. He works hard to achieve his goals both on and off the field. He has a very intellectual approach to the game. He is not overly aggressive. I would

say that his work rate off the ball is not as good as it should be in getting from one phase to the next. I have issues with him about this. I am constantly on to him about it.

After the incident his performance dipped. He was quiet and I replaced him. He was genuinely remorseful. He was flustered by the significance of his actions.

- 16) A testimonial from Mr Brian Redpath the head coach at Gloucester Rugby was produced referring to him as being known amongst his peers as a formidable but fair opponent. The testimonial also spoke about his community activities and his efforts to promote the Club.
- 17) There was no further evidence and the Judicial Officer therefore invited the Disciplinary Officer to make closing submissions.

### **Submission on sanction**

- 18) The Disciplinary Officer reminded the Judicial Officer that the entry points for an offence contrary to Law 10.4(b) is:
- a) Low end . 2 weeks.
  - b) Mid range . 5 weeks.
  - c) Top end . 9 . 52 weeks.
- 19) The Disciplinary Officer referred the Judicial Officer to the case of Jamie Cudmore which he produced during the hearing where holding onto a player is described as no more than minor provocation.
- He reminded the Judicial Officer of the injuries to the victim player and that although the pivot tooth is a crown it is still a serious matter to lose such a tooth.
- He referred to the effect which the Player's action had on the game which was set out in the referee's report.
- 20) In his view, the victim player was in a very vulnerable position and the contact was intentional.
- 21) With regard to the actions taken by Gloucester Rugby in already sanctioning the Player, the disciplinary rules provide (see DR 6.7.43) that the Judicial Officer can backdate the suspension where the player has lost out in playing meaningful games.
- 22) The Disciplinary Officer referred to 6.7.32 and submitted:
- This was an intention stamp on an opponent.
  - The gravity of the Player's actions were the use of the boot.

- There was no provocation and Mr Duthie referred again to the Cudmore case which emphasised that holding onto a player would be no more than minor provocation.
- With regard to the effect of the Player's actions on the victim, there was the medical report but it was to be noted that the Player had now returned to the game. Although the tooth which he lost was a crown, it was still a serious matter.
- The effect of the Player's actions on the game were evidenced by the referee's report.
- The victim player was in a very vulnerable position. He was prone on the ground, not able to protect himself.
- It was accepted that there was no premeditation.
- The act was completed.
- There were no other features which would constitute the offending.

23) With regard to the aggravating features (6.7.34) Mr Duthie made no submissions.

24) With regard to the mitigating factors (6.7.35) Mr Duthie made the following points:

- There was an early admission of culpability and this is evidenced by the disciplinary process in Gloucester Rugby and by the timely response to the standard directions. The Player through his legal representative made it clear that he accepted that his conduct constituted foul play meriting a red card.
- With regard to the record on good character, no issue was being taken on his previously having two yellow cards which became a red.

25) The Judicial Officer invited the Player through his representative to make closing submissions on sanction and again referred to 6.7.32.

- With regard to intent, it was submitted on behalf of the Player that he had no intention of or appreciation that his boot would come into contact with the (victim player's) face. The Judicial Officer was invited by Mr Q.C to look at and to listen to the Player to form a judgment of his mindset when the incident occurred. He reminded the Judicial Officer had stated that he had not intended to bring the boot into contact with the (victim player's) face. He was open and frank about his actions. He is therefore a credible witness who should be believed when he said that he did not know that the (victim player) was prone on the ground behind him. It is credible that he was pushing himself free. While using coaching as an excuse he knew that he needed to get to the next breakdown. That may not of itself justify his actions but it does give the reasons.
- This is a reckless act that has had the consequences and it is no more than that.

- Although this is not a classic case of provocation, he was being held back.
- While not belittling the injuries, rugby is a contact sport and the Player has already returned to the game.
- With regard to the effect that the incident had on the game, Richard Smith Q.C cautioned the Judicial Officer against holding the Player responsible for the subsequent ill discipline. He reminded the Judicial Officer that the ill discipline came from the La Rochelle players. The Player's sanctions should not be more serious because of La Rochelle players' ill discipline. Mr Smith Q.C expressed the view that when the Judicial Officer looks at the effect of the Player's actions on the match (6.7.32.e) it is meant to cover a situation where a key player has been removed from the game.
- Although the victim player was in a vulnerable position, it is part and parcel of the offence but the Player had not appreciated that the victim player was in the position that he was.
- There had been no pre-meditation . it was just a reaction.
- It is accepted that the act was completed.

Mr Smith Q.C submitted that where it is not premeditated, not intentional, but a reckless contact with the player, the starting point should be mid to top.

- 26) The Judicial Officer advised Mr Richard Smith Q.C that he did not need to be addressed on aggravating features as he had already concluded there were none.
- 27) With regard to the mitigating factors, he reminded the Judicial Officer that:
- The Player had admitted his culpability when he appeared before the Gloucester disciplinary hearing several days after the incident and the Disciplinary Officer had been advised of that in the response to the standard directions. The response also made it clear that the Player was accepting the act of foul play and that it would have merited a red card.
  - With regard to record and good character, the Judicial Officer was reminded of the Player's age and experience and of the testimonial from the head coach.
  - With regard to the conduct prior to and at the hearing, the Player had been open and candid.
  - The Player had shown genuine remorse from the time of the incident.
- 28) Mr Richard Smith Q.C submitted that the Player should be entitled to have 50% mitigation.
- 29) Before the Judicial Officer retired to deliberate on the issues, the Judicial Officer asked for clarification on the issue of costs and on the issue that the Player had already been suspended by his own club. Mr Duthie responded by stating:

- i) Insofar as costs are concerned, having regard to the very early admission of liability and the timely response to the standard directions, the costs would be confined to the administrative costs of the hearing and no more i.e. the travelling and accommodation costs of the Judicial Officer.
- ii) On the basis that the Player had missed meaningful games and had not played since the incident, the Judicial Officer had his discretion to backdate the sanction from that game (6.7.43).

### **Decision as to disposal**

- 30) The Judicial Officer retired to deliberate in private in respect of what, if any, sanctions would be appropriate in the circumstances. He was satisfied of the following:
- a) That the Citing Officer Mr Tom McCormack had given an accurate description of what had occurred.
  - b) That the DVD clip shows that when the Player had been tackled by the two La Rochelle players namely Petriscu Toderasc tackling low and Jonathan Garcia tackling high, the Player offloads the ball at which point the victim player is immediately behind the Player with his lower torso prone on the ground and the upper torso slightly raised. His left hand is seen grasping the Player's shorts and the Player is seen to lift his left knee to almost hip height and he brings his left leg backwards with force. His left boot strikes the victim player's face and then moves to the right shoulder before being removed.
  - c) The Gloucester player to whom the Player had offloaded the ball is tackled at about the same time as the boot strikes the victim player's face. The Player is therefore being held by the victim player for just a few moments.
  - d) The Player therefore would have known that the victim player was behind him. He would have known that he was low to the ground. He would have known that it was inevitable that the boot would have come into contact with the victim player's body and there was a risk that the boot (as the victim player was prone on the ground) would have come into contact with the face. It was not a shove or a push, it was a deliberate stamp causing facial trauma.
  - e) The Player admitted the stamp but said that the contact to the face was inadvertent. ~~Inadvertent~~ according to the Oxford English dictionary means accidental. This stamping was not accidental. Contact with some part of the victim's body was inevitable and the Player would therefore have to take the consequences for the fact that it was the victim player's face that his boot first came into contact with.
- 31) In this regard, the Judicial Officer considered the Disciplinary Rules including 6.7.29 through to DR6.7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

32) The Judicial Officer noted that the offence of stamping in contravention to law 10.4.(b) was listed within the IRB recommendations for sanctions within the playing enclosure (found at Appendix III of the Disciplinary Rules) as follows:

- a) Low end . 2 weeks.
- b) Mid range . 5 weeks.
- c) Top end . 9 plus weeks.
- d) Maximum sanction . 52 weeks.

33) To decide upon the appropriate entry point, the Judicial Officer assessed the seriousness of the Player's conduct by reference to the onfield issues (6.7.32) and concluded as follows:

- a) The offending was intentional. The Judicial Officer found the Player had intended the act i.e. of stamping on the victim player. At this point, the Judicial Officer was considering the act and not the consequences of the act.
- b) With regard to the gravity of the Player's action, this was a powerful stamp with the boot. Use of the boot is inherent in a stamping offence.
- c) There was no provocation and the grasping of the Player's shorts by the victim was for a matter of a few moments i.e. was not even minimal. The Player had already offloaded the ball.
- d) There was a significant effect on the victim in that he had suffered a deep wound to his cheek and had lost a tooth. The medical report refers to the 5cm long cut and the victim player refers to his requiring 4 internal and 3 external stitches. The fact that the tooth which he has lost was a pivot did not in any way lessen the seriousness of the injury.
- e) It was noted that the incident itself did not affect the outcome of the game insofar as the score was concerned, because La Rochelle went on to win the match. Nonetheless, it was quite clear that player discipline, mainly on the part of the La Rochelle players, deteriorated. Although it was put forward on behalf of the Player that he should not be responsible for subsequent acts of ill discipline, the Judicial Officer accepted the referees report when he concluded that the tone, temper and tenor of the match deteriorated after the incident and this is a factor that is taken into account.
- f) The victim player was in a vulnerable position with the lower part of his torso being on the ground and he was in no position to avoid what had occurred or protect his face.
- g) He fully participated in the act, but it is accepted there was no pre-mediation.
- h) He had completed the act of stamping.

i) There were no other features of the Player's conduct that constituted the offending.

34) In light of the above, the Judicial Officer determined the appropriate entry level point for this matter was top end. He concluded that even if the incident had been a reckless as opposed to an intentional stamp and even if it had not had an adverse effect on the temper of the game, it would still have been a top end entry level. For this offence the top end suspensions are between 9 - 52 weeks.

In assessing the entry point within the top end range, the Judicial Officer relied on:

- A DR 6.7.33 which states:

For acts of foul play, that are categorised as the top end of the scale of seriousness, the Disciplinary Committee may identify, again based on its assessment of the seriousness of the players conduct, and entry point between the period shown at the top end in appendix 3 and the maximum sanction shown in appendix 3.

- The decision of HHJ Jeff Blackett in David Attoub (18 January 2010) which decision was the subject of an appeal, but it was not overturned or varied and he states in paragraph 46:-

In cases where the offending is classified as being top end of the scale of seriousness, a Judicial Officer must assess the appropriate entry point within a given range. In assessing the entry point within that range, ERC Disciplinary Rules do not provide any guidance on what factors should be taken into account. General practice is, however, that only those matters listed in ERC Disciplinary Rule 6.7.32 (assessment of seriousness) may be considered.

Consequently, the Judicial Officer revisited 6.7.32 and concluded that when he had decided that this act of foul play was top end, he had not considered at that point the consequences of the players act. Had there been a conclusion that the player intended to stamp on the victims face, then coupled with the medical evidence, the sanction would have been nearer the top end of the top end entry point. The Judicial Officer is prepared to accept the player did not intend the consequence of his act i.e he did not intend to stamp on the victim player's face, but it was quite clear that he had acted recklessly with regard to the consequences of his action. As already pointed out, he knew the victim player was immediately behind him and was low to the ground and it was inevitable that his boot was going to come into contact with the victim player and there was a reckless disregard as to where the contact to the victims body would be.

The effect on the victim player was serious as evidenced by the medical report which had not been challenged. The Player has, however, returned to the game whereas if he had not and there were longer term consequences, the appropriate entry point in the Judicial Officer's opinion would have been 50% of the maximum i.e 26 weeks (or even higher).

The victim player has however returned to the game and the Judicial Officer therefore concluded that it would be appropriate to scale back from 26 weeks and would impose a sanction of 18 weeks.

- 35) The Judicial Officer then considered the off field issues and in so doing looked at whether there were any aggravating or mitigating factors.
- 36) The Judicial Officer considered that having regard to 6.7.34 there were no aggravating factors which would result in the sanction being increased beyond 26 weeks.
- 38) The Judicial then considered the mitigating factors and took note of (6.7.35)
  - a) The Player had acknowledged his culpability at an early stage and had already been suspended by his club.
  - b) The two yellow cards which became a red would not have an adverse effect on the mitigating factors. He has no previous disciplinary decisions against him and there was evidence given as to his good record and character both on and off the field.
  - c) He conducted himself well during the hearing. He had been very candid and open.
  - d) The Judicial Officer accepted that he had shown genuine remorse for the injuries to the victim player.

In the circumstances the Judicial Officer determined that the Player was entitled to have the sanction reduced by 50% which would therefore mean a sanction of 9 weeks.

The Judicial Officer took note that the Player had in effect been suspended with effect from the game on 14 December 2010 and the suspension would therefore run until midnight Saturday the 20 February 2011.

- 39) The written judgment will follow within three working days.
- 40) The Player and the Disciplinary Officer were reminded of DR7 which provides for a right of appeal against the decision.

**Costs**

- 41) There will be an order for costs. The Disciplinary Officer had indicated that having regard to the timely response to the standard directions and the early admission of guilt, the costs would be confined to the administrative costs of convening the hearing and the Judicial Officer so ordered.

Robert H P Williams

10 January 2011