

Decision of the Independent Judicial Officer

ERC

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

Wednesday 13th October 2010

In respect of

Sam Tuitupou of Munster ("the Player")

And

A citing in respect of an allegation of a **dangerous tackle by lifting a player and dropping or driving that player to the ground whilst that player's feet are still off the ground such that the player's head and/or upper body came into contact with the ground first contrary to Law 10.4 (j) of the Laws of Rugby Union**

Judicial Officer appointed to hear the case:

Simon Thomas, Wales ("the Judicial Officer")

Decision of the Judicial Officer:

- (i) The Player contested the citing complaint against him. The Judicial Officer found that the Player had committed an act of illegal and/or foul play as alleged in the citing complaint.
- (ii) The Player is suspended from taking part in the game of rugby union up to and including 31st October 2010. He is free to play on 1st November 2010. This represents 3 weeks suspension commencing 13th October 2010.
- (iii) The Judicial Officer made an award of costs against the Player to be assessed in default of agreement within 14 days.

Introduction:

1. The Judicial Officer was appointed by Professor Lorne D. Crerar, Chairman of the ERC's Independent Disciplinary Panel pursuant to the disciplinary rules found in the participation agreement of the Heineken Cup 2010/2011. The Judicial Officer was appointed to consider the citing complaint ("the Complaint") against the Player in the match between London Irish and Munster on 9th October 2010 in the Heineken Cup 2010/2011.
2. Ray Wilton (WRU) was appointed as Citing Commissioner to this match and had cited the Player for an offence contrary to Law 10.4 (j).
3. Law 10.4 (j) provides "Lifting a player from the ground and dropping or driving that player into the ground whilst the player's feet are still off the ground such that the player's head and/or upper body came into contact with the ground first is dangerous play".
4. Present at the hearing in addition to the Judicial Officer were the following persons:-
 - (a) Roger O'Connor - Disciplinary Officer, ERC.
 - (b) Mr Donal Spring - Solicitor for the Player.
 - (c) Mr Shaun Payne – Team Manager, Munster.
 - (d) Miss Blathnaid Evans – Apprentice Solicitor.
 - (e) Mr Mark Jones – Communications Manager for ERC (observing).

Preliminary Matters and Procedure:

5. The ERC Disciplinary Rules found in the Participation Agreement for the Heineken Cup 2010/2011 (the Disciplinary Rules and the 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.
6. The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was as follows:-
 - (a) The citing complaint.
 - (b) 2 DVDs showing the relevant passage of play from a number of angles.
 - (c) The statement of the player who was the subject of the tackle, Paul Hodgson.
 - (d) The statement from Christophe Berdos, Referee.

- (e) The statement of Eric Gauzins, Assistant Referee.
- (f) The statement of Jean-Luc Rebollal, Assistant Referee.
- (g) A medical statement from Cerian Parham, Senior Physiotherapist for London Irish RFC.
- (h) An email from Kieran McCarthy, Rugby Manager of London Irish RFC.

In addition the Disciplinary Officer had produced the following to which he would refer.

- (i) IRB Ruling 5:2005 relating to offences of dangerous tackling.
- (j) The Judgment of His Honour Judge Wyn Williams QC in the case of Ma'a Nonu dated 15th November 2005.
- (k) The SANZAR Judgment of Jannie Lubbe SC dated 12th May 2009 relating to the player Tewis De Bruyn.
- (l) The joint memorandum from Paddy O'Brien, IRB Referee Manager and Tim Gressen, IRB Judicial Panel Chairman dated 8th June 2009 in relation to dangerous tackles.
- (m) A copy of the Judgment of Bruce Squire QC, Judicial Officer in relation to the SANZAR citing of Quade Cooper dated 25th July 2010.
- (n) A copy of the Judgment in relation to Quade Cooper by the SANZAR Appeal Committee dated 28th July 2010.
- (o) A copy of a circular dated 12th October 2010 issued by Susan Ahern, Head of Legal Affairs of the International Rugby Board to all member unions of the IRB relating to proposed amendments to the definition of Law 10.4 (j).

7. The Judicial Officer noted the terms of the parties' responses to the standing directions found at appendix 6 of the Disciplinary Rules ("the Directions") as follows:-

- (a) The Player's response to the directions was:-
 - a. That he confirmed that he was the player named in the citing complaint.
 - b. That he will not argue any preliminary matters.
 - c. That he did not accept the citing complaint was a true and accurate account of the incident that resulted in the citing. He stated it was clear from the video that the Player's hands made contact with the ground first (i.e. therefore not his head or upper body)
 - d. The Player did not accept that he had committed an act of foul play as set out in the citing complaint.
 - e. The Player did not accept that the act warranted a red card.
 - f. The Player would rely upon his own evidence and the video evidence.
 - g. He indicated who would be attending with him and representing him.

8. The Disciplinary Officer's response to that of the Player was to produce the documents at

paragraph 6(m),(n) and (o). He also invited the Judicial Officer to consider his power to amend the charge, pursuant to Disciplinary Rule 8.8, in particular to Law 10 (e) – dangerous tackling.

9. The Judicial Officer invited the Player and Disciplinary Officer to confirm whether or not they had any preliminary issues that they wished to raise.
10. Mr Spring on behalf of the Player indicated that he did not accept that the description of the tackle which was the subject of the citing complaint could be re-categorised under Law 10.4 (e) on the basis that such tackles were given specific descriptions. The Judicial Officer asked Mr Spring whether he was suggesting the Judicial Officer did not have the power to amend the charge pursuant to DR 8.8 or whether the facts of the instant case did not match any offence under Law 10.4 (e). Mr Spring confirmed it was the latter. The Judicial Officer stated that this may be subject to further argument once the facts concerning the nature of the tackle had been established. Mr Spring also produced the Judgment of HHJ Blackett in the ERC case of Tommy Bowe dated 17 December 2009 to which he would refer.
11. The Judicial Officer reviewed and narrated the Complaint in full. The Judicial Officer asked the Player whether he accepted that:-
 - (a) The Complaint was a true and accurate account of the incident and the facts surrounding the incident; and
 - (b) The Complaint should be upheld (namely whether he had committed the alleged act(s) of illegal and/or foul play); and
 - (c) The alleged act(s) of illegal and/or foul play warranted a red card.
12. The Player responded that the Complaint was not a true and accurate account of the incident, the Complaint should not be upheld as he had not committed any act of foul play and that therefore there was no question of any red card being appropriate. Mr Spring elaborated stating that the Player's case was that the tackle was not a dangerous tackle and that even if it were found that it was a dangerous tackle, it had been dealt with appropriately by the referee having issued a yellow card to the Player.

Evidence Supporting the Complaint:

13. In terms of the Disciplinary Rules it is for the Disciplinary Officer to demonstrate to the Judicial Officer's satisfaction that the Complaint should be upheld. To do this he must demonstrate on the balance of probabilities that the Player committed the act or acts of illegal and/or foul play complained of in the Complaint.
14. The Disciplinary Officer presented his evidence regarding the Complaint as follows of:

(a) The Complaint and DVDs

The Citing Commissioner had stated that the incident occurred in the 22nd minute of the first half of the match. At that time the score was London Irish 9 – Munster 3. The Citing Commissioner recorded as follows:-

“Number 9 green tackled by number 12 red. Feet taken above shoulders and not taken back to ground with care. (Head/Shoulder hit ground first). Number 9 received treatment on shoulder but completed the game. Ref spoke to TJ. Warned 13 red for pushing and shoving then gave yellow to 12 red for spear tackle. Refer to two DVD’s”.

15. At this point the DVD evidence was shown on a number of occasions. The broadcast footage was also shown which included the verbal exchange between the Assistant Referee and the Referee. The Referee's words to the Player were also heard before showing him a yellow card.
16. The Disciplinary Officer summarised the match footage.
17. The video footage showed that Mr Hodgson, playing 9 for London Irish can be seen running from right to left across midfield with the ball in the general direction of the Player who is facing him and moves towards him to tackle him. Immediately before the tackle takes place, Hodgson can be seen turning and passing the ball behind him so that at the point of the tackle, Hodgson has his back to the Player. The Player can be seen crouching down to achieve a lower centre of gravity before grasping Hodgson around the waist with both arms. He then moves to drive Hodgson both forward and upward. As he does so, it can be seen that the Player then turns his body and Hodgson in a movement from right to left and brings his right elbow up. In the movement, Hodgson's body begins to rotate in an anticlockwise motion so that his feet end up not only above the horizontal but almost vertical with his head and upper body facing downwards. Hodgson can then be seen falling to the ground. Hodgson manages to outstretch his arms in an attempt to break his fall but suffers a significant impact on his left shoulder. The Player has remained on his feet at all times and immediately after the tackle turns begins to run back into the defensive line. Hodgson can be seen lying on the ground clutching his left shoulder and in obvious pain. At the next stoppage he receives treatment from the physiotherapist.
18. The Disciplinary Officer commented that from the footage there is no evidence that Hodgson was managed down for his own safety by the Player. Additionally the Player seems to show no regard for Hodgson's safety because he then immediately runs off back into the defensive line having realized at some point that the ball was no longer with Hodgson.

(b) The Statement of Paul Hodgson

"After passing the ball to Mapusua I felt a player tackle me from behind hard in the lower back. I was then lifted into the air and then turned mid-air and then landed left shoulder first. I felt pain afterwards in my left shoulder which went up into my neck. I was aware of the pain in my shoulder for the rest of the game".

(c) Match Official Reports

The Referee M. Berdos had indicated in a statement that he had not seen the incident. The match official who had seen the incident and had reported this to M. Berdos was Eric Gauzins. His report read as follows:-

"During an open play phase, number 9 green passed the ball to a team mate just before being lifted up by number 12 red.

During this action number 9 green feet were taken above shoulders (spear tackle) and number 12 red dropped his opponent without driving him to the ground.

I flagged and informed Christophe by communication set. Christophe played advantage but as it was inconclusive stopped the game. As Christophe was blowing the whistle, a small incident occurred between two players pulling and pushing (13 red and 15 green). Christophe saw this and I confirmed to him the numbers of the players involved. He then came to me to hear my report on the flag.

I said that number 12 red was guilty of a spear tackle on 9 green and recommended a yellow card.

Christophe went back to the players, warned 13 red and 15 green for their behaviour and gave a yellow card to 12 red".

(d) Other Evidence

19. The medical statement of Cerian Parham provided details of the injury to Hodgson. It read as follows:-

" Paul was assessed and treated on the field of play by me, following a tackle and landing on his left shoulder with forced right lateral flexion of his cervical spine. On assessment, a neuropraxia of the brachial plexus was identified. There was a temporary loss of power to the left upper limb; primarily external rotation and abduction of the glenohumeral joint,

alongside pain and loss of range in left rotation of the cervical spine. Loss of power was transient and on regaining full power Paul was cleared fit to continue.

Post match assessment identified stiffness of the cervical spine, with only half range of active left rotation available. Joint assessment identified C5-5, C5-6 as primarily hypomobile, with pain and protective muscle spasm in the adjacent musculature; scalene, trapezius. Treatment to normalise movement, joint stiffness and muscle activity at these levels is ongoing but Paul is expected to be fit for selection for Friday night's game v Ospreys".

20. The statement of Kieran McCarthy was read confirming that Paul Hodgson had reported to him that he did not receive an expression of apology at any stage during or after the game:-

"The two players' paths wouldn't have crossed later in the player's lounge as our guys were undertaking corporate duties while the Munster players were enjoying their post match meal before dashing off to catch their charter flight back home".

21. After receiving the evidence from the Disciplinary Officer, the Judicial Officer invited Mr Spring to indicate which part of the evidence was to be challenged before hearing the Player's case. Mr Spring indicated that much of what the disciplinary officer had said in his interpretation of the video evidence was not accepted. He stated that the Citing Commissioner had had the benefit of the video but it had to be borne in mind that the Player had the disadvantage of "real time" and did not have the same luxury when making decisions.
22. Additionally, Mr Spring suggested that reference in the physiotherapist's report to the injury to C5 and C6 of the spine may well have been caused by the initial impact of the tackle which he said was a forceful but not an illegal tackle.

The Player's Defence:

23. The Player gave his evidence in conjunction with the DVD as follows:-

"Immediately before the tackle, number 9 Hodgson ran into my channel. As he came towards me I braced myself to tackle him. He turned away from me just before I tackled him. I did not know that he had lost the ball. He sort of went up in the air. We are trained to tackle in this way by driving him. Also the reason why he lifted up so easily was because of his size as a number 9 as opposed to me as a centre. If it had been another centre I was trying to tackle it would not have made such a big difference. At the time that the tackle was in progress I tried to stay on my feet. It was only when I looked up after the tackle that I realised he (Hodgson) didn't have the ball. I feel that my tackle was a proper tackle. At no

stage did I feel that it was a dangerous tackle”.

24. Under cross examination by the Disciplinary Officer, the Player was asked why he had driven the Player up in the air rather than tackle him in an orthodox manner to enable him to fall backwards. The Player stated that he had driven him up due to their relative differences in size. He said he was 93 kilograms. It is understood that Hodgson was 81 kilograms. He could not have tackled him in an “orthodox” way because Hodgson had turned so that his back was to the Player. The Player stated that he did not realise that Hodgson was tipping over. The Player was asked by the Judicial Officer whether he had made any effort to land Hodgson safely. The Player stated that he didn’t make any effort because he didn’t believe that Hodgson was vertical. The Player had also stated that he had not apologised to Hodgson because he didn’t consider that his tackle had been dangerous. If the tackle had been dangerous then he would have apologised.
25. The Judicial Officer asked that the video be played on a further number of occasions and asked the Player to comment upon some aspects of it. The Judicial Officer pointed out a number of the angles and suggested to the Player that it looked as if Hodgson had been vertical with his feet in the air and his head facing downwards. The Player accepted that it looked that Hodgson was vertical although Hodgson’s feet were not together. The Judicial Officer asked the Player whether he had attempted to turn Hodgson in the tackle. The Player described how he had done so. He said he had tried to turn him by lifting his own right arm and shoulder. The Player’s arms could be seen wrapped around Hodgson’s waist. The Judicial Officer asked the Player to look at the slow motion footage of the tackle at the critical moment just as Hodgson was landing. The Judicial Officer asked the Player whether he had hold of Hodgson at the time that he landed on the ground. The Player agreed that neither arm was in contact with Hodgson although Mr Spring suggested that the video evidence showed that the Player was still holding onto Hodgson at the time his hand touched the floor. The Player confirmed that he had not tried to speak to Hodgson after the match. Mr Payne indicated that the Munster players were on a very short turnaround and that they had to get to the airport within 45 minutes of the conclusion of the match. The Player also stated that he realised it was appropriate to take steps to lower a tackled player where that person goes beyond the horizontal but had received no coaching on the point.
26. This concluded the Player’s evidence.

Submissions on Whether to Uphold the Complaint:

27. Once all of the evidence had been heard on the question of whether the complaint should be upheld or not, the Judicial Officer invited both the Disciplinary Officer and the Player to make submissions on whether or not the Complaint should be upheld.

28. The Disciplinary Officer's submissions were:-

The Facts

- (a) The citing complaint was not inaccurate. From the video footage Hodgson could be seen to have been taken above the horizontal and was almost vertical. When he had come to ground Hodgson had suffered the first real impact on his left shoulder. The Player had accepted that he had made no effort to bring him to ground safely. The touch judge had used the term "spear tackle". The touch judge had said that the Player had dropped Hodgson.

The Law relating to 10.4 (j)

- (b) The Judicial Officer should have regard to the O'Brien/Gresson Joint memorandum dated 8 June 2009 which summarises three possible scenarios when a tackler horizontally lifts a player off the ground. This reads as follows:

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

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

- (c) In interpreting Law 10.4(j) with particular reference to the word "first" the Judicial Officer should adopt the approach in the Quade Cooper appeal judgment of 28 July 2010 which approached the matter by stating that the intention of the law was to consider which part of the tackled player's body made the first real significant impact with the ground.
- (d) He further commented on how this area of the tackle law has been very topical since 2005 and those responsible for the governance of rugby have at the forefront of their mind the welfare of players and therefore a firm interpretation of the law should be applied.
- (e) Finally he referred to the memorandum of Susan Ahern dated 12 October 2010 which has been issued to all members countries of the IRB proposing an amendment to law

10.4 (j) so as to remove the word "first" altogether from it as "*when originally drafted it did not take into account defensive actions taken by the player being tackled , i.e. putting arms down to break a fall. The intention was to outlaw spear tackles irrespective of defensive actions taken by the player being tackled.*"

29. The Player's submissions were as follows:-

The Facts

- (a) Mr Spring's primary point was that this was not a dangerous tackle. The Player was renowned as a hard tackler but had never been sent off in any match. It was difficult to build a reputation as a hard tackler without foul play but he had done so. Spear tackles almost always involve the use of a player placing his arm between the legs of a tackled player turning them and then driving them into the ground. This was not that type of tackle at all. In this case there was no dropping from a height. The Player had been in an invidious position. If he had gone very low to tackle Hodgson, Hodgson might have flipped over behind the Player and injured himself that way. If he had gone higher then he might have been cited for a dangerous (high) tackle. There was no forcing or tipping in this case. Mr Spring pointed out that the initial impact on Hodgson was very severe and if one looks at Hodgson's face one can see the immediate impact which the tackle had on him. It was a legitimate but severe tackle. Insofar as the ball was concerned, the only person to assess whether the Player had known that Hodgson no longer had the ball was the Player himself. The passing of the ball by Hodgson was directly behind him. Where, as in this case, a Player in possession of a ball "shows the ball" there is nevertheless an obligation on the tackler to tackle him as if he still has it. The Player was legitimately committed to the tackle. When Hodgson had turned his back and offloaded the ball, it appears that he did not anticipate any impact. As a consequence he was in a "flop position" and the impact was exaggerated. One has to acknowledge that the Player is trained to stay on his feet in the tackle area because he must do so in order to legitimately compete for the ball after the tackle. The Player would have needed to have been tensed in order to compete for the ball. Mr Spring pointed out that the incident happened in a split second. The Player had put Hodgson on the ground and had not thrust him. If he had gone to ground with Hodgson the Player might be facing an allegation of driving Hodgson into the ground.
- (b) His second point was that if it were a dangerous tackle it was not a red card offence. The touch judge had a clear view. There was no driving and the video evidence confirmed, in Mr Spring's view, that the Player had not been dropped from a height. This was therefore not a case similar to that in the Judgment of Ma'a Nonu. When considering the guidance contained in the O'Brien/Gresson IRB memorandum this was

at maximum a yellow card. The ERC Judgment of Tommy Bowe was an example where the Judicial Officer had determined that a yellow card was sufficient for a similar tackle. At the time Hodgson reached the ground his hands were on the ground and it was at that time that the Player let Hodgson go.

The Law relating to 10.4.(j)

(c) Mr Spring argued that when it comes to the interpretation of Law 10.4 (j) notwithstanding what is said in the decisions relating to Quade Cooper, one cannot ignore the word "first" and if there is any doubt as to how that should be interpreted then the Player should have the benefit of that doubt.

30. In response to these closing submission of Mr Spring, the Disciplinary Officer invited the Judicial Officer to consider his powers to amend the charge to Law 10.4 (e) in accordance with Disciplinary Rule 8.8 if he did not find Law 10.4(j) proven.

Decision as to Whether or Not The Complaint Should be Upheld:

31. The Judicial Officer adjourned in private to consider all of the evidence in the case. The starting point, however, was for him to satisfy himself as to the true nature of the tackle.
32. The Judicial Officer considered the video evidence at great length. He found that Hodgson could be seen turning his back to the Player and passing the ball immediately before the impact of the tackle. The Player was in a crouched position bracing himself to tackle and indeed did tackle Hodgson forcefully. In so doing he, from the video evidence and by his own evidence, drove and lifted Hodgson and turned him in a anti clockwise manner which resulted in Hodgson's legs turning not only above the horizontal but ending up in an almost vertical position before he fell to ground. There was no evidence to suggest that the Player had done anything to try and lessen the impact of Hodgson's fall to the floor. Indeed the Player himself had admitted that he had not taken any steps to do so because he, apparently, had not even realised that Hodgson had turned in such a manner so as to require any assistance. Whilst it could not be said that there was any thrusting or "spearing" of Hodgson, the Judicial Officer was satisfied both on the video evidence and on the evidence of the Player himself that he had not taken any steps to reduce the risk of injury to Hodgson in completing the tackle. The Judicial Officer also noted that at the point that Hodgson impacts the ground with his shoulder which causes his injury, the Player no longer had hold of him. Indeed during the tackle as the Player (by his own evidence) had driven Hodgson causing him to rotate in an anticlockwise motion with the use of his right arm and shoulder, the Player's left arm was the pivot and the only arm which could have given support to Hodgson. From the DVD the Player's left arm can clearly be seen being withdrawn from under Hodgson as he falls. This means that the Player had not supported

Hodgson as he fell to the ground.

33. Applying the guidance issued by Paddy O'Brien and Tim Gressen on 8th June 2009 relating to dangerous tackles, the Judicial Officer found that the tackle fell within the following scenario "*the lifted player is dropped to the ground from a height with no regard to the Player's safety. A red card should be issued for this type of tackle*". The case of Tommy Bowe could be distinguished from this as in that case according to the findings of the Judicial Officer, Bowe "*became concerned for his opponent's safety and held onto him for most of the descent. As a result the victim player did not feel the need to break his own fall and suffered no injury – not even winded*".
34. The Judicial Officer also had regard to the following guidance "Referees and Citing Commissioners should not make their decisions based on what they consider was the intention of the offending player. The decision should be based on an objective assessment (as per Law 10.4 (e)) of the circumstances of the tackle".
35. On the basis that the Judicial Officer was therefore satisfied that the tackle was dangerous the Judicial Officer then had to consider the merit of the Players argument that the fact Hodgson's hand or hands had reached the ground first before his shoulder should provide him with a defence to the charge. The Judicial Officer reviewed the cases relating to Quade Cooper in which an interpretation of the law had been set out. The Judicial Officer found that as the principal impact was felt by Hodgson on his shoulder (and thereby forming the upper part of the body) the fact that his hands or arms had hit the ground first was incidental. The Judicial Officer was satisfied that the purposive approach to interpreting Law 10.4 (j) should be applied so as to reflect the law-makers' concerns about the mischief of such tackles.
36. On that basis there was no need to for the Judicial Officer to consider whether the charge should have been amended to an offence of Law 10.4(e) pursuant to rule Disciplinary Rule 8.8.
37. The Judicial Officer therefore reconvened the hearing and confirmed that he had upheld the Complaint and thereafter heard representations from the Disciplinary Officer and the Player as to sanction.
38. The Disciplinary Officer's submissions were:-
 - (a) When considering entry point the Disciplinary Officer indicated that in terms of aggravating factors there was an impact on the victim player in terms of his injury, albeit relatively short lived. The victim player was vulnerable and the conduct of the Player was completed. Insofar As aggravating factors were concerned, he submitted that the Judicial Officer should have regard to the fact that these types of tackles appear to be

prevalent and there have been recent instances both in the tri nations and in Europe of high profile tip tackles which need to be eradicated from the game. In so far as the Player himself was concerned, he had been suspended on two previous occasions whilst playing in New Zealand, both in 2005 for stamping/trampling. These suspensions had been for 6 weeks and 2 weeks.

39. The Player's representative's submissions were:-

(a) This was a low entry offence. The Player had never been sent off in a game before and is remorseful. Notwithstanding the fact that he has a reputation as a hard tackler there is no pattern of offending as far as he is concerned and he had conducted himself well at the hearing and had been frank and honest in giving his evidence.

40. The Judicial Officer retired to deliberate in private in respect of what, if any, sanction, would be appropriate in the circumstances. In this regard the Judicial Officer considered the terms of the disciplinary rules including DR 6.7.29 through to 6.7.44. The Judicial Officer considered that this was an offence for which a suspension ought to be imposed.

41. The Judicial Officer noted that the offence of dangerous tackling in contravention of Law 10.4.(J) was listed within the IRB recommended sanctions for offences within the playing enclosure (found at appendix 3 of the Disciplinary Rules) as follows:-

- (a) Lower end – 3
- (b) Midrange – 6
- (c) Top end – 10 +
- (d) Maximum sanction – 52

42. To decide on the appropriate entry point the Judicial Officer assessed the seriousness of the Player's conduct by reference to the following "on field" issues:-

(a) The Judicial Officer found that the Player's offending was reckless rather than intentional or deliberate. The Judicial Officer accepted that the relative difference in size between the Player and Hodgson together with the fact that Hodgson had turned his back to the Player and appeared to have been off the ground at the time of the tackle made the rotating of Hodgson easier.

(b) The Judicial Officer also noted that the Player's actions on the victim had some impact in as much as there was injury albeit it did not prevent Hodgson from continuing to play in the match and he would not miss this Friday's match against the Ospreys.

- (c) The Judicial Officer noted that the victim was vulnerable although this is invariably the case in such tackles as they are by definition inherently dangerous.
 - (d) The Player's conduct was completed rather than simply attempted.
 - (e) There was no other feature of the Player's conduct that constituted the offending.
43. Whilst the Judicial Officer concluded that there were a number of "on field" factors which might have drawn him to conclude a mid range entry point, on balance and taking all matters into account he determined it was appropriate to start from the low entry point of three weeks.
44. When considering any aggravating factors, the Judicial Officer did not find that there was any absence or lack of remorse and/or contrition on the part of the Player as he was perfectly entitled to defend himself against the charge and had been open and frank about his evidence. It was simply the case that he did not accept the tackle had been dangerous.
45. Whilst it is correct that the Player had a disciplinary record of 2 suspensions from 2005 when he had been playing in New Zealand, none of these suspensions related to dangerous tackling and in light of the age of those offences the Judicial Officer did not consider them to be an aggravating factor.
46. There is, however, a need for a deterrent to combat a pattern of offending in the game generally. Players have to be educated that such tackles are inherently dangerous and coaches must also assume some responsibility for educating players as to these dangers. Accordingly the Judicial Officer considered that an additional one week's suspension should be added to the entry point of three.
47. When considering any mitigation, the only relevant mitigating factor found by the Judicial Officer was the Player's conduct prior to and at the hearing. This is unusual where a charge has been contested. Whilst it is correct that the Player had not admitted the offence, his evidence had been perfectly frank and open. He had accepted that he had not taken steps to lower the Player to the ground safely. The Judicial Officer considered that he should be given a one week discount from the sentence which reduced the total sentence to a suspension of 3 weeks.
48. The Player was therefore suspended from all rugby up to and including Sunday 31st October 2010. which would mean he would miss 3 whole weekends of matches. He is therefore free to play on Monday 1st November 2010.

Costs:

49. The Judicial Officer ordered that the Player should be responsible for $\frac{1}{2}$ of the Judicial Officer's travel/accommodation costs which equates to €250 plus $\frac{1}{4}$ of ERC's administration costs for convening today's hearing plus the legal costs in dealing with the matters relating to the legal argument concerning 10.4 (j). The Judicial Officer ordered that those costs were to be assessed by the Judicial Officer if ERC and the Player cannot agree them within 14 days from today's date.

Appeal:

50. The Player was reminded of his right to appeal against the decision in accordance with Disciplinary Rule 7.2.

Conclusion:

51. At the conclusion of the hearing, Mr Spring on behalf of the Player indicated that the Player was considering appealing but because no appeal could be heard prior to this weekend's round of matches the Judicial Officer should consider imposing a stay on the suspension pending appeal. The Judicial Officer refused the request. A short form Judgment was issued at the conclusion of the hearing.

Dated 18th October 2010.



Simon Thomas
Judicial Officer.