

EUROPEAN RUGBY CUP

DECISION OF DISCIPLINE COMMITTEE

HELD AT Hugenot House, St. Stephen's Green, Dublin.

13th May 2009 at 1.00 pm

IN RESPECT OF:-

Alan Quinlan (*"the Player"*)

AND

The citing complaint brought by John Byett (RFU) that the Player had breached Law 10 (4) (k) of the Laws of the Game in the match between Leinster and Munster played at Croke Park Dublin on 2nd May 2009.

MEMBERS OF THE DISCIPLINE COMMITTEE:- (*"the Committee"*)

Roger Morris (Chairman) (WRU)

Simon Thomas (WRU)

Mike Hamlin (RFU)

DECISION OF THE COMMITTEE:

- (i) The Committee found that the Player had committed an act of Illegal and/or Foul Play.
- (ii) The Player is suspended from taking part in the game of rugby up to and including 9th September 2009. Taking into account the rugby close season this represents a 12 week suspension commencing on 13th May 2009.
- (iii) The Committee ordered the Player should pay the costs of the Disciplinary Officer in relation to the hearing (including legal costs) together with the costs of convening the Committee.

INTRODUCTION

This Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel, pursuant to the discipline regulations of ERC in respect of a citing complaint made by Mr John Byett. The Citing Complaint concerned the conduct of the Player during the Heineken Cup Semi Final match played between Leinster and Munster at Croke Park Dublin on 2nd May 2009.

The citing complaint alleged that the Player, with fingers bent, had scraped his hand across the face of the Leinster No 4, Leo Cullen, making contact in the area of Cullen's right eye, so contravening Law 10 (4) (k) of the Laws of the Game.

Present at the hearing on 13th May 2009 in addition to the members of the Committee were:-

The Player

Mr Donal Spring, Solicitor, representing the Player

Ms Avalon Everett, Apprentice Solicitor to Mr. Spring

Mr Shaun Payne, Team Manager, Munster.

Mr Roger O'Connor, ERC Disciplinary Officer

Mr Max Duthie, Solicitor, representing ERC

In addition, present at the times they were called to give evidence:

Professor Michael O'Keefe, Professor of Paediatric Ophthalmology

Mr Paul O'Connell, Team Captain, Munster.

HEARING

At the commencement of the hearing the Chairman confirmed the identities of all present and established that the Player was before the Committee to answer a citing complaint. The Chairman outlined the procedure to be adopted by the Committee for the hearing and that the provisions of the ERC Disciplinary Regulations ("the Regulations") would apply. The Player and all present agreed to proceed on that basis.

The Chairman established what evidence had been placed before the Committee prior to the hearing and enquired as to whether all present had received the same in good time. This

comprised: the Citing Complaint; letter dated 4th May 2009 from the Disciplinary Officer to the Chairman ERC Disciplinary Panel; letter dated 7th May 2009 from Professor Crerar convening the hearing; e mail messages from each of the three match officials; e mail to Roger O'Connor from Leo Cullen dated 11th May 2009; letter from Mr Spring dated 12th May complying with replies to standard directions; and letter dated 12th May from Roger O'Connor responding to Mr Spring's letter. The Chairman also confirmed that all parties had received the same three video clips.

Prior to commencement of the formal hearing Mr Spring confirmed what he had signalled in advance and that he wished to raise a preliminary issue. However, first, he requested that Professor O'Keefe, because of pressing commitments elsewhere, be allowed to give his evidence at this stage but without prejudice to the preliminary issue. Mr Duthie did not object and so Professor O'Keefe was called to the room to give his evidence. (That evidence had no relevance to the preliminary issue and is summarised below in this judgement with the remainder of the evidence heard by the Committee).

PRELIMINARY ISSUE

The issue raised by Mr Spring related to the Citing Form used by Mr Byett to make his report. He noted that the Regulations did not have a prescribed form for the use of citing commissioners. He contended that the manner in which Mr Byett had completed the particular form used in this case was defective in that it did not sufficiently clearly make out the charge so that the Player could know with proper accuracy of what he was accused. The form used had a section headed "Nature of the Offence: (please list applicable Law Number(s) and short description of the Law)" and in response Mr Byett had stated simply: "10.4 (k) ACTS CONTRARY TO GOOD SPORTSMANSHIP". In Mr Spring's submission, because, in Appendix Three of the Regulations, there are a number of different recommended sanctions for different categories of

breach of that law, Mr Byett should have particularised the category of the breach he was alleging. It was a fundamental legal principle, said Mr Spring, that the accused should know with absolute clarity and certainty of what he was accused. He cited in support of his submission the Irish Supreme Court case, *Director of Public Prosecutions v. Moorehouse*. Neither the citing form nor the letter to Professor Crerar dated 4th May 2009 were sufficiently clear to comply with this fundamental principle and the citing should be dismissed.

In response Mr Duthie confirmed there was no prescribed form for the use of citing commissioners. The form used by Mr Byett was a form that used to be prescribed and was still frequently employed by citing commissioners. He referred the Committee to Regulation 6.4.6 and submitted the form used complied with the requirements of that Regulation. He went on to say that, in any event, Mr Byett had correctly identified the relevant law by reference to the precise wording contained in the Laws to Rugby. Mr Duthie also referred to Regulations 8.8 and 8.9 and submitted that even if the citing form was defective those Regulations gave the Committee the power to make appropriate amendments and that there was nothing in this case that should prevent it from exercising those powers.

The parties left the hearing room to allow the members of the Committee to deliberate in private.

The Committee unanimously observed and concluded as follows:

1. At the outset of the hearing all parties had agreed the proceedings be conducted in accordance with the Regulations.
2. Regulation 6.4.6 was the Regulation relevant to the form required of a citing complaint.
3. The citing complaint in this case complied with the requirements of Regulation 6.4.6.
4. There was sufficient clarity in the form as a whole for the Player to know exactly of what he was accused.

5. The Committee noted its powers under Regulations 8.8 and 8.9 but did not consider there to be any reason to use them.
6. The hearing would proceed on the basis of the citing lodged by Mr. Byett.

The parties were recalled to the hearing room and the Chairman delivered the Committee's decision as above.

The Chairman confirmed with Mr Spring that the Player wished to contest the citing complaint and therefore denied that he had committed an act of foul play.

THE HEARING

It had been agreed by all parties at the outset of the Hearing that Professor O'Keefe should give his evidence first notwithstanding the fact that he was a witness called on behalf of the Player and that, usually, the evidence to be presented by the Disciplinary Officer would precede evidence given on behalf of the defence.

THE EVIDENCE OF PROFESSOR O'KEEFE

Professor O'Keefe, in response to questions from Mr Spring, first established his credentials as a Professor of Ophthalmology. He had been a Professor for 10 years having first qualified as a Doctor in 1986. He was pre-eminent in his field. He did not know any of the parties in the case and in particular had never before met the Player. Professor O'Keefe said he was interested in rugby and had played himself both as a student in Ireland and when training in London.

Professor O'Keefe had been asked to study the video clips that had been circulated prior to the Hearing. He had done so and had come to the conclusion that there was no contact by the Player's hand with the eye or eye area of Leo Cullen. He had come to this conclusion from observing the reaction of Leo Cullen. He agreed with Mr Spring that significant force had been applied by the Player to Leo Cullen's face and opined that, if such force had made contact with the eye or eye area, the reaction of Cullen would have been very different from that displayed in the video clips. Cullen would have been in excruciating pain with watering eyes. Professor O'Keefe referred to the wrinkling of the skin apparent on Cullen's face under the pressure from the Player's hand and concluded that had such pressure been exerted to the eye or eye area Cullen would not have been able to sit back as he did with eyes wide open. On the contrary, his eyes would have closed and watered considerably. He could see no evidence from the video of any injury to Cullen. In particular he could see no evidence that Cullen's vision was impaired. In all these circumstances he had concluded there was no contact with the eye or eye area.

In response to questions from Mr Duthie, Professor O'Keefe defined "the eye area" as being restricted to the area within the orbit of the eye. Mr Duthie questioned Professor O'Keefe as to the effect of contact with the face in a wider area than that defined by Professor O'Keefe as "the eye area" but Professor O'Keefe maintained his opinion that, had there been contact with the eye area, Cullen's reaction would have been very different from what he had observed. He had not noticed anything particular about Cullen's behaviour during the rest of the match although he had not been looking for it. He confirmed he had been watching the game, live, on television.

The Chairman confirmed with Professor O'Keefe his definition of "eye area". His ophthalmological definition of the term was restricted to the area within the orbit of the eye. Professor O'Keefe demonstrated where the edge of the relevant orbital bones were positioned on

the face. The Chairman specifically asked if, for example, Professor O'Keefe considered the bridge of the nose to be part of the eye area. Professor O'Keefe said he did not.

THE ERC CASE

Mr Duthie presented the case on behalf of ERC but first made some preliminary remarks about the context of this particular case. ERC recognised the potential significance of the case to the Player and wished the Player no ill. He urged the Committee to ignore the external context of the case and simply seek to apply the Regulations in a fair manner.

Mr Duthie pointed out that IRB had determined that contact with the eye or eye area was a serious matter and this was reflected in the recommended sanctions determined by IRB and reproduced in the Regulations in Appendix 3.

He would refer to a RFU case concerning Dylan Hartley which had been heard under the Chairmanship of His Honour Judge Blackett. That case contained observations that might prove helpful to the Committee.

Mr Duthie reminded the Committee that the burden of proof lay with the Disciplinary Officer and that the appropriate standard of proof was the balance of probabilities.

The Match Officials had seen nothing of the relevant incident and therefore the evidence on behalf of ERC would comprise the Citing Report; the video clips; and the statement from Mr Cullen.

The video clips were played and replayed. The first clip was a “real time” replay of the relevant incident and the second clip a slow motion, with close up, replay of the same incident.

The video showed that a lineout was awarded to Munster, on the Munster right about 10 metres from the Leinster try line. The ball was thrown in by the Munster No. 2 and caught by the Munster player Paul O’Connell. A maul formed around O’Connell with O’Connell’s back to the Leinster line and a number of Munster players bound together on the Munster side trying to drive him towards the Leinster line. O’Connell slipped the ball to the back of the maul. The Player was part of the maul but in a position on the Leinster side of the maul, supporting O’Connell, and with his back to the Leinster line. The Leinster No 1 attempted to drag the maul to ground. Another Leinster player, Leo Cullen, had insinuated himself into the maul, taken hold of O’Connell with his hands clasped around the back of O’Connell’s neck and was trying to drag O’Connell (and therefore the maul) to the ground. Cullen had both arms around O’Connell who became detached from the maul when the Player attempted to remove Cullen’s arm from its grasp on O’Connell. When he failed to achieve this, from a position behind Cullen, he reached with his left hand to the right side of Cullen’s face and appeared to pull at the side of the face. The wrinkling of the skin referred to by Professor O’Keefe could be seen immediately to the outside of Cullen’s right eye. The left hand of the Player was placed on the face so that his little finger was towards the chin, the index finger close to the right eye (where the skin wrinkled) and the thumb on the forehead. The Player then appeared to drag his hand, from the position of initial contact, across Cullen’s face, pulling Cullen’s face from right to left. Cullen released his grip on O’Connell and tried to swat the Player’s hand away. He did so, lost his balance and sat on his bottom on the ground. The instant reaction of Cullen appeared to be one of anger and he could be seen apparently directing rebuke towards the Player. On the ground, Cullen’s eyes were wide open and directed at the Player.

The ball, by now was at the back of the Munster maul which continued to threaten the Leinster line. The Player rejoined the maul at the rear. Cullen quickly got to his feet, rejoined the maul and continued assisting the (eventually successful) Leinster attempts to bring the maul to ground.

A third video clip showed the Player approach and have a short conversation with Cullen at the end of the game. The conversation appeared amicable and ended with a hand shake.

Mr. Duthie highlighted the following : the Player had an unobstructed view; there was contact , with fingers bent, to the face of Cullen; contact was in or close to the eye ; there was force in the grip so that Cullen's face is pulled towards the Player; Cullen's hand reached up in reaction ; and Cullen shouted at the Player following the contact.

LEO CULLEN

Mr Duthie explained that Mr. Cullen, with appropriate good reason, was not available to attend the hearing and so his evidence would comprise the e mail statement circulated before the hearing. Mr. Spring raised no objection.

Mr Duthie said that Cullen's statement corroborated the video evidence. In his statement he confirmed he was attempting to pull the maul to the ground; that he had felt a hand come across his face and had not liked the sensation; that he had reacted angrily; and that he had hurled obscenities at the Player. He had also confirmed that the Player had approached him at the end of the match and apologised for making contact with his face.

In addition, it should be noted that in his statement Cullen also says: after the incident he got on with the game and forgot all about it until approached after the final whistle by the Player; that

he mentioned nothing of it to the referee despite, as captain, being in regular dialogue with Mr Owens ; that whatever injuries he suffered during the game were as a result of other incidents and not the incident in question ; and that when approached by the Player at the end of the game Cullen said to the Player he thought there was nothing in the incident.

THE PLAYER'S CASE

(The evidence of Professor O'Keefe, the first witness called by the Player is summarised above so that all evidence before the Committee is recorded in the chronological order it was given).

Mr. Spring addressed the Committee. He said there were now quite a few rugby discipline cases on the record involving contact with the eye or eye area and that these cases revealed there is a wide spectrum of levels of seriousness. Whilst the test for the Committee to adopt in determining guilt is the balance of probabilities, the more serious the allegation the more that balance should weigh in favour of the accused. In this case, too, that balance should weigh in favour of his Client.

Mr. Spring pointed out what he regarded as unusual aspects of the case. There was no complaint from the participants, no medical evidence of physical contact and no claim by an injured party that he had suffered harm. The only evidence was video evidence. He urged the Committee to be circumspect in their viewing of that video evidence, remembering that it was one dimensional and therefore painted a potentially misleading picture. He referred, as an illustration, to film of a football player going to ground as the consequence of what appears a trip, only for it to be discovered, when viewed from a different angle, that there was no contact. He warned too that in considering slow motion film, it should be remembered that the incident, in real time, was very brief, a matter of no more than a second and a half.

The video was played again and Mr Spring pointed out certain features of what was shown. He referred to the position of Paul O'Connell in the maul. He was being held in a head lock by

Cullen and was being throttled by him. He referred to the whiteness in the knuckles of Cullen's hands as he held O'Connell, emphasising the strength of Cullen's hold. In Mr. Spring's view the hand of the Player, seeking to assist O'Connell, grabbed at Cullen's shirt on Cullen's right shoulder and it was an unfortunate failure by the Player to grasp the shirt that led to his hand coming across the face of Cullen. Mr. Spring also asked the Committee to note the total lack of reaction on the part of any other player, highly unusual, in Mr Spring's submission. Usually, if anything serious has happened, other players react.

PAUL O'CONNELL

Mr. O'Connell was called to the hearing room to give evidence. He was asked by Mr. Spring to give his account of what had happened. He said that he had caught the ball at a lineout and immediately his team formed into a maul around him. The ball was quickly slipped to the back of the maul. He felt arms and hands around his neck and he was pulled away from the maul. He expected that the grip around his neck would be released but the hold continued such that he felt extremely uncomfortable. He was about to lash out in angry reaction, and shouted an obscenity, effectively imploring that someone remove the hand and arms from his neck . The grip was released and he was able to rejoin the maul.

Mr. Spring then asked Mr. O'Connell to give his opinion of the Player. He said that the Player is a "fabulous guy", a tough but fair player. He was someone other players looked up to, a leader on and off the field. He was respected by team mates and opponents alike and would not resort to deliberate contact with anyone's eyes.

Asked by Mr Duthie if he had seen the incident involving the Player and Cullen, he replied that he had not. Nor had he heard Cullen shout at the Player.

After giving evidence Mr. O'Connell left the hearing room.

THE PLAYER

Next, the Player was called to give evidence. Before addressing the incident itself, he wished to explain a little about himself. He was 34 years of age and had played rugby since he was 7. He was seen as a role model in his home town, where he was still involved, sometimes coaching youngsters, with his local rugby club. He had played professional rugby for 12 years and had been capped 27 times by Ireland. He had recently been selected by the Lions. Rugby meant the world to him and he was devastated at being involved in something like this hearing. He considered interfering with eye a despicable act and would never do anything like that either intentionally or recklessly.

He then proceeded to give his account of the incident. He had been positioned in the maul behind O'Connell. His right arm was trapped and so not available for him to use. He heard O'Connell shout to someone to let go of his neck. In order to assist O'Connell, who appeared to be in a distressed and vulnerable position, he reached around with his left arm and tried to grab the jersey of the offending player. He failed to take hold of the jersey and the unintentional consequence of that failure was that his hand came across Cullen's face. Cullen had shouted an obscenity at him but play carried on and he rejoined the maul. After the match he had gone to Cullen to shake his hand and apologise for accidentally making contact with Cullen's face. It was common amongst professional rugby players to approach opponents in this way at the end of a game, to clear up any incidents that sometimes occur in the heat of battle.

Cross examined by Mr Duthie, the Player maintained his account of the incident and asserted that whatever happened was the unintentional consequence of his failure to do as he had intended and grab Cullen by the jersey. He also maintained his version of events when questioned by members of the Committee, claiming his hand crossed the face in an upwards movement rather than from side to side.

Under re examination by Mr Spring the Player further maintained that whatever happened was unintentional and happened as a result, in the first place, of the need to remove Cullen's grip on O'Connell.

OTHER EVIDENCE AND SUBMISSIONS

There was no further evidence pertinent to the facts of the case and the hearing proceeded to hear in turn from Mr Duthie and Mr Spring in summary of the evidence presented.

Mr Duthie submitted that the test for the Committee to adopt was the simple balance of probabilities and in support of that proposition he referred to the 2008 House of Lords case *In re B (Children) (FC)*. He then addressed the question of the accused's mental state. In order to find the Player was guilty of foul play there was no requirement to find that the act was intentional. If he was reckless, or even merely careless, it would still be a foul under the Laws of the Game. In dealing with the evidence, Mr Duthie said the video clips and the statement of Cullen spoke for themselves. The main question, in his view, for the Committee to determine was whether or not there was contact with the eye or eye area. He referred to Professor O'Keefe's evidence and urged that the definition of "eye area" put forward by him was not the appropriate rugby definition. Mr. Duthie further asserted that whatever Professor O'Keefe's qualifications he was not able to offer an expert's view on the level of force exerted. He also could not have seen enough of Cullen in the game after the incident to assess what reaction Cullen may have made. Mr O'Connell's evidence did not advance the position in relation to the facts of what had happened and the Player's assertion that he had grabbed at Cullen's jersey was a matter of fact for the Committee to determine.

Mr. Spring, summing up for the Player, repeated what he had said earlier about weighing the balance of probabilities in a more serious case more in favour of the accused. Turning to the

incident, he said it was something that happened in seconds. In real time what had happened was barely discernable. There was a danger, in looking at slow motion, of a distorted view of the incident. What had happened was that the Player, in an understandable effort to help a colleague in trouble, had grabbed at a jersey and that had led unintentionally to the contact with Cullen's face. However, was there contact with the eye or eye area? Mr Spring asked the Committee to consider the lack of reaction of other Leinster players, untypical if it was a serious incident. He referred to the definition of "eye area" and asserted the definition put forward by Professor O'Keefe was correct. If not where on the body would the definition end? Mr Spring reminded the Committee of the evidence of Professor O'Keefe. There may have been contact with the face but not, in Mr Spring's view of the evidence, contact with the eye or eye area. Mr Spring again weighed the balance of probabilities and said the balance was in favour of the Player. He urged the correct decision would be to find that there was no contact with the eye or eye area or, if there was such contact, it was wholly accidental.

The Committee was handed testimonials from Declan Kidney and Simon Easterby before the parties left the hearing room to allow the Committee to deliberate in private.

DECISION

The Committee considered all the evidence it had seen and heard. The Committee also considered the submissions made to it about the correct approach to the balance of probabilities test. In doing so it referred to the cases of Haskell and James and Tincu. Having considered both approaches the Committee found, whichever approach it applied, on the balance of probabilities as follows. Paul O'Connell, in the maul referred to in the evidence, was in a position in which he needed assistance from a fellow player to free him from the hold of Leo Cullen. The Player attempted to give that assistance. First, he tried to remove one of Cullen's arms. That failed. He then, with his left hand, took hold of Cullen's face on its right hand side and pulled it towards the

Player. The little finger was towards the chin end of the face, the index finger alongside the right eye and the thumb along the forehead. This made Cullen release O'Connell. Any contact with Cullen's jersey was coincidental to the Player's intended action. The pull referred to was made with some force. The Committee did not conclude there was direct contact with the eye and in arriving at the conclusion took note of Professor O'Keefe's evidence about the reaction of Cullen as well as Cullen's own evidence in which he himself refers to his face being pulled and says that he suffered no injury. The Committee agreed with Professor O'Keefe when ^{he}/was questioned by Mr Spring said that there was significant force exerted in the pull to the face. In his evidence, Professor O'Keefe pointed out the wrinkling, under the force of the Player's hand, of the skin to the right of Cullen's eye. Professor O'Keefe said this was outside the area of the eye. However the narrow (even the bridge of the nose, according to his evidence, would be excluded) definition of that term put forward by Professor O'Keefe is not a definition the Committee felt bound to adopt in dealing with its usage in the world of rugby. On the contrary the Committee was firmly of the view that at least the index finger of the Player's left hand was perilously close to the right eye of Cullen and squarely within what Rugby would and should regard as the area of the eye. The slightest slip of the Player's left hand, under the acknowledged significant force, and the finger would not only have been within Professor O'Keefe's definition of eye area but in the eye itself.

For these reasons the Committee was unanimously of the view that the Player had made contact with the area of Cullen's eye and that the contact was not accidental. The Player had contravened Law 10 (4) (k) of the Laws of the Game and the Citing Complaint should be upheld.

SANCTION

The hearing was reconvened and the Chairman delivered the Committee's decision. He invited the parties to deal with the question of sanction and to do so by reference to the relevant parts of the Regulations.

Mr Duthie had little he wished to add. He pointed out the range of entry points set out in Appendix 3 to the Regulations and suggested reference to the cases involving the players Hartley and Bergamasco might prove helpful to the Committee. In the light of the forthcoming tour of the British & Irish Lions (when two matches would be played in each week) he also referred to a case involving the player Danny Grewcock in which the question of more than one game per week was considered and the IRB Regulations relating to 7 a side tournaments when a number of games might be played on the same day.

Mr Spring addressed the Committee by reference to Regulation 6.7.32 of the Regulations and urged it to consider the appropriate entry point to be Lower End. He said there was no intention to target the eye or eye area, no effect either on the game or the victim and the incident happened in the briefest of moments. He submitted that the Committee should ignore the Player's previous record which showed three previous suspensions (2 weeks for striking an opponent in 1998, 6 weeks for stamping in 2006 and 3 weeks for stamping in 2008) because he not been involved in anything similar to the current offence. He further urged the Committee to find there were exceptional circumstances that should allow the Committee to reduce any period of suspension. He pointed in particular to the fact that the Player's actions were in response to a call for help from a fellow player in considerable distress. The Player now found himself in a dreadful position and a long suspension would be a catastrophe for him. Mr Spring said that the Player had not played for Munster since the incident so the Committee should consider any period of suspension should start from the date of the match. He had, in effect, been suspended by Munster

but nothing was made public so as not to prejudice the outcome of today's hearing. There was, however, nothing to produce to verify this.

Mr Duthie made an application for costs on behalf of ERC which Mr. Spring did not oppose following which the parties again left the hearing room so that the Committee could consider in private the appropriate sanction.

The Committee considered sanction, as it is required to do, by reference sequentially to the appropriate provisions of the Regulations. First it considered Regulation 6.7.32 and made the following findings:

6.7.32 (a) : the placing of the Player's hand on Cullen's face was intentional but the Committee accepted there was no deliberate intention to target the eye;

(b) : having intentionally placed his hand on Cullen's face the Player was reckless as to whether it was in the eye or area of the eye;

6.7.32 (c1) : the action was carried out with fingers bent and with the hand in a powerful position

(c2) : there was no provocation aimed at the Player or any question that he was defending himself. However in the light of Mr. O'Connell's evidence the Committee felt that such credit as might be available under this sub clause should be available to the Player;

6.7.32 (d) : there was no effect on the victim beyond what he said in his statement;

6.7.32 (e) : there was no effect on the game

6.7.32 (f) : the victim was in a vulnerable position ;

6.7.32 (g) : the level of participation was full but there was no premeditation in that the Player's actions were a swift and instantaneous response to the situation involving Mr. O'Connell

6.7.32 (h) : the act was completed;

6.7.32 (i) : there were no other relevant features.

In the light of the foregoing the Committee seriously considered mid range as the appropriate entry point. However the Committee accepted there was no intent to target the eye. Further the Committee felt it should have regard to what it considered unusual features of this case. First, on his testimony, Mr. Connell was in great distress and , however misguided, the Player's actions were designed to rescue him from peril. Second, the victim player suffered no injury and there was no other effect on him whatsoever. He said that after the incident he forgot all about it.

In the circumstances the Committee adjudged the Lower End entry point to be the appropriate level. This represents a period of suspension of 12 weeks.

The Committee then moved to consider aggravating circumstances as required by Regulation 6.7.34. The Player had apologised to the victim as he left the field. On the other hand he had come to today's hearing to contest the citing complaint. However, the Committee was prepared to overlook this, understanding that because of his Lions selection the Player may have thought, or been advised, that he had no alternative. There were no other off field aggravating circumstances but the Committee was not minded to ignore the Player's disciplinary record except for the offence in 1998. The Committee was firmly of the view that this type of offending requires deterrent. Accordingly the Committee decided two weeks suspension should be added to reflect these aggravating features.

The Committee then addressed the potential mitigating factors by reference to Regulation 6.7.35 .

Considering sub clauses (a) and (e) which, in the Committee's view, in this case, were linked, the Player apologised on the field of play and appeared horrified to be implicated in a 'gouging' (and

the word 'gouging' is used here to emphasise the point in favour of the Player) allegation. However he had come to the hearing to contest the citing complaint. The two parts of this ambiguity, in the Committee's estimation, cancelled each other out.

The Player does not have an exemplary record but the Committee was impressed by the character testimony from Paul O'Connell, Declan Kidney and Simon Easterby. Further, the members of the Committee are imbued within the Rugby community and, individually, were aware of the regard in which the Player is held in the Rugby world. The Committee was particularly impressed by the Player's voluntary involvement with his local Club in Tipperary. Consequently, under sub clause (b), despite the Player's record, the Committee readily agreed to consider the Player to be of good character.

With regard to sub clause (c), the Player is old enough and experienced enough to have known better and not committed the act that led to the citing . This observation, with regard to the level of suspension to be imposed, is counterbalanced, with reference to sub clause (d), by the dignity with which the Player accepted the Committee's finding of guilt.

At this stage of the Committee's deliberations on the mitigating features of the case the positive and the negative were equal. This left the Committee with the need to consider sub clause (f). Previously during this hearing the Committee had deliberately and assiduously put from its collective minds the fact that the Player, at the age of 34, had been selected to tour with the British and Irish Lions. The Committee had focussed on the cited actions of the Player and strove to apply the Regulations objectively , accurately and in the spirit of Rugby. The Committee could not fail to recognise the devastation that would be felt by the Player in losing the right, for ever, in the world of Rugby, to be called "A Lion". The Committee considered this to be a sufficiently mitigating off field factor to balance the aggravating factors previously referred to. Mitigating

factors, under Regulation 6.7.35, would allow a reduction of two weeks to the length of suspension.

Taking the aggravating and mitigating elements into account, the length of suspension would be 12 weeks.

The Committee then considered Regulation 6.7.36. Under sub clause (a), the Committee had determined, as outlined above, that there were factors aggravating to the offence. Having made that determination, sub clause (b) required no consideration. In the committee's view there was no justification to reduce the period of suspension below 12 weeks.

The date upon which the suspension would end should take account of the close season, the Lion's tour itinerary and the date of Munster's first fixture of Season 2009/10.

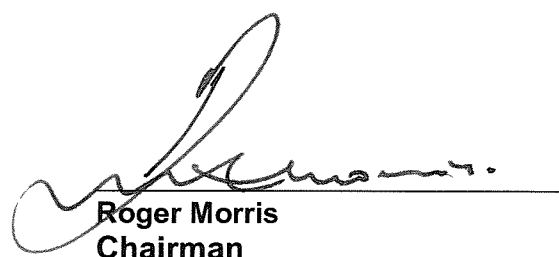
The Committee agreed unanimously, as it had done for all its decisions, that a period of suspension of 12 weeks was appropriate. The Committee also agreed that costs should be awarded against the Player and in favour of the ERC Disciplinary Officer, to include legal costs and the costs of convening the Committee .

The parties were re-convened in the hearing room and the Chairman delivered the Committee's decisions.

The Player would be suspended from any participation in Rugby Union for a period of 12 weeks . Taking account of the Lion's playing schedule, the close season and the date the Committee had been informed Munster were due to play their first fixture next season, the Player was suspended up to and including the 9th September 2009. Costs were awarded against the Player as claimed by Mr. Duthie on behalf of ERC.

The parties were reminded of their right, under the Regulations to appeal the decisions of the Committee.

There were no other matters requiring the Committee's attention and the proceedings were closed.



Roger Morris
Chairman
Discipline Committee

15th May 2009

Date