

# Decision of the Independent Disciplinary Committee

ERC

Held at Westbury Hotel, Dublin, Ireland  
Tuesday 19<sup>th</sup> July 2011 at 11:00am

In respect of

**Mr Michael Cheika** . Director of Rugby of Stade Français Paris (~~Mr Cheika~~)

And

Complaints of two allegations of misconduct during and after the 2010/2011 Amlin Challenge Cup final between Harlequins and Stade Français Paris on Friday 20<sup>th</sup> May 2011 at Cardiff City Stadium.

## THE DISCIPLINARY COMMITTEE APPOINTED TO HEAR THE CASE:

Simon Thomas (Wales) (~~Chairman~~)

Antony Davies (England)

Mark McParland (Ireland)

## Decision of the Disciplinary Committee:

Mr Cheika having admitted the two allegations of misconduct against him, the Disciplinary Committee determined as follows:-

(i) First Misconduct Complaint:-

Mr Cheika is fined " 15,000, " 7,500 of which is to be paid within 28 days of 20<sup>th</sup> July 2011 and the balance of the fine suspended until 30<sup>th</sup> June 2013 on condition that there are no further acts of misconduct in any rugby within that period.

(ii) Second Misconduct Complaint:-

Mr Cheika is fined " 5,000, " 2,500 of which is to be paid within 28 days of 20<sup>th</sup> July 2011 and the balance of the fine suspended until 30<sup>th</sup> June 2013 on condition that there are no further acts of misconduct in any rugby.

(iii) Mr Cheika shall pay ERC's reasonable and proportionate costs to be agreed or in default as assessed by the Disciplinary Committee.

## Introduction

The Disciplinary Committee 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 Amlin Challenge Cup 2010/2011 (the Participation Agreement). The Disciplinary Committee was appointed to consider the misconduct complaints (the Complaints) against Mr Cheika during and after the match played between Harlequins and Stade Français Paris on 20<sup>th</sup> May 2011 at Cardiff City Stadium in the Amlin Challenge Cup 2010/2011 (the match).

The Complaints arose after an investigation by Mr Roger O'Connor, Disciplinary Officer, ERC following reports of Mr Cheika's conduct towards the match officials and an ERC senior event management executive during and after the match.

Present at the hearing in addition to the Disciplinary Committee and Mr Cheika were the following:-

- Mr Roger O'Connor, Disciplinary Officer, ERC (Mr O'Connor)
- Mr Max Duthie, Solicitor of Bird & Bird representing Mr O'Connor (Mr Duthie).
- Mr Jamie Herbert, Solicitor, assisting Mr Duthie.
- Mr John O'Donnell SC, Counsel for Mr Cheika.
- Mr Richard Pool-Jones, Vice President of Stade Français Paris.
- In addition Mr Chris Whitaker was present for part of the hearing.

## Preliminary Matters & Procedure

At the commencement of the hearing the Chairman noted the identities of all present and informed Mr Cheika that the hearing had been convened to hear the two complaints of misconduct. The allegations which are particularised below would, if proved, be contrary to clauses 2.1, 3.2, 3.3.2, 3.3.9, 3.3.15 and 3.3.17 of the Disciplinary Rules.

It was common ground between all parties that the ERC Disciplinary Rules found in the Participation Agreement for the Amlin Challenge Cup 2010/2011 (the Disciplinary Rules and DR in the singular) were applicable to the case. Mr Cheika was bound by the Disciplinary Rules pursuant to clause 1.4.1 of the Participation Agreement which states:

The club undertakes to procure that each of its players, as well as each of its officials, directors, officers, members, employees, members of staff, contractors, agents and other representatives involved in any way in the club's participation in the Tournament is made aware of, has the opportunity to take professional advice regarding, and agrees to be bound by, to observe and to comply with, the terms and conditions+

For the sake of brevity in this Judgement the full analysis of the Participation Agreement is not repeated verbatim however clauses 1.4.2, 1.2 and clause 2.1 bind officers or members of staff of each club to the Disciplinary Rules.

The Chairman outlined the procedure to be followed to determine the matter. Mr Cheika and all present agreed to proceed on that basis.

Before the allegations of misconduct were put to Mr Cheika, it was confirmed by Mr Duthie and Mr O'Donnell that discussions had taken place between them which had resulted in certain issues and facts being agreed which would shorten the proceedings. Preliminary applications to amend the particulars of the misconduct would follow together with an application by Mr Duthie for the adducing of fresh evidence. Before proceeding to deal with these preliminary applications, the Chairman identified the relevant documentation for the purposes of the hearing. This comprised the following:-

- The letter from Professor Crerar dated June 2011 to the parties appointing the Disciplinary Committee.
- The letter of complaint from Mr O'Connor to Professor Crerar dated 13<sup>th</sup> June 2011 which sets out the allegations in detail.
- The statement of Mr Cheika in accordance with Appendix 6 section C (Standing Directions) of the Disciplinary Rules.
- Mr Duthie's reply on behalf of Mr O'Connor in response to Mr Cheika's statement.
- A document jointly prepared by the parties entitled 'Facts agreed between the Disciplinary Officer and Michael Cheika'.
- Evidence from Evan Cebenta, Tony Diprose and Paul Daniels.

All parties agreed that they had received this documentation in good time for the hearing.

## **The Allegations**

There were two allegations of misconduct by Mr Cheika. The basis of each allegation was the subject of further particulars identifying the substance of that misconduct. The first allegation had three particulars and the second had one.

### **Misconduct Number 1**

*“Mr Cheika (a) in the tunnel during the half time interval in the match, and/or (b) on or near the playing area immediately after the conclusion of the match, and/or (c) by passing a note into the match officials changing room after the conclusion of the match, made comments to and/or near the match officials that were, and/or conducted himself toward the match officials in a way that was, insulting and/or offensive and/or disparaging and/or intimidatory”.*

Mr Duthie then presented his application to amend the particulars.

Whilst the substance of this first complaint remained unaltered by the application to amend, the effect of Mr Duthie's application (which was agreed by Mr O'Donnell) was the deletion from the particulars of the allegation that Mr Cheika had used foul and abusive language directly at the referee by saying to him *“you're not f\*\*\*\*\*g protecting us”* or words to that effect. Mr Duthie explained the Disciplinary Officer would not proceed with the allegation that Mr Cheika had sworn at the referee. Instead the particulars would read that *“Mr Cheika approached the match referee at half time and said in a loud voice repeatedly “you have got to look after us mate, they have been poking us since the start of the game”, (or words to that effect)”*. Mr Duthie indicated that he further wanted to apply to amend the particulars of this first part of the first allegation of misconduct so as to refer to certain facts which had recently been agreed between the Disciplinary Officer and Mr Cheika. This additional evidence was that he, still in close proximity to the match referee and his assistant referees said to Tony Diprose, the Harlequins Academy Manager *“get out of the f\*\*\*\*\*g way you f\*\*\*\*\*g moron, I am doing my thing, you do yours. Look after your own fucking blokes and get out of my way”*, or words to that effect.

The second particulars of the first allegation of misconduct was that *Mr Cheika approached Mr Parisse (Stade number 8) on the playing area immediately after the final whistle, when Mr Parisse was trying to talk to the match referee and said “there is no point, he is incompetent”, or words to that effect.*

The third particulars to the first allegation of misconduct was that *Mr Cheika passed a note to the match officials changing room after the conclusion of the match, stating that the match referee was “too scared to face him”, or words to that effect.*

Mr Duthie stated that insofar as the disputed amendment (the exchange between Mr Cheika and Mr Diprose) was concerned an amendment was sought because it particularised the complaint more fully and would capture what he said to Mr Diprose near the match officials. Further, he stated that the comments caused or contributed to Mr Clancy taking the step of seeking additional security at the conclusion of the match which would have prevented Mr Cheika from having any contact with him. Mr Duthie reminded the Disciplinary Committee that DR 8.8 was the rule under which the Committee was entitled to amend the charge.

DR 8.8 reads as follows *“Disciplinary Committees and Appeal Committees, prior to or at any stage during a hearing, may amend the offence for which the club, person or player was made the subject of a misconduct complaint.....unless having regard to the circumstances of the case, such amendment cannot be made without causing injustice”*.

Mr O'Donnell addressed the Committee objecting to this particular amendment. Firstly he said that the letter of complaint by Mr O'Connor to Professor Crerar dated 13<sup>th</sup> June 2011 had given an assurance that Mr Cheika's conduct in connection with Mr Diprose at half time of the match would not be the subject of any misconduct complaint. He further stated that it was inappropriate for the Disciplinary Officer to use the facts agreed arising out of the discussions leading up to the hearing to amend the charge to the detriment of Mr Cheika. Furthermore, the gravamen of the misconduct allegation was the approaching of the match officials as opposed to Mr Diprose.

Mr Duthie replied that no injustice would be caused by allowing the amendment. The facts which he sought to add to the particulars were agreed. It was important to draw a distinction between amending the actual allegation of misconduct (which the Disciplinary Officer was not seeking to do) as opposed to amplifying the particulars of the conduct itself.

The Disciplinary Committee retired in private to consider the application. DR 8.8. gave a discretion to permit the amendment unless any injustice would be caused to Mr Cheika. The Disciplinary Committee did not agree that Mr O'Connor's letter to Professor Crerar was an assurance to Mr Cheika that such an amendment to the particulars would not be made in that regard. The letter was not addressed to Mr Cheika. However, the Disciplinary Committee concluded that the application to amend the particulars of the Complaint was made very late in the day and that there was no good reason for such a late amendment particularly where the allegations of the confrontation between Mr Diprose and Mr Cheika and the use of Mr Cheika's alleged foul language towards him (and in the presence of the referee) had been identified in the early part of June 2011. Furthermore, the Disciplinary Committee concluded that on the basis that the facts underlying Mr Cheika's conduct in relation to the first limb of the first misconduct had been agreed in writing between he and the Disciplinary Officer, the amplification of the particulars in that regard did not add anything to the seriousness of the charge so as to require an amendment at such a late stage. The Disciplinary Committee communicated its decision to refuse the amendment.

## Misconduct Number 2

Insofar as the second misconduct complaint was concerned, this application to amend was agreed between the parties so that it read in its amended form:-

*“After the conclusion of the match Mr Cheika made comments to an employee of ERC that were insulting and/or offensive and/or disparaging and/or intimidatory”*.

The particulars of the said misconduct complaint were that:-

*“After the conclusion of the match Mr Cheika approached Mr Paul Daniels, an ERC senior event management executive and, directed at Mr Daniels extremely abusive language that displayed a disrespect for Mr Daniels and ERC as a whole”.*

The Disciplinary Committee granted this agreed application.

## **Plea**

Mr Cheika was asked how he intended to plead. He replied that he pleaded guilty to both amended allegations of misconduct.

## **Further Preliminary Issue**

Mr Duthie on behalf of Mr O'Connor indicated that he now had a further application to make to adduce fresh evidence. The application would be in three parts. He intended to make the application in relation to the first two at this stage but would reserve his application in relation to the third element as the necessity of that application would depend upon Mr Cheika's evidence in due course.

The first part related to letters from Messrs Owen Doyle, Paddy O'Brien and Ed Morrison who are head of refereeing for IRFU, IRB and RFU respectively. The purpose of adducing this evidence was to demonstrate that the match referee's conduct during the final moments of the match by requiring Stade Français to use the ball at the base of the scrum was a correct interpretation of the Laws of Rugby Union and in accordance with common policy. It was explained that if it were suggested by Mr Cheika that the referee had dealt with the final moments of the game incorrectly then they would wish to adduce evidence to prove otherwise. The Disciplinary Committee was reminded that where a scrum has turned 90° from its start position before the ball is released, the referee is required to re-set the scrum and the team in possession of the ball at that earlier scrum forfeits it in favour of the opposing team.

The second piece of fresh evidence was a newspaper report from the French Journal *Midi Olympique* of 23<sup>rd</sup> May 2011 in which Mr Cheika had given an interview that made reference to the fact that he had passed a note to the referee about his decision making at the end of the match.

Mr Duthie accepted that these two elements of additional evidence were not of great significance to the allegations of misconduct.

In reply, Mr O'Donnell stated that from Mr Cheika's perspective the correctness of Mr Clancy's refereeing at the particular time was irrelevant. It was inappropriate, he said, to debate whether the

referee was correct or not. If that were relevant then Mr Cheika should have been given more notice of this application so that expert evidence on the matter could be provided. The Chairman put to Mr O'Donnell that if his position was that the correctness of the referee was not a factor which could be capable of aggravating Mr Cheika's conduct then he would have to accept that the Committee would not entertain any criticism of the referee by Mr Cheika as a mitigating factor.

Insofar as the newspaper report was concerned, Mr O'Donnell argued that no charge or complaint had been made by the Disciplinary Officer arising out of it and it had no probative value to the facts surrounding the misconduct. Further, this alleged evidence had been disclosed very late in the day.

The Chairman asked Mr Duthie when this article had come to the attention of ERC. Mr Duthie was unable to say with certainty but stated that it would have been a couple of weeks ago. However, he added as far as the Disciplinary Rules were concerned the serving of the evidence was not late as it had been served the Friday before the hearing. Only 72 hours notice was required for DR 6.7.2.

The Disciplinary Committee retired to consider their decision.

Insofar as the first application was concerned, the Disciplinary Committee was firmly of the view that in the circumstances of this case it would be wholly inappropriate to allow any party to call into question the conduct of the referee on the pitch as that had no bearing whatsoever on the seriousness of Mr Cheika's conduct. Mr Cheika's representative had confirmed that it was not relevant and he could therefore not seek to justify anything that Mr Cheika may have done by reference to the refereeing. In this game the Disciplinary Committee had firmly in mind the laws of the game and considered it would be a dangerous precedent to allow misconduct allegations of this type to shift the focus to any extent upon the match officials and their decision. The application to allow this evidence was therefore disallowed.

Insofar as the second part was concerned, although Disciplinary Rule 6.7.2 provided that evidence should be served not less than 72 hours before the disciplinary hearing, it also provided that such evidence should be served upon the Disciplinary Committee itself. Mr Duthie had accepted that the newspaper report was of little relevance. The Committee considered that if the report had been inappropriately critical of the referee in such a way as to make it relevant then that of itself could have, and perhaps should have, formed a separate misconduct complaint. On the basis that its content was not apparently of any particular relevance and that Mr Cheika had admitted writing a note (the contents of which were not disputed) the Disciplinary Committee refused to admit it.

## **Evidence Supporting the Complainant**

Before the evidence was presented Mr O'Connor made short submissions as to the importance of this case. He explained that the type of misconduct by Mr Cheika and the impact it had upon the match referee was something which ERC took very seriously as a policy issue. Whilst he accepted that Mr

Cheika is a passionate rugby man with a clear desire to win and that the period was an emotional time for him and for his club he had on this day ~~clearly~~ ~~crossed the line~~. Respect for match officials is the cornerstone of the game of rugby and not to deal with transgressions of this type of behaviour would allow the jealously guarded core values of rugby union to descend slippery slope. Mr Clancy was an experienced referee and for him to seek refuge from Mr Cheika was unprecedented as far as ERC were aware. The second allegation of misconduct had occurred against a respected employee of ERC who was merely going about his duties for the organisation and the tournament. The Participation Agreement requires those involved in the Heineken Cup to adhere to high standards of behaviour at all times.

Having heard from Mr O'Connor, Mr Duthie referred to the other evidence in support of the complaints.

The Disciplinary Committee noted the terms of the agreed facts as between Mr Cheika and Mr O'Connor. It is helpful at this stage to set them out in particulars (a) to (h) below, and these are as follows:-

### **Agreed Facts**

- (a) In the tunnel area during the half time interval in the Amlin Challenge Cup Final between Stade Français Paris (Stade Français) and Harlequins that took place at the Cardiff City Stadium on Friday 20<sup>th</sup> May 2011 (the match), Mr Cheika approached the match referee, George Clancy.
- (b) In a loud voice and repeatedly, Mr Cheika said to Mr Clancy: ~~you~~ ~~have~~ ~~got~~ ~~to~~ ~~look~~ ~~after~~ ~~us~~ ~~mate~~, they have been poking us since the start of the game+ (or words to that effect). Mr Cheika appeared to be angry, but did not swear at Mr Clancy.
- (c) Immediately after this exchange with Mr Clancy, Mr Cheika, still in close proximity to Mr Clancy and his other referees, Simon McDowell and Peter Fitzgibbon (together, the ~~match officials~~) said to Tony Diprose, the Harlequins Academy Manager: ~~Get~~ ~~out~~ ~~of~~ ~~the~~ ~~fucking~~ ~~way~~ ~~you~~ ~~fucking~~ ~~moron~~. I am doing my thing, you do yours. Look after your own fucking bloke and get out of my way+(or words to that effect).
- (d) As a result of these exchanges Mr Clancy was worried that Mr Cheika would try to confront him again at the end of the match. Mr Clancy therefore asked Evan Cebenka, ERC Events and Operations Director, to take steps to ensure that Mr Cheika could not come into contact with Mr Clancy at full time. Accordingly, shortly after the second half had begun, Mr Cebenka asked the stadium manager to ensure that, once the match had concluded, two stewards would accompany the match officials while they collected their medals and then escort them back to their changing room.

## Full Time

- (e) Immediately after the conclusion of the match, while the Stade Français captain, Sergio Parisse was speaking to the match officials, Mr Cheika approached Mr Parrise and said, in close proximity to the match officials and in a loud voice enough that it could clearly be heard by them (and picked up on Mr Clancy's microphone): "You're wasting your time. I have seen it all before. He's incompetent, forget about it+(or words to that effect). The reference to "he" was to Mr Clancy. Mr Cheika appeared to be angry, but he did not swear at the match officials.
- (f) As a result of this exchange (and the exchange between Mr Cheika and Mr Clancy during the half time interval), Mr Clancy remained worried that Mr Cheika would try to confront him again.
- (g) Approximately 10 minutes after the conclusion of the match, when the match officials had returned to their changing room, Mr Cheika went to the match officials' changing room to ask for an explanation from Mr Clancy as to his refereeing of the final scrum of the match, and asked the security guard on the door if Mr Clancy would speak to him. Mr Cheika then returned to the Stade Français changing room. Five minutes later the security guard knocked on the Stade Français changing room door and said to Mr Cheika that Mr Clancy would not see him that he was "too frightened" to do so. Mr Cheika then asked the security guard to pass Mr Clancy a note, handwritten by Mr Cheika, in which Mr Cheika asked for an explanation from Mr Clancy as to his refereeing of the final scrum of the match. In that note, Mr Cheika referred to Mr Clancy as being "too frightened to speak to Mr Cheika+(or words to that effect).

## Misconduct Number 2 . Mr Daniels

- (h) In respect of the second misconduct complaint, shortly after the conclusion of the match, Paul Daniels, an ERC Senior Event Management Executive was assisting with the organisation of the podium presentations. In doing so, Mr Daniels was asking a member of the Stade Français' players not to leave the playing area but rather to wait in a designated area prior to collecting their runners up medals. At that time Mr Cheika approached Mr Daniels and directed at Mr Daniels extremely abusive language that displayed a disrespect for Mr Daniels and ERC as a whole.

## **Other Evidence**

In addition to the agreed statement of facts set out above, Mr Duthie referred the Committee to a number of other written statements which had been circulated to Mr Cheika and the Disciplinary Committee. These comprised the evidence of Evan Cebenka, Tony Diprose and the statement of Paul Daniels. There was also the written statement of Mr George Clancy. The Disciplinary Officer,

however did not seek to call these individuals to give live evidence and Mr O'Donnell confirmed that these were agreed in so far as they were consistent with the 'Agreed Facts'.

The other evidence which was adduced before the Committee included a number of video clips.

These showed the following:-

- At the end of the first half the players and match officials return to the tunnel. When in the tunnel, whilst there is no picture, the referee's microphone picks up sound of Mr Cheika complaining to the referee as follows 'It's been on since the start of the game. They have been poking us since the start of the game.' There is then a pause and Mr Cheika can then be heard using expletives in his exchange with Mr Diprose.
- The second piece of video evidence shows the final phases of the match where Mr Clancy directs Sergio Parrise to use the ball at the base of a scrum. The ball is subsequently knocked forward when it is passed amongst the backs. The referee blows the final whistle and Harlequins win. The referee's microphone can then pick up Sergio Parrise complaining to the referee about his decision to compel Mr Parrise to use the ball rather than keep it in the scrum.
- Further video footage showed Mr Cheika immediately before the conclusion of the match. He is seen coming down from the grandstand onto pitch side and a TV cameraman appears to direct his camera at his face when the cameraman is close to Mr Cheika. Mr Cheika can be heard asking the cameraman to leave him alone however the cameraman continues to follow Mr Cheika. Mr Cheika then walks back and behind a row of other team and match officials in what appears to be an attempt to walk away from the cameraman who follows him and continues to direct his camera towards him.
- The fourth clip shows Mr Cheika walking past security officials after the final whistle in the direction of Mr Clancy who is talking to Mr Parrise and he stands to the side of and just behind Mr Parrise who is facing Mr Clancy. Mr Cheika can be heard to say 'I have seen it all before. He is incompetent' as he pulls Mr Parrise away.
- There was further evidence of Mr Cheika's interaction with the TV cameraman at the conclusion of the match and his heated discussion with other ERC officials and an interviewer from Sky TV immediately before he gives a live interview to the broadcaster. Mr Cheika is in a highly charged state and complains about his treatment by the broadcaster. However, during the course of his live broadcast which was aired on TV Mr Cheika did not behave in an insulting or derogatory way towards the referee or match officials.

At the conclusion of the showing of the video evidence Mr Duthie indicated that there was one further piece of evidence which the Disciplinary Officer may wish to seek to reply upon (and which may be subject to a further application) but that would depend upon Mr Cheika's evidence.

## **Mr Cheika's Evidence**

Mr Cheika was asked by the Chairman to explain his version of events in respect of each of the allegations of misconduct.

The first allegation of misconduct was made up of three parts. The first aspect related to Mr Cheika's conduct at or near the match officials in the tunnel during half time. He said that there had been problems during the game. He said that he was not conscious of any poor refereeing per se. He said that he certainly did not want to intimidate the referee when he spoke to him but accepts in hindsight that it was naïve and silly to try and speak to him. He said that in France it is different in that team officials are able to have a dialogue with the referee at half time but realised that with ERC it is not possible to do so. He said that when he had spoken to Mr Clancy, Mr Clancy had told him to move on. When Mr Clancy stopped walking he said he turned back towards him. He denied that he was attempting in some way to insult the referee. He had said that the other side had been 'provoking us'. He couldn't understand why he had used that word because what he meant to say was that they had been 'provoking us' in incidents off the ball, probably in the hope that some of his players would be penalised for retaliating. Although there had been some pushing and shoving between he and Tony Diprose he said that this was because Mr Diprose had dropped his shoulder and bumped into him when Mr Diprose was trying to stop him from communicating with the referee. He said that his relationship with the match officials during the match had been perfectly good. He said that after half time he had had a 'bit of a laugh' with Alan Lewis, the match fourth official whom he had come to know quite well whilst he was coaching in Ireland. He said, more generally, that since 2005 when his conduct towards match referees had first been highlighted in a match between Lenster and Munster he acted in a more restrained manner towards match officials. After that particular match he had written a letter of apology to the referee. He described himself as honest and straight. There was no hard feelings towards anybody at the end of the match including to Mr Diprose, because he had congratulated him on their victory. He said that he was angry about the fact that the Harlequins players were getting away with their provocation and was not angry towards the referee. However insofar as the referee's evidence was concerned, he acknowledged that the referee was justified in asking that he not approach him at the conclusion of the match.

Insofar as the second particular of the first misconduct was concerned, that of the comment in the presence of the referee that he had been 'incompetent', Mr Cheika stated that shortly before the final whistle because of problems in communicating from the stand over the radio system with Chris Whitaker the assistant coach of Stade Français he had to leave the stand and come down to pitch

side in order to give an instruction that the ball should be kept at the base of the scrum so that pressure could be brought upon Harlequins. Because of the way in which the cameraman invaded his space and would not leave him alone he accepted that he was uptight that was what got him agitated. At the end of the match he could see that Sergio Parrise appeared to be arguing with the referee and realised that this was inappropriate. He hustled past the security guards in order to extricate Mr Parrise. He acknowledged that his words in the presence of the referee stating that the referee was ~~incompetent~~ was evidence of his own lack of discipline. He said it was inappropriate and that his comment was cynical. He sought, however, to put in context the way in that he was feeling at the time. The Stade Français players were desperate to play in the Heineken Cup. Fifteen players had been ~~let go~~ during the season and the failure of the club to achieve a place in the Heineken Cup (which would have occurred had they won the match) was likely to have an effect upon the remaining players and the club itself. He said that he had put in place a strong system of discipline at the club since he had joined it but again acknowledged his own lack of discipline at that point.

He described this lack of discipline at that time was momentary because from the video evidence one can see him going up to Connor O'Shea (Harlequins Director of Rugby) and congratulating him. He acknowledged that he did not think the referee had cost his team the game. It was the team performance which let the club down. He described how the team had had plenty of opportunities to score more points than it did but it was its lack of composure which was to blame. He readily acknowledged that he had no criticism of the referee.

The third element to the first misconduct count related to the note which had been passed to the security guard and then to Mr Clancy. He said that after he had gone back to his team and despite the loss had told them that he had been proud of them. The referee's room was opposite the Stade Français team changing room and he went out and asked a security guard if Mr Clancy would speak to him. The security guard came back and said that he would not. About 5 minutes later he went back to ask the security guard again if Mr Clancy would speak to him. This time he waited for the security guard to return. When he did he said that the referee was refusing and that he was ~~too~~ frightened+. Mr Cheika said that he was not being confrontational in any way. The security guard himself seemed quite relaxed about it. Mr Cheika thought to himself ~~how can he be too frightened?~~+. Mr Cheika therefore returned to the changing room and wrote out the note which read along the lines of ~~Seeing as you're~~ too frightened to see me, why did you make the half back use the ball?+. No reply to this note was forthcoming and Mr Cheika felt on reflection that it was better to stay in the dressing room until the referee had left both that area and the match function before going upstairs to rejoin his team. He accepts that writing the note was foolish.

Upon questioning from Mr McParland as to whether he has since written to Mr Clancy to apologise, Mr Cheika stated that he hadn't done so but perhaps he should have because he had let himself down. The point was also made by Mr O'Donnell on behalf of Mr Cheika that it might have been

difficult for him to have written a letter of apology in circumstances where Mr Clancy had accused him in his statement of swearing at him when in fact this is now accepted by all parties this was not the case.

Mr Antony Davies asked Mr Cheika why he felt the referee considered it necessary to require the security guards to protect him. Mr Cheika stated that he could not speak for the referee but admitted that he had established a reputation as being very direct and had an image as being very passionate. As for physical contact there was no question that this would ever arise.

Insofar as the second allegation of misconduct was concerned, he could not recall anything about that. He did not even know who Mr Paul Daniels was and even now, looking on the video when Mr Daniels was identified he could not recall him.

Mr Cheika volunteered details of his previous record again acknowledging an incident in 2005 in respect of which he was spoken to privately by Mr Brian McLaughlin. He had written a letter of apology and had also made a donation of " 2,500 to a charity.

He also referred to another incident which had occurred this season in France. He was abusive to match officials and was banned for 30 days from the touchline.

When asked by Mr O'Donnell why he had behaved in the way that he had after the match he said that he was so upset mainly because of the way in which he felt he had been treated by the cameraman and the disappointment and implications to his team and his players at not being able to play in the Heineken Cup next season. He denied any disrespect to ERC and said that he was desperate to play in the Heineken Cup. He described that Stade Français circumstances were particularly precarious at the time. No money was available from the former sponsors and a new investor had come along and it had appeared that the club would have financial security. On the strength of this Mr Cheika had begun recruiting new players. However, doubts then crept in about the financial support which could be provided. He felt personal responsibility that a number of players who had brought their families to Paris may have their contracts terminated and this added to his anxiety at the conclusion of the match where his team had failed to secure a place in the Heineken Cup next year.

Mr Duthie then cross examined Mr Cheika and asked why he had felt it necessary to have raised his voice towards Mr Clancy in the tunnel. Mr Cheika said that there were a lot of people in the tunnel and he would not have got that close to the referee. He had repeated his question to Mr Clancy because he did not think that Mr Clancy had heard him but in retrospect he realised that Mr Clancy was probably trying to ignore him.

He stated that his comments to Mr Diprose had occurred after Mr Diprose had ~~body~~ checked him. Mr Cheika pointed out that you could hear him (Cheika) say on the recording ~~let me go~~ as Mr Diprose had hold of him or was blocking him.

Mr Cheika was asked whether he accepted that Mr Clancy was frightened. Mr Cheika stated that he did not know how he felt. In Mr Cheika's previous dealings with him, Mr Clancy had come across as an accomplished referee and described him as calm. Mr Cheika was asked whether he had heard on any previous occasion of a referee calling for security. Mr Cheika said that he had not.

In relation to his comment of Mr Clancy being ~~incompetent~~ he said that this was said out of frustration. In relation to his comment in the post match interview with Sky: ~~Big game. Big referee~~ he acknowledged that he was still angry and annoyed but that it was the camera incident which had got to him.

Turning to the third element of the first misconduct complaint he again acknowledged that it was silly of him to have sent the note to Mr Clancy. He acknowledged and understood that Mr Clancy did not want to have any contact with him after the match but said that the sending of the note did not give him a ~~power trip~~.

In relation to his previous record other than the incidents in 2005 and 2011 there had been no other findings of any inappropriate conduct towards or near match officials.

Under questioning from Mr McParland Mr Cheika was asked about his interview with the television reporter Tyrone Howe. Mr Cheika confirmed that this interview had taken place before the note was written. He said that he had written the note around 10 minutes after the conclusion of the match.

There was no re-examination by Mr O'Donnell.

## **Other Evidence on Behalf of Mr Cheika**

Mr Chris Whitaker, the Assistance Coach for Stade Français Paris was called and confirmed his rugby credentials in that he had played for the Australian national team and had known Mr Cheika since 1994 and had captained Australia once. He had played number 9 at Lenster for three years and was also on the staff there. He then transferred to Stade Français. He described Mr Cheika as being a very passionate rugby man who loves to win. He described how Mr Cheika had matured over the last 4 or 5 seasons. Five or six years ago he was hot headed but that was no longer the case. He described Mr Cheika as very widely respected by those who work with him and is held in high regard.

Mr Richard Pool-Jones, Vice President of Stade Français Paris, also gave character evidence on behalf of Mr Cheika. He described the context in which these incidents occurred and the financial

turbulence which the club had been suffering from. The club had had to raise " 10,000,000 in 6 days to maintain its elite status. He said that contrary to what had been alleged to the effect that Mr Cheika or Stade Français did not hold the Heineken Cup and ERC in high esteem he said that ERC is an institution which the club aspires to. When he heard about ERC's concerns about any deterioration in the high core values and standards prevalent in rugby, he and the club were as keen as any to avoid this. He said that he had only known Mr Cheika for a relatively short period of time but from what he has seen of him during his employment he was able to speak very highly of him. He also made the point that he as a representative of Stade Français is determined to build a strong relationship with ERC.

A number of written character references were handed up to the Committee on behalf of Mr Cheika from the following:-

- Brian O'Driscoll of Ireland and the British Lions.
- Michael Dawson of Lenster Rugby.
- Sergio Parrise of Italy.
- Felipe Contepomi of Argentina.
- Rocky Elsom, Australian Team Captain.
- Shane Horgan of Ireland and British and Irish Lions.
- Alan Gaffney the backs coach of the Ireland National Team.

Each of these documents spoke of Mr Cheika's passion and integrity.

### **Submissions as to Sanction**

Mr Duthie reminded the Committee that the provisions under the Disciplinary Rules as to the sanctions can be found at DR 6.7.29 with the options in this particular case ranging from a caution, reprimand and/or warning as to future conduct, a fine and expulsion from the tournament and/or a ban from future competitions organised by ERC or suspension from being involved in rugby.

Mr Duthie stated that ERC did not intend to propose or recommend a particular sanction to the Disciplinary Committee in this case (as it has done in previous cases). He indicated, however, that the Committee might wish to adopt the approach to the question of sanction in accordance with the way in which disciplinary proceedings in rugby deal with dangerous and foul play under Law 10 by firstly identifying the seriousness of the act(s) themselves in terms of low entry, middle entry or top entry before then considering any aggravating and mitigating factors. Mr Duthie referred to a number of cases from the Rugby Football Union Disciplinary Panel together with a case from the New Zealand Rugby Union and two ERC cases.

The cases which were produced were largely concerned with verbal abuse of referees many of which involved foul and abusive language directly at the referee. The sanctions ranged from fines to suspensions from rugby.

The case involving the most severe fine involved Brendan Venter of Saracens, an ERC case dated 11<sup>th</sup> November 2010 in which he had made a number of comments to the media in which he attacked both the tournament and the referee. In that particular case he had been fined "25,000," 15,000 of which had been suspended on condition that he commits no further act of misconduct.

In closing his submissions as to sanction Mr Duthie referred to the fact that Mr Cheika had previously been disciplined for verbal abuse of match officials and this had already been mentioned by Mr Cheika himself in his evidence. That should be considered as an aggravating factor. Mr Duthie also asked the Committee to consider that some thought needed to be given as to any suspension which the Disciplinary Committee may wish to impose. Although the Disciplinary Rules in respect of which Mr Cheika is bound permit the imposition of a suspension from all rugby, including coaching, some rugby jurisdictions may not be prepared to enforce such a suspension in domestic competitions. In it was questionable whether LNR and FFR would enforce the suspension within their domestic tournament. It would, however, be possible to suspend Mr Cheika from ERC games only.

Mr Duthie also indicated that it has been agreed between Mr Cheika and ERC, that Mr Cheika would pay ERC's reasonable costs of these proceedings.

Mr O'Donnell made submissions as to sanction on behalf of Mr Cheika. He sought to draw a distinction between the precedents which had been provided by Mr Duthie where those cases involved verbal abuse of match officials and this case. He submitted that Mr Cheika had not used foul and abusive language to match officials. The only time that he had spoken directly to the referee was in the tunnel when he had asked for the referee to protect his team from the provocation or "poking" that his team had allegedly been subjected to by Harlequins during the first half of the match. Insofar as his conduct generally was concerned it was accepted by Mr Cheika that he should not have acted as he did. Certainly there had been no intention that Mr Clancy should feel threatened in any way and he did not intend to intimidate him. Mr O'Donnell submitted that Mr Cheika's inappropriate behaviour had been momentary and transitory and had not been pre-meditated. Furthermore unlike the Brendan Venter case Mr Cheika's conduct had not been widely publicly reported. Insofar as the second allegation of misconduct were concerned the remarks to the ERC official were not personally motivated and it was not a "studied insult". He asked the Committee to appreciate how the cameraman's actions were provocative and that following the end of the match as a consequence of this Mr Cheika had vented his anger generally.

Insofar as the implied criticism that perhaps Mr Cheika should have written to the referee to apologise that was complicated because of the allegation which had been made by Mr Clancy about direct

swearing which was now not being proceeded with. Whilst an apology may have been desirable in the circumstances Mr O'Donnell asked the panel not to hold it against Mr Cheika.

Insofar as the imposition of sanction was concerned, Mr O'Donnell invited the panel to take into account Disciplinary Rule 6.7.42 which states %n any case where there has been multiple offending, the Disciplinary Committee can order that sanctions run either concurrently or consecutively, provided that the overall sanction is proportionate to the level of overall offending in the circumstances+.

Mr O'Donnell also drew a distinction between the conduct of Mr Venter in the November 2010 Judgement which had contained very significant criticism of the referee and which had achieved a significant breadth of coverage.

In his submission a fine was most appropriate in this case. He further added that a suspension would not be appropriate because that would in effect penalise the players who play for him and that it would be disproportionate. He also made reference to the fact that any suspension would be inappropriate as it would restrict Mr Cheika's ability to carry out his livelihood.

The Disciplinary Chairman invited Mr Cheika to give information about his financial circumstances if he so wanted but no evidence was forthcoming in that regard. The Disciplinary Committee also took details of the forthcoming pattern of games which Stade Français had.

Due to the pressure of time (the case having started later than originally anticipated) the Disciplinary Committee retired for a relatively short period before adjourning until the following morning to deliver its decision as to sanction which would be communicated by email to the parties.

## **Sanction**

The Disciplinary Committee took into account all of the evidence and the submissions as to sanction.

The Disciplinary Committee noted that Mr Cheika had been angry and agitated and had approached the referee repeatedly at half time which he knew was not permitted under ERC rules. He has been coaching at the highest level in the Heineken Cup for a number of seasons and would have known before speaking to the referee that this was not permitted. Whilst there may have been some element of provocation in the exchange that he had had with the Harlequins Academy Manager (no evidence to contradict Mr Cheika's assertions in that regard was adduced before the Committee) his reaction to it was wholly inappropriate and caused the referee such concern as to request security at the conclusion of the match. This was something which was unprecedented so far as is known to the Committee, ERC or indeed Mr Cheika himself. At the conclusion of the match Mr Cheika had quite obviously been upset and annoyed at the manner in which the cameraman had attempted to film him and this probably contributed to his reactions immediately after the match concluded and later in

sending the note to the referee. Insofar as the comment about the referee suggesting that he was ~~incompetent~~, Mr Cheika had admitted that this remark was ~~synical~~ and he should have known better.

The fact that the incidents happened over a lengthy period of time- from half time to the period after the end of the match- led the Disciplinary Committee to disagree with Mr O'Donnell's assertion that the behaviour of Mr Cheika had been momentary or transient.

It was evident from the video footage, during the Sky TV post match interview that Mr Cheika was able to give a coherent and restrained interview to TV but unfortunately he let himself down for a third time after that interview had concluded by writing a note to the referee which was unnecessarily antagonistic. Although the words ~~too frightened~~ were those used by the security guard to Mr Cheika as to why Mr Clancy was not prepared to speak to him, it was provocative for Mr Cheika to have used that phrase in the note. Fortunately Mr Cheika had recovered equilibrium to wait until after the referee and match officials had left the changing room area and post match function before he decided to join the remainder of his team.

In dealing with any credit for Mr Cheika's guilty plea, the Committee concluded that whilst he had not admitted misconduct at an early stage this was because he had denied certain particulars of misconduct which had been subsequently agreed largely in accordance with his initial statement in response to the allegations in June 2011. Ordinarily he would be entitled to credit for his guilty plea. However, by his own admission Mr Cheika had been guilty of misconduct of one sort or another towards or near match officials twice in the last six years (one of those being this season) and therefore any credit that he ordinarily would have been entitled to by his guilty pleas was offset by the aggravating factor of this previous record.

In coming to its decision as to sanction, the Disciplinary Committee reviewed all of the other cases which had been presented to it. Whilst it was true that Mr Cheika's conduct near or towards the referee on the three occasions the subject of the hearing, had been wholly inappropriate, derogatory and insulting he had not directly threatened or swore at the referee itself and that was a significant factor which distinguished it from a number of the cases which had been produced by Mr Duthie. In terms of its seriousness, however, the Disciplinary Committee were keen to ensure that a severe and firm message is sent out that respect towards match officials and others involved in the game of rugby is at the forefront of its mind and accordingly a significant financial penalty should be imposed. The Disciplinary Committee concluded that the case was at a similar level of seriousness to that of Brendan Venter in which he was fined "25,000, " 15,000 of which would be suspended. Whilst Mr Venter's misconduct was directed at the referee and had been a calculated and publicly aired opinion which impacted upon the referee and the ERC tournament as a whole, Mr Cheika's conduct was confined to the match and tournament officials. It was nevertheless of similar seriousness. The Disciplinary Committee took into account the fact that Mr Cheika has a recent previous history of

inappropriate conduct towards referees and felt that any financial penalty should be partially suspended so that Mr Cheika is aware that any further misconduct of this type would automatically result in him having to pay further financial penalty as a consequence of this misconduct. Taking all matters into account the Disciplinary Committee concluded that the appropriate sanction would be that in respect of misconduct 1 Mr Cheika should pay a fine of " 15,000 to be paid within 28 days, " 7,500 of which should be suspended until 30<sup>th</sup> June 2013 on condition that there are no further acts of misconduct in any rugby within that period.

Insofar as the second misconduct complaints was concerned, Mr Cheika should pay " 5,000, " 2,500 of which is to be paid within 28 days and the balance of the fine suspended until 30<sup>th</sup> June 2013 on condition that there are no further acts of misconduct in any rugby within that period.

Mr Cheika is also ordered to pay ERC's reasonable and proportionate costs to be agreed or in default as assessed by the Disciplinary Committee.

The parties are reminded of their rights to appeal pursuant to Rule 7.2 of the Amlin Challenge Cup Disciplinary Rules 2010/2011.

12<sup>th</sup> August 2011

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Simon Thomas  
Chairman Disciplinary Committee