

# EUROPEAN RUGBY CUP

## DECISION OF DISCIPLINARY COMMITTEE

Held at offices of Harper Macleod LLP, The Ca'd'oro, 45 Gordon Street,  
Glasgow

Monday 7 January 2008

### IN RESPECT OF:

Jamie Cudmore ("the Player") and the citing complaint that the Player's actions breached Law 10.4(a) of the Laws of the Game.

### MEMBERS OF THE DISCIPLINE COMMITTEE: ("the Committee")

Rod McKenzie (SRU - Chairman)

Dr Barry O'Driscoll (IRFU) (by teleconference)

Richard McGhee (SRU)

### DECISION OF THE COMMITTEE:

- (i) The Player having accepted that he had committed the act of Foul Play (Law 10.4(a)) for which he had been cited the Committee upheld the citing complaint against the Player.
  - (ii) The Committee suspended the Player for a period of 4 weeks from 21 December 2007 until 19 January 2008 (inclusive).
  - (iii) The Committee determined that the Player should bear the costs of the hearing and of the Disciplinary Officer (including legal costs).
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## **INTRODUCTION**

The Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Discipline Panel, pursuant to the Disciplinary Rules of the Heineken Cup 2007/2008 in respect of a citing complaint made by Mr Rob Flockhart, who The European Rugby Cup Limited (“ERC”) appointed to act as the Citing Commissioner for a Match between London Wasps (“Wasps”) and ASM Clermont Auvergne (“ASM”) in the 2007/2008 Heineken Cup on 15 December 2007 at the Adams Park, High Wycome (“the Match”). The citing complaint alleged that the Player had struck the Wasps number 1 repeatedly on the head. The Citing Commissioner cited the Player for infringement of Law 10.4(a).

Present at the hearing, in addition to the members of the Committee, were:-

Roger O’Connor (Disciplinary Officer, ERC) (by teleconference)

Max Duthie (Lawyer for Disciplinary Officer) (by teleconference)

The Player (by teleconference)

Neil McIlroy (ASM – representing the Player) (by teleconference)

Jean Marc Lhermet (ASM) (by teleconference)

## **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 complaint by the Disciplinary Officer pursuant to a citing complaint arising out of the Match for which the ERC had appointed Mr Flockhart as Citing Commissioner.

The Chairman confirmed that all present (personally and by teleconference) had in their possession all relevant written materials and video coverage of the incident which had been provided to the Chairman in connection with the citing complaint.

### **CITING COMPLAINT**

The Player was asked whether he accepted that he had committed the act of Foul Play alleged against him in the citing complaint and the Player accepted that he had committed that act of Foul Play. The Committee therefore upheld the citing complaint. The Committee then proceeded to determine what sanction, if any, should be imposed on the Player.

### **SANCTION**

In determining the appropriate sanction, if any, to be imposed on the Player the Committee had regard to the video evidence made available to them, representations on that video evidence by Mr Duthie and Mr McIlroy, oral evidence from the Player, and statements from Mr Rolland (referee) and Mr McDowell (touch judge). The Committee also considered submissions made on behalf of the Disciplinary Officer by Mr Duthie and on behalf of the Player by Mr McIlroy.

The Committee found it established that at approximately the fifty seventh minute of the Match a ruck was formed near to a touchline. The ruck was the culmination of a sequence of play which had commenced with a scrum near to the other touchline. There is one rather indistinct long distance video clip showing the scrum. The Player complained that at the break up of the scrum he had been punched twice by an opposing player. There is some support for this allegation from the video clip. There is movement at the side of the scrum (nearest the touchline) and then the Player can be seen remonstrating with the touch judge. The movement is consistent with the

Player being struck. The Player explains that he was remonstrating because he was complaining that the touch judge had not signalled for Foul Play arising out of the player being struck in this way. The Player was angered by the treatment that he had received.

In the sequence of open play which followed the ball was transferred to near to the opposite touch line and in due course the ruck referred to above was formed. During the course of the ruck the video coverage shows what appears to be a strike to the side of the head of the Player by the Wasps number 1. It is unclear from the video whether the strike involved the use of the fist by the Wasps number 1 or was an open handed strike.

In any event, the Player describes being further angered by this second piece of what he considered Foul Play directed against him.

The Player retaliated. Following the strike by the Wasps number 1 the momentum of the strike coupled with pushing by other players caused the Wasps number 1 to fall towards the touch line. He was followed up by the Player who made to attack the Wasps number 1. By this time the Wasps number 1 was on the ground and eventually came to rest with the Player on top of him beyond the touch line. The Player directed a series of blows to the head of the Wasps number 1. In so doing he was much incumbered by other players who joined in the developing general melee and the whole incident provoked general disorder with blows being struck by other players. The video shows some 6 or more blows to the head being directed by the Player on the Wasps number 1. It is not possible to tell from the video how many of these blows landed but at least 2 did.

During the course of the general disorder a further incident, involving a non-player, occurred which may be the subject of separate misconduct proceedings by the Disciplinary Officer. Accordingly, we make no comment in relation to that incident.

When the disorder ceased the referee consulted with his touch judge. The referee proposed a yellow card for the Player for the blows to the Wasps number 1 and he enquired of the touch judge whether any sanction should be directed towards the Wasps number 1. The touch judge replied in the negative and a yellow card was given only to the Player.

The Wasps number 1 was uninjured by the incident and continued to play.

A series of intentional blows having been delivered by the Player to the Wasps number 1 and those blows having been delivered with force the Committee did not believe that the act of Foul Play committed by the Player would not have warranted a red card. We took due account of submissions from Mr McIlroy on this matter but he did not persuade us that a red card would not have been warranted. He referred us to Mr Rolland's decision only to issue a yellow card on the field of play. However as is apparent from Mr Rolland's statement he did not see that the punches from the Player were to the head of the Wasps number 1. In any event the opinion of the referee on this matter is not determinative. It is the belief of the Committee which determines the issue. The opinion of the referee, as with that of the citing commissioner are relevant factors which members of the Committee took into account in arriving both at their individual beliefs and at the Committee's collective belief. Accordingly, a period of suspension falls to be imposed on the Player. This is not a case in which Disciplinary Rule 6.7.41 applies.

In determining the appropriate sanction the Committee are required to have regard to Disciplinary Rules 6.7.32, 6.7.34 and 6.7.35 and the current IRB table of sanctions which is reprinted as appendix 3 to the Disciplinary Rules.

With respect to Disciplinary Rule 6.7.32 the Committee determined that the offending was intentional. The offending was reckless in the sense that striking out in the way that the Player did, recklessly exposed the Wasps number 1 to the danger of injury from the blows. Under reference to 6.7.32(c) it was the fists of the Player that came into contact with the Wasps number 1. There was no element of self-defence. The Foul Play was a spontaneous reaction to the Player having been the victim of Foul Play. It was retaliation following provocative conduct towards the Player.

The effect on the victim was not serious. In terms of the effect on the game, the Foul Play resulted in a significant incident of disorder on the field of play in which a non player became involved and where a number of blows were struck and attempted. It also resulted in the Player being yellow carded.

Wasps number 1 was vulnerable, in the sense that he was below the Player and the part of his body affected was vulnerable to injury. There was a significant level of participation in the offending by the Player but no premeditation. This was not a premeditated act but it was completed. The incident displayed a complete loss of control by the Player. It presented a very poor image of the game to the spectators and viewing public. There is no other feature in the conduct which was relevant.

Taking all of these factors into account the Committee determined that this was a mid-range offence. Given the number of blows, the violence of the act, and the loss of control as well as the

disorder which resulted, this might have been a top end offence but the Committee came to the conclusion that, because of the provocation and the absence of injury, it would be appropriate to categorise the offence as mid-range.

The mid-range figure, per appendix 3, for a strike with the fist is five weeks and that was the Committee's starting point. The Committee then considered Disciplinary Rule 6.7.34, to identify if there were any aggravating features. The Committee did not consider that there were any aggravating features in this case.

As far as Disciplinary Rule 6.7.35 is concerned, that is mitigating features, we acknowledge that there was an admission of guilt, although only in an email of 7 January 2008, received some 4 hours prior to the commencement of the hearing. There was no timely response to the standard directions notified in the email from the Committee Clerk of 17 December 2007. In those standard directions the Player was specifically asked whether or not he admitted the act of Foul Play. The Committee decided not to impose any specific sanction on the Player for failure to respond to the standard directions, not less than 24 hours prior to the initial hearing originally scheduled for 19 December 2007. However, in terms of Disciplinary Rule 6.7.10, the failure to respond counts against the Player having regard to Disciplinary Rule 6.7.35(a) (time of acknowledgement of guilt/culpability). The Player has a prior record of a red card in season 2005/2006 for two yellow cards in the same match. The Player gets no credit for age and experience in respect that, broadly speaking, he should know better at his age and level of experience. His conduct prior to the hearing has been exemplary and that counts in his favour. He showed and gets due credit for showing remorse for his actions. That said his acknowledgement of culpability was not complete in that he attempted to argue that a red card was not warranted under reference to Disciplinary Rule 6.7.41. There were no other off-field mitigating factors. The Committee decided that the appropriate discount from five weeks was

25%, which results in a suspension of between 3 and 4 weeks. On application of Disciplinary Rule 6.7.38, the suspension is rounded up to the nearest whole number of weeks and, therefore, the period of suspension is four weeks.

A mitigating factor at Disciplinary Rule 6.7.35(a), is “the presence and timing of an acknowledgement of culpability/guilt by the Player;”. In the context of the ERC Disciplinary Rules the timing of the response to the standard directions may be relevant in this context. In a citing case the third question in the standard directions is “whether he [the player] accepts the citing complaint as a true and accurate account of the incident that resulted in the citing”. The fourth question is “whether he [the player] accepts that he committed an act or acts of Foul Play and that/those act(s) warranted a red card”.

If a player intends to accept the account of the incident in the citing complaint and/or accept that he committed the act or acts of Foul Play asserted and/or that those act or acts warranted a red card then the appropriate time to communicate such an intention is by responding timeously to the standard directions; i.e. not less than 24 hours prior to the hearing. In the view of the Committee a player who fails to timeously respond to the standard directions, and in particular a player who fails to answer questions (c) and the first part of (d) in the affirmative, where he intends to do so, within the time provided for in relation to the standard directions is not giving notice of an acknowledgement of culpability/guilt at the time when he ought to so acknowledge same. A Player who fails to timeously respond to those questions in the standard directions, where he intends to respond positively, will not get full credit for acknowledging culpability/guilt where he fails to respond to the standard directions within the time provided.

Had the Player in this case responded to the standing directions, within the time provided in the Disciplinary Rules, i.e. not less than 24 hours prior to the hearing (Disciplinary Rule 6.5.5) then

the discount would have been 33%. However the period of suspension would still have been 4 weeks on the basis of rounding up, per Disciplinary Rule 6.7.38.

The Player was voluntarily stood down by ASM for the French National League fixtures on 21 December 2007 and 5 January 2008. The Committee were satisfied that if he had been available for selection he would have played on those dates. ASM have Heineken Cup fixtures on 12 and 19 January 2008. The Player is therefore suspended from 21 December 2007 until 19 January 2008 (inclusive). In effect the period of suspension involves four first team matches.

## **COSTS**

The Disciplinary Officer sought an order for costs against the Player in terms of Disciplinary Rule 6.7.45. The Committee determined to award costs against the Player in relation to the costs of holding the hearing, the travel and accommodation costs of the members of the Committee and the legal and travel/accommodation costs of the Disciplinary Officer.

Parties were reminded of their right of appeal at the hearing.

Date

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**Rod McKenzie**  
**Chairman**  
**Disciplinary Committee**