

# **EUROPEAN RUGBY CUP**

## **DECISION OF DISCIPLINARY COMMITTEE**

### **HELD AT HUGUENOT HOUSE**

**3<sup>rd</sup> FLOOR, 35-38 ST. STEPHENS GREEN**

**DUBLIN 2 IRELAND**

**ON THURSDAY 16<sup>TH</sup> OCTOBER 2008 AT 11.00 a.m.**

#### **IN RESPECT OF:-**

Kris Ormsby of Sale Sharks ("the Player") and a citing complaint made by Citing Commissioner Achille Reali in respect of Law 10 4(a) Punching or Striking and 10.4(g) Dangerous Charging during the ASM Clermont Auvergne against Sale Sharks match at the Stade Michelin - Clermont-Ferrand on the 11<sup>th</sup> October 2008.

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

Mark McParland (Chairman) (IRFU)  
Rob Flockhart (SRU)  
Simon Thomas (WRU)

#### **DECISION OF COMMITTEE:**

- (i) The Committee found that the Player had not infringed Law 10.4(a) but had committed an act of illegal and/or foul play contrary to Law 10.4(g).
- (ii) The Player is suspended from taking part in the game of rugby for a period of one week from the 16<sup>th</sup> day of October 2008 up to midnight on Wednesday the 22<sup>nd</sup> October 2008.
- (iii) The Committee made an award of costs against the Player amounting to one quarter of the costs incurred by the ERC in respect of the four hearings held on the 16<sup>th</sup> October 2008 at Huguenot House.

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#### **INTRODUCTION**

This Committee was convened by Professor Lorne D. Crerar, Chairman of the ERC Disciplinary Panel, pursuant to the Discipline Regulations of the ERC in

respect of a citing complaint made by Achille Reali, the Citing Commissioner. The citing complaint concerned the conduct of the Player during the Round 1 match of the Heineken Cup played between ASM Clermont Auvergne and Sale Sharks match at the Stade Michelin – Clermont-Ferrand on the 11<sup>th</sup> October 2008.

The citing complaint alleged that the Player, during a counter attack by ASM Clermont Auvergne on the ASM Clermont Auvergne 22 metres line approximately, struck and/or charged at the ASM Clermont Auvergne number 4 Julien Pierre ("the Opponent") with his shoulder to the Opponent's head.

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

Roger O'Connor	(Disciplinary Officer) (ERC)
Max Duthie	(Solicitor) (Representing the Disciplinary Officer)
Kris Ormsby	(the Player)
James Jennings	(Chief Executive – Sale Sharks)
Robert Williams	(WRU) Observing

## **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 the citing complaint. The Chairman outlined the procedure to be adopted by the Committee for the hearing and advised that the provisions of the ERC Disciplinary Regulations would apply. The Player and all present agreed to proceed on that basis.

It was noted that both the Player and the Disciplinary Officer had complied with the standard pre-hearing directions set out in the Rules.

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

No preliminary issues were raised.

The Committee considered the terms of the citing complaint and the Chairman asked the Player how he wished to plead in relation to the citing complaint and the allegation that he had committed an act of illegal and/or foul play.

The Player denied that he had committed an act of illegal and/or foul play.

Mr Duthie on behalf of the Disciplinary Officer read the citing complaint received from Achille Reali, which read;

“During a counter attack of the yellow team (ASM Clermont Auvergne), approximately on the line of the 22 metres of the yellow team, the yellow player n.4, Julien Pierre, first is held by the player n.1 of the black team (Sale Sharks), Lionel Faure, then the black player n.5, Kris Ormsby, arrives and strikes and/or charges with his shoulder the head of the yellow player n.4”.

Mr Duthie acknowledged that under rule 6.7.11. the burden of proof was on the Disciplinary officer on the balance of probabilities that the person cited committed the acts or acts of illegal and/or foul play specified in the complaint. He stated he would do so by reference to the video evidence available to the ERC. He said that there were no comments available from the Match Officials, the Opponent or the Opponent’s team ASM Clermont Auvergne.

Mr Duthie opened two video clips, the first of which was a long camera range to put the complaint into context. It was noted that ASM Clermont Auvergne were in possession and that the Opponent was running with the ball when the Sale Sharks n.1 tackled him whereupon the Player with his right arm pointing across his body shoulder charged the Opponent without making any effort to bind or grasp the Opponent. The Player made no contact with the ball and it appeared that the initial contact was with the Opponent’s head.

In response the Player said he was doubling back when he saw ASM Clermont Auvergne coming around the side of a ruck with the Opponent carrying the ball in his outside arm. He saw his teammate going to tackle him. He joined in the

tackle to try and free the ball. He said that he was not running at pace but reacting to his Opponent's changing angle. The Player said he had no intention to make contact with the Opponent's head or that area.

Mr Jennings on behalf of the Player said that the point of impact was high up shoulder to shoulder. He said that the Opponent had almost been brought to a stop by the Sale Sharks n.1 and that in the tackle the Opponent had dropped in height. He suggested that if the Opponent had maintained his height, the point of impact would have been very different.

In response to questions from Mr Duthie, the Player said that there were no other incidents between the Opponent and the Player during the match. The Player contested the ERC version of events saying that was not what actually happened. The Player said he could see the ball and was aware that off-loads was a strength of the ASM Clermont Auvergne game. He said that his efforts were designed to free up the ball and that in going into the tackle, his intention was to attack the ball and that an orthodox tackle was not appropriate as he was the second tackler. He had thought that first contact was shoulder to shoulder but acknowledged that contact was higher than intended.

The Player conceded that in hindsight his action would have warranted a penalty on the field. The Player stated that it looked worse than how it felt on the field. He said that his actions were not malicious but rather that he had made a mistake.

He acknowledged that he had not spoken to the Opponent subsequent to his action.

Committee member Rob Flockhart put it to the Player that tackling was contact with an opponent using ones arms. He put it to the Player that even in a gang tackle situation the players must use their arms in tackling an opposition player. The Player acknowledged this but referred to the Opponent as having dropped his body to receive the tackle of his teammate and that in a high and low tackle situation he probably went in too high.

In response to the Chairman's question as to what would the penalty have been awarded for, the Player acknowledged that he had tackled the Opponent without using his arms to grapple the ball as he should have.

In response Mr Duthie applauded the Player for his candidness and openness. Mr Duthie referred to the IRB Directive of the 19<sup>th</sup> August 2008 regarding Dangerous Play with particular reference to players who charged into rucks and mauls without binding. Mr Duthie put it to the Committee that proof of intent was not essential and that it was sufficient to find the Player had committed an act of illegal and/or foul play if he was reckless as to his actions. He suggested that the Player could not have been going for the ball if he was not using his arms to grapple the ball.

The Committee retired to deliberate in private in respect of whether the Player had or had not committed an act of illegal and/or foul play. The Committee considered that the Player had not punched or struck the Opponent and found no act of illegal and/or foul play had been committed by the Player under Law 10.4(a). The Committee went on to find that the Player had committed an act of illegal and/or foul play contrary to Law 10.4(g) in that he had Charged Dangerously into his Opponent in a manner which at best was reckless and made no attempt to use his arms in his actions.

The Committee reconvened and announced its findings and invited Mr Duthie to address the issue of sanction. Mr Duthie stated that the sanctioning policy was outlined in Rule 6.7.32 and noted that the Committee had found the Player to have been reckless in his actions. Mr Duthie went on to state that the gravity of the offence was self evident. It took place at pace and the Player made contact with the Opponent's head. He said there was no element of provocation or self defence involved in the matter and thankfully there was no obvious effect on the Opponent nor had the incident any effect on the game. He said that the Opponent was vulnerable and that the level of participation comprised a fully blown charge with a shoulder which had been completed and not attempted. By way of aggravation, he noted that there had been no apology from the Player to the Opponent although he accepted that the Player may have thought he did nothing wrong.

The Disciplinary Officer informed the Committee that the IRFU had advised that the Player had a clean record. Mr Jennings on behalf of the Player acknowledged that the Player had received two red cards while playing in New Zealand, one of which was upheld by a Disciplinary Committee involving a Rucking Charge and the second which had been dismissed. Both incidents had occurred some seven years ago when the Player was 20/21 years of age.

In commenting on Sanctioning, Mr Jennings stated that it was a tackle which the Player would not have wished to make. He said that the change in the position of the Opponent and his own teammate caused the Player to miss-time his tackle. He said that it was not an intentional charge and that the action was not carried out maliciously. He pointed to the short distance between the players as a result of which the action took place with little momentum. Mr Jennings said that the Player acknowledged his mistake and he had been open and honest in his dealings with the Committee. He also pointed to the fact that the game was extremely physical with considerably more stoppage in play than usual.

In relation to the Player, Mr Jennings confirmed that he was aged 28 years and had been playing Provincial and Super 14 Rugby in New Zealand from the age of 20. He also played with the New Zealand 7 A Side Team, the Maoris and the New Zealand A Team. He had joined the Sale Sharks at the start of the season and his wife and family had moved to England.

Having adjourned to consider all the circumstances, the Committee determined an appropriate sanction was the imposition of a period of suspension of one week commencing on Thursday the 16<sup>th</sup> October 2008 and ending at midnight on Wednesday the 22<sup>nd</sup> October 2008.

Mr Duthie on behalf of the ERC applied for his costs and referred the Committee to Rule 6.7.45. The Committee noted that three other hearings were taking place at the same venue on the same day and in such circumstances granted the ERC costs on the basis that same would be agreed between the Player and the ERC on the basis of one quarter of the total costs arising in respect of the four hearings fixed for Huguenot House on the 16<sup>th</sup> October 2008.

A handwritten signature in black ink, appearing to read 'Mark McParland', written over a horizontal line.

**Mark McParland**

**Chairman Disciplinary Committee**

**20<sup>th</sup> October 2008**

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