

RBS 6 NATIONS 2012
DECISION OF DISCIPLINE COMMITTEE
Held at Sofitel Hotel, Heathrow, England
27th March 2012

In respect of:

Dylan Hartley ("the Player")

and

A citing complaint ("the Complaint") brought by Alberto Recaldini, the independent citing commissioner, in respect of an alleged act of foul play contrary to Law 10(4)(m) of the Laws of the Game in the match between England and Ireland played on the 17th March 2012 at Twickenham.

Members of the discipline committee ("the Committee"):

Roger Morris (Chairman) (Wales)
Rob Flockhart (Scotland)
Paul Minto (Scotland)

The decision of the Committee:

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- (i) The Committee found that the Player had committed an act of foul play, namely an act contrary to good sportsmanship (biting) in breach of Law 10(4)(m) of the Laws of the Game as alleged in the Complaint.
- (ii) The Player is suspended from taking part in the game of rugby up to and including the 13th May 2012. This represents an 8 week suspension commencing on the 19th March 2012.
- (iii) The Committee made no award of costs against the Player or any other party.

Introduction

The Committee was convened pursuant to the Disciplinary Rules and Anti-doping Programme applying to the 2012 Six Nations Championship in respect of the Complaint made by Alberto Recaldini the independent citing commissioner. The Complaint concerned the conduct of the Player during a Six Nations Match played between England and Ireland on the 17th day of February 2012 at Twickenham Stadium, London. The Complaint alleged that the Player had bitten the Irish No. 6 player, Stephen Ferris ("Ferris").

Present at the hearing in addition to the Committee:

The Player

Richard Smith QC, Counsel for the Player

Jim Mallinder, Coach of Northampton Saints

Graham Rowntree, Forwards Coach, England

Jon Davis, Disciplinary Officer, 6 Nations Rugby Ltd

Belinda Armstrong, 6 Nations Rugby Ltd

Max Duthie, Bird & Bird Solicitors, Solicitor to RBS 6 Nations

Jamie Herbert, Bird & Bird Solicitors

Hearing:

At the commencement of the hearing the Chairman confirmed the identities of all present and that there were no objections to the composition of the Committee.

The Chairman said that the hearing would be conducted under the provisions of the IRB Disciplinary Regulations as amended for the purposes of the 2012 Six Nations Tournament. The Player and all present agreed to proceeding on that basis.

The Chairman referred to and confirmed as accurate the form the Player had been required to sign consenting to be subject to the tournament's regulations.

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

- The Complaint
- Email dated 19th March 2012 from Dr Eanna Falvey.
- Assistant referee's report (undated) from J.Garces.
- Assistant referee's report (undated and unsigned) but accepted by all to be the report of Neil Patterson.
- E mail dated 20th March 2012 from the referee, Nigel Owens.
- Three photographs.
- Letter dated 20th March 2012 convening the hearing.
- Statement dated 20th March 2012 by Stephen Ferris (unsigned).
- Pre-hearing directions dated 21st March 2012.
- The Player's response to the pre-hearing directions.
- Various video clips circulated to all with the emails from Belinda Armstrong.

The Chairman asked if there were any preliminary issues any parties wished to raise. There were none.

The Chairman then read the narrative parts of the Complaint and asked the Player how he wished to respond. Mr Smith, on behalf of the Player, said that the Player did not admit the allegation that he had committed an act of foul play.

In the light of the Player's response the hearing proceeded to consider the evidence placed before it.

The assistant referees' reports

These were considered and agreed by all to have no bearing on the hearing.

Video evidence

The video clips were then watched without sound.

The video showed Ireland's No 12 being tackled by an English defender. At the ensuing ruck the Player, squatting in a strong "jackal" position, head down and bottom up, challenged for the ball. Ferris arrived at the ruck intent on removing the Player from his position challenging for the ball.

He attempted to do so by taking hold of the Player with his right arm around his neck and head and his left hand to the right of the Player's torso under the Player's right arm and then trying to roll the Player to the Player's right. These efforts led to Ferris falling to ground on his back over his left side with arm and hand still around the Player's neck and to the Player ending up on his knees with head buried towards the ground.

Ferris's mouth opened, as though shouting something, and he withdrew his right hand from the ruck holding his finger up as though for inspection. As Ferris got up from the ground the Player tried to grab Ferris's right hand. Ferris got to his feet, again held his right hand up, briefly inspected it, and made off for the next breakdown of play.

Other clips showed Ferris receiving attention from the Irish medical staff and the referee talking to both captains and front rows.

Mr Smith asked that the Player should not be questioned on the contents of the video clips or be required to give an account of those clips until after Ferris had given evidence. The Committee agreed to that request and proceeded to consider other elements of the evidence whilst a video call was made and connected to Ferris.

Referee's report

The referee had written in the following terms:

"During play in the first half 28 min approx I believe of the match. I heard a player swear at another player in a ruck just out of my view as I was moving away from it following the ball. I did not know what happened and carried on with play as I had seen nothing. At the next stoppage Ireland No 6 Stephen Ferris came to me and complained that he had been bitten by an opposition player, and showed me what looked like to me clear teeth marks on his finger. I then called both captains together and told them that I had received a complaint of biting and it looked like a bite to me, but I have not seen it and can only deal with foul play when I see it. I said that if I do see it then it will be dealt with and with a red card. I asked them both speak to their teams and make sure it was end of the matter for the rest of the match."

Mr Smith observed that the referee had not named the Player. Neither did his report say that Ferris had named the Player.

The Doctor's Report.

The doctor's report, in the form of an e mail, was considered. The relevant parts of his email read as follows:

"At approximately 28th minute of the game No. 6 (Stephen Ferris) called my attention. I attended him and reviewed the fifth digit of the right-hand.

Though the skin remained intact there were three obvious tooth marks from a bite to the middle phalanx of the fifth digit of the right-hand. Stephen informed that this happened in the previous play and that he had drawn it to the attention of the referee (Mr Owens).

I further drew Mr Owens' attention and he informed me he had not seen the episode.

I ensured that the skin was not broken – though it was heavily indented – cleaned the area and allowed Stephen back into play.

The area was assessed post-match and no further action was taken."

Mr Smith made two observations. He asked the committee to note that the doctor said there was no break to the skin and also that the doctor had not named an alleged perpetrator.

Evidence of Stephen Ferris

Ferris had made a written statement which was before the hearing and was also called to give evidence in person by Skype from Ulster.

Ferris was asked questions by members of the Committee, by Mr Smith and also by Mr Duthie.

The essence of Ferris's evidence was as follows:

- His purpose as he arrived at the relevant ruck was to remove the Player from it.
- He did not drive through the Player to clean him out from below but got hold of him and attempted to turn him over.
- His arm was around the Player's head trying to clear him away but the task was difficult because the Player was in a strong position over the ball.
- He got his hand over the head and over the neck with his arm around the head but he had not put his finger in the Player's mouth.
- His contact with the Player was around the head but his purpose was to ruck him out and not to twist his head off.
- His arm was around the head as the point of leverage but his hand was doing nothing.
- His finger never came in contact with his mouth until the Player bit him and that was when his body was on the deck.
- His focus was not on the ball but on getting the Player away from the ruck.
- He denied placing his hand on or finger in the Player's mouth.
- Although he was on the ground, his hand was not.
- His written statement had been prepared by Mr Duthie from information given by him and he had signed it off as true.

- He denied putting his fingers in the Player's mouth but knew it was the Player who bit him.
- He denied doing anything wrong himself and asserted that the Player had no cause to complain.
- When he complained to the referee he had not named the Player because it had not crossed his mind to do so.
- He denied that his failure to name the Player was because he himself had committed a foul (placing his fingers in the Player's mouth and pulling) and was fearful that the Player would, in turn, name him.
- It was the Irish team manager who made the complaint to the Citing Commissioner so that he, Ferris, did not know if or why no name was given to the Citing Commissioner.
- He was trying to roll the Player out of the ruck with a judo-style movement with his arm around the neck. As a consequence of that action his hand ended up in front of the Player's face.
- He was not prepared to accept that his fingers may inadvertently have got into the Player's mouth and asserted that his fingers were not in Player's mouth until he was bitten.
- He acknowledged that the Player was probably pinned to the ground and also acknowledged that his arm was already around the Player's head. Therefore his hand must have been close to the Player's face so that when they both "got to the deck" his hand would be near the Player's mouth.
- He asserted again that it was his arm around the Player's neck and that he was not pulling with his hand. That his arm was around the Player's head meant his hand was near the face.
- He confirmed he had executed a judo-style action with his right arm to head and left arm under the body for purchase.
- He denied again that he had used his hand for leverage by holding the Player's face but did not know exactly where his hand was. He reiterated that his hand did not enter the Player's mouth until he was on the ground.
- He said his fingers did not enter the Player's mouth as part of the action to get the Player to ground.
- He thought that his finger was in the Player's mouth for a few seconds.
- At the time he was treated on the field it looked like only indentations in his finger. He could not remember being treated after the game.
- He had pushed the Player as he got to his feet.
- The finger was swollen with three marks on the outside and one on the inside. Those marks had become like scabby little cuts.
- He had tried to pull his finger out of the mouth but the bite was so hard it could not be extracted.
- He did not agree with an assertion that his little finger was in the Player's mouth to assist in dragging him out of the ruck.
- The Player had not cried in pain.
- He agreed with the supposition that his other four fingers would have been on or near the Player's jaw.

Evidence of the Player

Mr Smith wished, first, to present the Committee with some background about the Player.

He was 26 years of age and had been a professional rugby player for 6 years. He had played 150 times for Northampton Saints and 39 times for England. His only previous disciplinary problem

had occurred in 2007 when, as is well known, he was suspended for 6 months for an offence of making contact with an opponent's eye.

He emphasised that there had been no disciplinary issues since then and invited the Player to describe how, now, he was different from the man who had been suspended in 2007.

The Player said that in 2007 he was "loose" and "unpredictable". He would "rise to things" and "react"; he was hot-headed and unable to ignore situations of conflict. Since then, his behaviour had been addressed by himself, by his club and by his country. He had worked with a sports psychologist, Steve Peters, and had received particular help from Dorian West who "pulled me in" and kept him going in the right direction.

It was now 5 years on and nothing untoward had happened in the intervening period. He had been given responsibility (his club had made him captain) and he was seen as a leader both for club and country. 2007 seemed a long time ago. He was now older and more mature and a very different person from the one who was in trouble then.

He said that he was continually confronted by provocation from other players who still played on his reputation of being hot-headed. However, he did not now react to such situations. Mr Smith asked him if he had bitten Ferris for the sake of it. He replied, emphatically, "no". That was the sort of conduct that he might have been "dragged into" in 2007 and the one thing he certainly did not want to do now was to go back to the person he was then.

He was then asked to give his evidence about the allegation in the Complaint. The essence of the evidence was as follows:

- To the best of his recollection, he arrived first after an opponent had been tackled and was looking to get on the ball, head down, "bum in the air" in a strong position to achieve a turn over.
- He then felt himself being "cleaned" and felt something in his mouth pulling at his face.
- He had lost the contest for the ball but the pulling sensation was still there in his mouth and instinctively "it happened".
- He felt a finger in his mouth almost immediately contact had been made.
- By reference to the video clip he said he felt something in his mouth with somebody on top of him trying to roll him. His mouth felt like it was being pulled.
- The pulling and discomfort forced the Player to give up the contest and to leave the ball but the pulling continued.
- He was not able to say whether it was one finger or more fingers in his mouth.
- All he felt was something pulling against his mouth.
- He agreed that, with the head being rolled in one direction, the body would instinctively follow and thought that his neck being wrenched with a finger in his mouth was designed to create such discomfort as to make his body roll away.
- He had not made a conscious decision to bite in order to effect a release but what he did was an instinctive reaction to being pulled. He invited Mr Rowntree to join him to demonstrate the position he felt Ferris's hand was in. The demonstration showed the heel of what would have been Ferris's hand in the region of the Player's left ear, the palm on the left side of the jaw, right thumb furthest from the Player's mouth on his neck and little finger inserted in the mouth attempting to rotate his head around his neck in an anti-clockwise direction.
- The intrusion of the finger was not uncomfortable at the start but as he was being pulled it became more uncomfortable and he was unable to get rid of the finger by gently closing his mouth.
- He did not consciously try to bite Ferris' finger – it just happened as a reaction to his head being pulled.

- As the incident started, he was in a strong "jackal" position with his right-hand looking for the ball and Ferris was not able to get under the Player to clean him out and therefore resorted to attempting a judo-style roll.
- He did not know if the finger was in his mouth on purpose or accidentally. All he knew was that he was being pulled.
- (In a response to Mr Smith), he was aware of wanting what was happening to stop. It was not painful at first but it became painful and when he was off his feet the problem continued and he felt pain in his mouth and neck.
- He did not shout anything and he did not know if Ferris had done anything on purpose. In any event it was difficult to talk from the bottom of a ruck with fingers in your mouth.
- The Player confirmed that he suffered no injury.
- There was no thought process in how he reacted. He was being pulled and instinctively "it happened".
- In terms of the length of the bite, it had felt to him to be no more than a split second.
- Showed the pictures of Ferris's finger, he accepted that they showed the bite marks.
- He said that Ferris had not pushed him down as Ferris had claimed in his statement.
- His reaction to being called a "f***** c***" was that he thought it a "bit rich" at the time.
- He was aware that Ferris had said something to the referee but as far as the Player was concerned he was just intent on getting "on with it". He did not say anything. He "just moved on".
- He remembered being "blanked" at the end of the game but would have liked to have thought that he could have talked with Ferris about the finger in the mouth and that everything would be done and dusted on the field.
- Looking at the video at the hearing was the first time he paid attention to the fact, as had been pointed out to him, that his left-hand had held on to Ferris's right-hand as Ferris was attempting to stand up.
- He agreed that by holding on to the hand he might have been holding on to the hand of someone he thought was doing him wrong and so by holding the hand it would assist him in identifying the other player.
- He reiterated that Ferris was trying to move him from the ruck and the ball and that is what Ferris's job was.
- He also reiterated that, in trying to roll him, Ferris had got him by the mouth.
- He confirmed that although frequently subjected to being "wound up" there had been no "winding-up" in this game.
- He repeated that it was clear in his head that he was being pulled. When it became uncomfortable and the pulling continued, "instinctively it happened".

Jim Mallinder

Mr Mallinder said that he wished to address the Committee on behalf of the Player and made the following points:

- He had known the Player since he first came from New Zealand and in his early days it was fair to say he was wild and loose – both on and off the field.
- The club, recognising an exceptional talent, had worked hard over that period to supervise the Player and to get him "through it to a new place".
- They had sought external help and it had been a challenging time both for the club in coming to terms with the Player and the Player coming to terms with himself.
- The Player is now a completely different man from the one he had been in those early days. He still plays to the maximum but has learnt to contain himself.
- The difference seen in the Player as he has grown in maturity was such that the club had made him its captain and he has been "good for us" both on and off the field.

- He was still a hard, tough, uncompromising player but now one who played exemplarily within the rules.
- People have “questioned him” on the field both physically and mentally and not once had Mr Mallinder seen him ever react in anything approaching a reckless manner.
- He was still playing hard but never, anymore, went “over the edge”. They had seen a massive difference.
- The allegation he now faced was totally uncharacteristic and if Mr Mallinder asked himself the question, would the Player “bite for bite’s sake?”, then that would be totally inconsistent with a man he now knew.
- (In response to a question), Mr Mallinder certainly would never coach anyone to bite. That would be clearly well over the limit.
- In approaching a ruck the first option was to try and get under the “jackaling” player and the second option was to roll him. He would not coach players to go for the head but realistically you accept that that does happen.
- He confirmed that a finger in the mouth, from his experience as a player, was a painful sensation.

Graham Rowntree

Mr Rowntree had volunteered – insisted – that he should come to the hearing to speak on behalf of the Player and made the following representations:-

- He had worked for four years with the Player in the national set up and felt compelled to speak on his behalf.
- He had seen a massive change in the Player over the years since his struggle in 2007.
- He was immensely talented and passionate about the game. Aggressive in a proper way.
- In Mr Rowntree’s view was that he “did his time” and moved on having learnt his lesson.
- It was well known that the national team had had difficult times over the last 6 months but the Player had been a beacon and a leader and no one had more credibility with his peers.
- When referee Alain Rolland wanted to speak to a representative of the England’s scrum to talk about scrummaging he specifically asked to speak to the Player.
- He was very close to having been made captain of the national team and might well soon become captain.
- That he should deliberately bite another player just did not fit with the man he knew.
- Other teams make efforts to wind him up (for example Warren Gatland last season) but the Player now just does not react.

He finished by saying that the Player’s reputation is completely unfounded and “if you look at the many videotapes of the matches in which he has played you will see a man of humility and respect”.

Submissions by Mr Duthie

Mr Duthie addressed the proposition that acting in self defence gave a rugby player a defence to an allegation of foul play.

He suggested, in the context of the present case, that the Committee should assess the evidence and particularly that of the two main witnesses in the usual way, assessing creditability and probability, to come to a conclusion. He suggested there were three steps. First, the Committee should determine the facts. Then it should decide whether or not the Player had acted in self

defence. Thirdly, if the Player acted in self defence, the Committee should consider whether that should exonerate him from the present allegation.

Mr Duthie pointed out that the notion of self defence was not mentioned in the relevant rugby regulations other than in IRB Regulation 17.14.2 as one of the factors to be taken into account in determining the seriousness of an act of foul play.

If the Committee felt that self defence was also a defence in a rugby context, it should properly then also consider the other factors, such as proportionality, that touch upon it in the criminal law.

He also pointed out that rugby was different from general life in the sense that rugby took place within a set of regulated boundaries, policed by a referee and two assistant referees.

He acknowledged that the notion that self defence might exonerate a rugby player from an allegation of foul play was an unanswered question but suggested that, in policy terms, it would not be what the game should want.

Submissions by Mr Smith

Mr Smith, first, in commenting on the evidence, pointed out that two different versions of the same events could sometimes polarise views of those events whereas, in reality, decisions were rarely a choice between two extreme versions. It was not the case that the Committee had to accept as absolute everything that one or other of the witnesses had said to the exclusion of all the evidence of the other. Two witnesses could give different versions of the same events whilst still both trying their best to tell the truth.

Mr Smith then reviewed the evidence in some detail to conclude that the Player's actions were executed, instinctively, in an act of self defence.

He questioned whether the rules and regulations of a game should deny a man the right to use reasonable force to defend himself. He suggested that any inferences to be drawn from the lack of specific provision in the Regulations should be weighed in favour of the Player. It was perfectly acceptable for a man to protect himself and therefore, in Mr Smith's view, it would be ludicrous if a Player could not use the defence of self defence in a rugby context.

He acknowledged that the only reference to self defence in the regulations was in Regulation 17.14.2 and that nowhere else in the Regulations was there any assistance on the point. However, he also pointed to the fact that the Regulations were silent in dealing with accidental acts of foul play. Although not expressly dealt with in the Regulations, it was widely acknowledged that an accident would not amount to foul play.

Decision as to the Complaint

The Committee retired to consider matters in private.

The Committee reminded itself of the standard of proof that it should apply to the determination of factual matters.

The Committee considered it had two decisions to make: first whether or not the Player had acted in self defence and second, if he had acted in self defence, whether that should lead the Committee to dismiss the Complaint.

The Committee considered it would be helpful to their deliberations to make an assessment of the evidence they had heard and seen and that they considered relevant to their decisions. They did so as follows:

In relation to the injury:

- It was common ground that Ferris's little finger of his right hand had been bitten by the Player.
- There was some inconsistency between Ferris and Dr Falvey as to the consequences of that act (Ferris said there were four teeth marks and broken skin and he referred to the photographs to support that. Dr Falvey said there were three indentations with no broken skin and no treatment required). The Committee felt themselves compelled to accept the Dr. Falvey's evidence and to base its conclusions on that evidence in preference to that of Ferris.

In relation to the incident:

- Ferris's intent was to move the Player from the relevant ruck but because of the Player's strong and low "jackal position" he was unable to do so by getting low and driving the Player from the ruck.
- Instead, he attempted to roll the Player away, judo style.
- To attempt this manoeuvre required him to grasp the Player around the head or neck and to roll the Player's body in an anti-clockwise direction.
- Although Ferris claimed that it was his right arm that was used as a lever, with his right hand not being involved, the Committee's close assessment of the video came to a different conclusion.
- Ferris's arm was impeded from making close contact with the Player's neck and/or head by the position of another England player's right arm over the Player's shoulder and between the Player's body and Ferris's arm.
- It was Ferris's wrist that was crooked around the Player's neck and was therefore clearly a major part of the leverage Ferris was exerting on the Player's body.
- From that position Ferris's right hand would have been holding the Player firmly in the region of the Player's neck, chin and lower part of his face.
- The Player, pinned to the ground, would not have been able to move his head such that his mouth might have sought out Ferris's hand.
- It was probable to the requisite standard of proof that Ferris's hand – and particularly the little finger of his right hand – was exerting strong pressure in the region of the Player's mouth.

In arriving at these conclusions the Committee acknowledged that in rugby matches there are murky areas of unpredictable dynamic where actions and reactions become almost inextricably meshed and in which players are required to make instantaneous decisions along the fine line between the legal and the nefarious. In that maelstrom of activity in the ruck in question, the Committee did not conclude that Ferris, in his effort to remove the Player from the ruck, deliberately decided to place his finger in the Player's mouth to assist that effort but the fact remains, that in executing the judo roll as he did – by holding the Player's head/neck/face in the manner observed by the Committee - it was clearly a possibility that a finger might find itself in a position in or near the Player's mouth.

It may have been inadvertent that Ferris placed his finger near the Player's mouth, but that was the consequence of the action of grasping the Player in the region of the lower part of his face. A finger entering the mouth in that situation would, in the panel's judgement, be such as to cause discomfort if not the pain claimed by the Player. As such it might provoke a reaction.

However, being at the bottom of a ruck in an uncomfortable position is something that players are both well used to and expect. The Committee did not accept that the Player had no alternative but to bite in order to defend himself.

Although, in the light of the foregoing, it was now hypothetical, the Committee, in dealing with Mr Duthie's "unanswered question", considered whether self defence should afford a player a defence to an allegation of foul play and concluded firmly that it did not. The Committee had been urged to conclude that the paucity of reference to self defence in the Regulations should not prevent them from considering it in relation to the culpability of particular players for acts that would otherwise be foul play.

The Committee took a contrary view. Reference to self defence in the Regulations is clearly placed in the principal Regulation that deals with the seriousness of an act of foul play. Further, the Laws of the Game do not qualify acts of foul play, for example, by saying "except in order to defend himself a player shall not punch an opponent".

The notion of self defence and a player's right to defend himself can, in the context of rugby, be properly and correctly applied in the assessment of the seriousness of an offence. The Committee could envisage circumstances in which an act of self defence might lead to no sanction at all being imposed even though an act of foul play had been committed.

In the Committee's clear view, the correct approach to the application of the concept of self defence - within a rugby specific jurisdiction and set of regulations and laws designed to be applied throughout the game worldwide – was to consider it as a factor dealing with the seriousness of an act.

Sanction

The hearing was reconvened and informed that the Committee had upheld the Citing Complaint and found that the Player had committed an act of foul play (biting – contrary to the provisions of Law 10.4.m) and that the hearing would now deal with the question of sanction.

Mr Smith was invited to address the Committee on behalf of the Player. He addressed the issues by reference to the provisions of the relevant regulations. He first examined the provisions of IRB Regulation 17.14.2 by reference to the evidence that had been heard. He suggested that in all the circumstances the low end entry point was the appropriate entry point in this case.

He assessed that there were no circumstances aggravating of the offence. In particular he urged the Committee not to hold the Player's one previous disciplinary sanction against him in this case.

In relation to mitigation, there was no reason why the Player should not be given the full benefit of the various relevant matters that the Committee could take into account.

Mr Duthie had no representations to make at this stage of the hearing.

The Committee again retired to consider matters in private. The Committee considered the provisions of the relevant Regulations and first considered the provisions of IRB Regulation 17.14.2. The Committee made the following assessments:

- (a) The Committee found it difficult to envisage a situation in which a bite would not be an intentional action although in this case it was prepared to accept it was a reaction to a situation in which the Player found himself.
- (b) In the light of its assessment of (a) the Committee did not consider the provisions of this part of the Regulation.

- (c) (i) The Committee accepted that the bite was a momentary action and not one which lasted a few seconds as Ferris said. The injury caused by the bite was of the relatively minor nature described by the Irish team doctor.
- (ii) In different senses the Committee considered that provocation and retaliation were both present. The Committee did not think that Ferris deliberately set out to place his finger in the Player's mouth. However, the finger was close to the Player's mouth and was part of a strong hand grip held around the Player's neck and head. The Committee could understand how that might provoke a reaction. The Committee could also understand that having a hand and arm held around the neck and head of the Player, with hand inevitably firmly touching the face, might result in a retaliation. The Committee noted that if a player's head was pinned in a position where it could scarcely move with another player's hand interfering (whether or not intentionally) and intruding between the player's lips and into the mouth might cause to defend himself although in this case that was not a justifiable choice of reaction.
- (d) The effect on the victim was minimal. In arriving at this assessment, the Committee, again, relied on the evidence of the Irish team doctor. Ferris was treated for a short period of time and played on without adverse effect.
- (e) There was no effect on the game.
- (f) The only sense in which the victim was vulnerable was that his little finger found itself close to and then in the Player's mouth.
- (g) The level of participation was full but the Committee did not consider there was any premeditation.
- (h) The offending was complete.
- (i) There was no other feature of the Player's conduct to take into account.

In light of the above the Committee was unanimously of the view that the correct categorisation of this act of foul play was one at the lower end of seriousness and, in line with the recommended sanctions set out in appendix 1 to IRB Regulation 17, that meant a period of suspension of 12 weeks.

The Committee then considered the provisions of Regulation 17.14.3 to consider whether or not there were any factors aggravating of the offence and therefore whether the period of suspension should be increased.

The only provision the Committee felt was relevant to their deliberations was the provision in Regulation 17.14.3(b).

The Committee was aware that the Player had acquired something of a reputation within the game. However, the fact of the Player's disciplinary record is that his only previous sanction was in relation to a matter that had occurred in 2007. That was in connection with an offence involving contact with another player's eyes. It was a serious offence and it had carried with it a lengthy suspension.

The Committee had heard glowing testimony from Messrs Mallinder and Rowntree.

Neither of them had glossed over nor hidden from the fact of the Player's conduct in the early days of his career but they had also both spoken about the efforts that all involved with the Player

had made to change his attitude and approach. More importantly, they had also spoken about the efforts the Player himself had made.

They had urged the Committee to recognise the Player as the man he now was – mature, focussed and a leader amongst his peers – and to recognise too that this man was very different from the man who committed the offence in 2007.

The easy course for the Committee to follow was to ignore what they had heard and take the Player's previous suspension into account. However, to do that would have been to rely on the anecdotal baggage surrounding the Player and not on the facts before them. It would also fail to acknowledge that the purpose of sanction is also to cause an offender to think again about his behaviour and that, the Committee felt compelled to conclude, is what the Player had done.

In deciding, based upon what they had heard, to ignore the Player's previous record the Committee, also, unapologetically, relying on their rugby instincts, were prepared to give the Player the benefit of any doubt they may have had.

In all the circumstances the Committee did not consider it would be proper to increase the period of suspension.

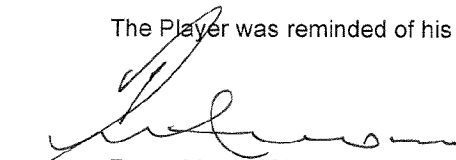
Turning to the mitigating factors to be considered under IRB Regulation 17.14.4, the Committee considered it appropriate to give the Player credit for his clean (apart from the one instance they had decided to ignore) record, his entirely exemplary demeanour at the hearing, the glowing testimony of Messrs Mallinder and Rowntree (both of whom impressed the Committee as being men of utmost integrity upon whose judgement the Committee felt it could comfortably rely) and the compelling story they had heard about how the Player had been prepared, himself, to address and seek to correct his own behaviour.

The period of suspension would be reduced by four weeks.

The final conclusion of the Committee was that the Player would be suspended from taking part in the game of rugby for the period of eight weeks starting on Monday 19th March 2012 and ending at midnight on Sunday 13th May.

There was to be no order for costs.

The Player was reminded of his right to appeal against the Committee's decision.



Roger Morris (Chairman)

24 March 2012