



## **Decision of the Independent Judicial Officer**

Hearing held at the offices of Clifford Chance, 10 Upper Bank Street, Canary Wharf, London on Wednesday 23 September, 2015 commencing at 11.00 am

In respect of

**Mariano Galarza** of Argentina Rugby Union (“**the Player**”)

And

A citing by **Murray Whyte (Ireland)** Citing Commissioner, in respect of **an act contrary to good sportsmanship contrary to Law 10.4(m)** in the Match between **New Zealand v Argentina** on Sunday 20 September 2015 at Wembley Stadium (“**the Citing Complaint**”)

Judicial Officer appointed to hear the case:

**Christopher Quinlan QC (England)** (“**the Judicial Officer**”)

### **Decision of the Judicial Officer:**

- (i) The Judicial Officer found that the Player committed an act of Foul Play namely Acts Contrary to Good Sportsmanship, Law 10.4(m).
- (ii) The Player is suspended from taking part in the game of rugby union for a period of 9 weeks, up to and including 25 November 2015. The Player is free to resume playing on 26 November 2015.

## 1. Introduction

- 1.1 I was appointed to consider the Citing Complaint against the Player in the Match played between **New Zealand** and **Argentina** on Sunday 20 September 2015 at Wembley Stadium (“the match”) in the Rugby World Cup 2015 (“the Tournament”).
- 1.2 **Murray Whyte (Ireland)** was appointed as Citing Commissioner to this Match and cited the Player for ‘acts contrary to good sportsmanship’ contrary to Law 10.4(m).
- 1.3 Pursuant to Section 2 of Appendix 5 to the Tournament Disciplinary Programme (“TDP”) I issued pre-hearing directions.
- 1.4 In addition to the Judicial Officer the following persons were present at the hearing:
- **Jaime Barba** (UAR Board Member)
  - **Nestor Galan** (Argentina Team President)
  - **Daniel Hourcade** (Argentina Head Coach)
  - **Rodrigo Jimenez** (Argentina Team Manager)
  - **Fernando Rizzi** (UAR secretary)
  - **Chris Smith** (UAR Interpreter)
  - **Ben Rutherford**, Designated Disciplinary Official, Rugby World Cup Limited (“RWCL”)
  - **Yvonne Nolan**, Designated Disciplinary Official, RWCL
  
  - **Patricia Bianco**, Interpreter

Witness (present only when giving evidence):

- **Brodie Retallick**

## 2. Summary of the Citing Complaint and Player’s account

- 2.1 The Player was cited for ‘acts contrary to good sportsmanship’. He was alleged to have “made contact with the eyes or eye area” contrary to Law 10.4(m). The incident occurred in the 24<sup>th</sup> minute of the first half of the match. In his report the Citing Commissioner states:

*“Following a Lineout with Argentina in possession, Number 4 New Zealand is attempting to contest for the ball and Number 19 Argentina is trying to prevent this action in a maul. In doing so Number 19 Argentina’s arm comes over the shoulder of Number 4 New Zealand and then his hand makes contact with the eye area of No 4 New Zealand as can be seen in the clips attached.*

*Having reviewed the incident after the game I asked for a player statement which I received and confirms my understanding of the incident. I refer you to the statement and also draw to your attention in a post match interview there is a mark under the left eye of New Zealand 4”.*

- 2.2 In support of the Citing Complaint I received the recorded match footage of the incident. The footage was played and viewed (with no sound) at full speed and in slow motion (at 75%, 50% and 25% full speed). In addition to the broadcast feed, the

Citing Commissioner submitted footage from the following cameras: numbers 2, 7, 26 and a split screen passage showing footage simultaneously from camera 7 (zoom) and 26. The remaining available footage was disclosed (to the parties) but not relied upon by the Citing Commissioner in support of his Citing. My findings in relation to what the footage shows are set out below (see paragraphs 4.3.2 to 4.3.4). At this stage I need only record that the quality of footage was excellent and accords with the narrative in the citing report.

- 2.3 In an email the referee Wayne Barnes stated that he did not see the incident and “*no player made any comment to [him] alleging that any incident had taken place*”. In separate emails both assistant referees stated that they did not see the incident.
- 2.4 I received an email from the New Zealand team doctor, Dr AJ Page. That email was timed 08.41 and dated 22 September 2015. Therein the doctor stated:  
*“Brodie Retallick reported to me a halftime in the Rugby World Cup game New Zealand vs Argentina on 20 September 2015 that his left eye contact lens had been dislodged by an opposition player.  
There was no significant eye injury. He was given a replacement lens.”*
- 2.5 By way of one of my pre-hearing directions, I sought clarification on aspects of that email and whether the visible abrasion below NZ4’s eye was said to be related to the incident. In Dr Page’s response to my direction he stated:  
*“The abrasion injury around Brodie’s left eye was sustained at training 2 days prior to the match.  
Brodie told me during the halftime break that ‘someone got me in the eye and I need another lens’. I said ‘which one’ and he said ‘left one’. I got him the lens and he put it in. I asked him if the eye was alright and he said yes. I asked him if he could see clearly and he said yes.  
While no visual deficit was apparent after the replacement of his left soft contact lens (ie his eye sight was not impaired in any way), I did notice there was minor conjunctival redness in his eye (ie minor irritation). I did not get to examine his eye prior to him replacing the lens so I do not know how the irritation was caused – it may have been by injury or from insertion of the second lens.”*
- 2.6 The Player did not wish to ask questions of the doctor and had no challenge to his written statements.
- 2.7 I received two witness statements (one by email and the other handwritten) from the New Zealand number 4, Brodie Retallick (“NZ4”). I also heard live evidence from him. Due to training commitments, he could not be at the hearing before 13.00. The Player elected to give his account before I heard from the NZ4.
- 2.8 In compliance with my pre-hearing directions the Player’s written statement (supplied to the DDO and to me in advance of the hearing) summarised his case.  
*“I do not accept that the incident that the citing complaint describes was an illegal conduct or a foul play. It was situations of game were we were disputing a maul between many players in a rude, but not illegal form. I never*

*had the intention to affect a player from the other team and we were in a maul, after a line, were I was in a position that doesn't permit me to see exactly face position of the other player. In fact I put my hand in his face but never trying to affect his face witch [sic] I wasn't seeing."*

2.9 In the hearing he expanded upon that account. He started playing aged eight years. This is his second Rugby World Cup and he has worked hard to overcome injury to be fit. He said he had received only two yellow cards in his professional career, neither for foul play. Mr Rutherford confirmed from records available to him, that the Player had played 25 Test Matches and had no disciplinary record while playing for Leinster in 2010, Worcester 2013/2014 or Gloucester since 2014.

2.10 As for the incident he knew nothing of it until told by his Team Manager after the match. He said he was trying to hold NZ4 in position in the maul. He was holding him with one arm and moved his left arm attempting to grab his "*chest, shoulder, body, thorax then, chest, shoulder, around his shoulder*". His head was down and he was not aiming for NZ4's face. It was a dynamic situation. He said he had no memory of the contact and said he did not know at the time that he touched NZ4's eye or eye area (which contact he denied). In answer to a direct question from Mr Rutherford he said he had not made contact with NZ4's eye. Mr Rutherford showed him the relevant passage from the decision in *Quinlan* where the meaning of "eye area" is defined. Having done so he asked him:

*"So, having read that and understanding that that, for rugby purposes, is what the Judicial Officer will have to take into account is the eye area, just to be clear, it is your position that you did not touch the eye area as defined by that document?"*

The Player replied: "*I did not touch the eye area, and I didn't have intention [sic] to touch the eye*".

2.11 The Player said:

*"I never had contact with the eyes, with the eye. I think it is really important to watch, to see the reaction of the player, and I think the image is stopped, but I would like to -- I don't know if you have the images, but I would like to continue a couple more seconds, and he continues playing, because -- I think you stopped really quick, but we can see a couple more seconds -- and he continues playing normally. He never touch his eyes with the hand. Normally what I believe, if you touch an eye of another person, the person is going with his hand and do something with it."*

After the match he said NZ4 congratulated him on his performance, as did the NZ coach.

2.12 I heard and considered character evidence from the Argentine Coach, Daniel Hourcade and also an email from David Humphreys, Director of Rugby at Gloucester.

- 2.13 NZ4's first witness statement was by way of an email sent by the New Zealand Team Manager, Darren Shand to the Citing Commissioner. Therein he stated:  
*"I was involved in a lineout which became a maul. In the maul, I was standing up trying to get through the maul and to the ball. I felt an arm around my head. I then felt a hand go through my left eye which caused my contact lens to come out. I did not require any medical treatment for my left eye other than having a replacement contact lens at halftime."*
- 2.14 By way of a pre-hearing direction I sought and received a more detailed written (and signed) statement from NZ4. Therein he said:  
*"Contact was made right across my left eye. Contact was made by just a finger across the eye. The finger dug in on my eye as it went across it for no longer than 2 seconds".*
- 2.15 He was questioned by the Player's representatives, by Mr Rutherford and by me. He had not seen the footage of the incident. He said the abrasion below his left eye was caused in training on the Friday before the match. He has had a contact lens dislodged 3 or 4 times before whilst playing. It had always been dislodged through direct contact, namely *"something has made contact across the eyeball"*. He said that such contact need not be *"very strong"* but there had always been direct contact with the lens to cause it to be dislodged. He could not remember reacting to this incident and he did not make a complaint to the Player at any point because *"I had other things to worry about in a game of rugby"*.
- 2.16 He was asked to describe the nature of the contact and he said it went *"like that across my eye"* at which point he demonstrated a sweeping motion across his left eye, from (his) left to right He then said this: *"when I said dug in [in my statement] I didn't mean with a finger point it was...the way I recall it, the hand sort of went across my whole face like that"* and again demonstrated a sweeping motion across his face, from (his) left to right. He was then shown the footage. He said the contact was made with part of a finger to his eyeball. The finger exerted pressure but that pressure was across his eye. He did not feel any inward pressure onto the eye. Asked if he could remember how he felt when that contact was made, he replied he could not.

### **3. Submissions**

- 3.1 The DDO did not make any submissions on whether or not the Player committed an act of Foul Play.
- 3.2 In summary, the Player's representative submitted that there was no act of Foul Play. If there was contact in the way alleged (which the Player had denied) it was accidental in a dynamic maul situation. At no time did the Player target or intend to make contact with NZ4's eye or eye area. It was submitted that I must ignore the abrasion beneath NZ4's left eye since it had nothing to do with the incident. The Player has an exemplary disciplinary record and is of excellent character and (as he said) he would not commit an act of Foul Play, still less one that would or might jeopardise participation in this Tournament.

3.3 Mr Barba further submitted that in a maul situation accidental contact with the eyes or eye area might happen. He alleged that NZ4 made such a contact with Argentina 1 in that maul; NZ4 was never asked about that in his evidence and so had no opportunity to address it. He said, *“the New Zealand player had stated that Mariano touches his face but it has not become clear when the contact lens became dislodged”*. He added, *“we allow ourselves to doubt whether that was the exact moment when he lost the lens”*. Once more when giving his evidence, NZ4 was not challenged on the clear assertion in his first witness statement (and inferentially what he said to the team doctor at half time) that the lens was dislodged by the Player’s contact with his eye.

3.4 During the course of his submissions Mr Barba did not accept that the Player made contact with NZ4’s eye or eye area. He said, *“we don’t discard [sic] the concept that there was a hand in front of his face as the video can show but the hand is far from the area that is protected by the World Rugby Regulation”*. In any event he submitted that there was no intention to cause any harm and that the Player’s arm movements were not reckless but were typical of legitimate actions during a maul.

#### **4. Judicial Officer’s findings in relation to act of Foul Play**

4.1 The International Rugby Board (as it then was) issued a memorandum on the subject of “Contact with the Eyes or Eye Area” dated 10 July 2009 (“the 2009 Memorandum”). Tim Gresson, IRB Judicial Panel Chairman issued a further supplementary Memorandum on the same subject dated 24 October 2014 (“the 2014 Memorandum”). Paragraph 4 of the 2014 Memorandum provides:

*“There have been a number of decisions which have helpfully clarified what is referred to as “contact” and defined the ‘eye area’.*

*In Hartley (RFU Disciplinary Panel, 2007), a passage also included in the 2009 memorandum, the Disciplinary Panel clarified the extent of conduct required for there to be ‘contact’ with the eye(s) or eye area:*

*‘Clearly ‘contact’ encompasses a wide range of activity from applying pressure with an open hand to a finger intentionally inserted into the eye socket intending to cause injury. Offences which would properly be classified as at the Lower End of the scale of seriousness would include, but not be limited to, wiping with an open palm or fist without any real force or intent and causing no injury. In certain circumstances it might also include reckless contact with a finger into the eye area. Offences which would properly be classified as at the Top End of the scale of seriousness would include, but not be limited to, an intentional act designed to cause serious discomfort or injury to the eye or area around the eye of an opponent. The most serious offences in this category would be where permanent damage is caused.’*

*In Quinlan (ERC Appeal Committee, 2009), page 6, the ‘eye area’ was defined as follows:*

*‘The Appeal Committee were of the view that contact by a player with an opposition player’s eye area would occur in respect of ‘Any area of the face in close proximity to the eye, where contact would cause a victim to fear for the safety of his eye or where there is a substantial risk that there could be contact with the eye.’*”

4.2 I have considered with care the evidence and all the submissions advanced before me. By TDP Clause 10.8.4 my function is to determine whether or not I am satisfied on the balance of probabilities that the Player committed an act of Foul Play. If I am so satisfied I must uphold the citing complaint.

4.3 My findings of fact as to contact:

- (a) Notwithstanding necessary caution when considering video footage (it is two-dimensional, distances are foreshortened and there was some very modest loss of image definition when magnified) the relevant imagery was both clear and compelling. A number of “stills” from the footage are appended hereto to demonstrate that and show what I have decided was the moment of contact with NZ4’s eye and eye area (**Appendix A**). I well appreciate that a still is but a moment in time and care must be taken in the analysis thereof. I have exercised such care and caution.
- (b) The Player is part of that attacking Argentina maul. NZ4 is seeking to disrupt the maul progress and/or challenge for the ball. The Player attempts to stop him. They are grappling with each other. With his right hand on NZ4’s right chest/upper body, the Player reaches with his left hand round behind NZ4’s head and over his left shoulder. The Player’s left hand reaches round and onto the left side of NZ4’s face. His left index finger entered NZ4’s left eye socket. Contact is made between NZ4’s eye and the distal and possibly the upper reaches of the middle phalange of the left index finger. The Player’s left middle finger is alongside and touching his index finger, touching the area immediately below and close to NZ4’s eye.
- (c) The Player’s left hand is ‘cupped’ from behind around NZ4’s face, such that parts of his fingers and/or palm are touching the side of his face. The Player then pulls his left hand back thereby pulling NZ4’s head back in the same direction. NZ4’s eyes, which had been opened, close and his face grimaces as he is pulled back, finger in eye. During that movement the Player’s left hand is pulled and comes away from NZ4’s eye and face as contact is lost.
- (d) That analysis of the footage was confirmed by NZ4’s direct evidence. His oral and written account without seeing the footage was essentially consistent with it. He did not change that account having viewed the footage. He was clear that he felt digital pressure applied directly to his eyeball. It is right that when he demonstrated the contact, he moved his hand across his face from left to right (i.e., the opposite direction from that shown in the footage). However, I do not consider that undermines his account in any material respect: he was not asked whether that movement was intended to demonstrate the actual direction of contact and in any event, in all other respects his account was consistent with the footage.
- (e) For the avoidance of doubt, in reaching my conclusion I ignored the abrasion below the left eye: on the evidence before me it had nothing to do with the incident.
- (f) I therefore reject the Player’s account that there was no contact with the eye or eye area.

- 4.4 My finding as to whether that contact constitutes an act of Foul Play:
- (a) I am not satisfied on the balance of probabilities that the Player targeted the eye and eye area. The contact with the eye and eye area was not intentional or deliberate. He did not look for or seek out the eye deliberately.
  - (b) However, in my judgement he intentionally reached out for and grabbed the Player's head and face. Further, I am satisfied he knowingly made contact with NZ4's face. With his hand placed on NZ4's face in the way I have described he then deliberately used force to pull his head backwards. In the act of grabbing his face and pulling back his head, he made contact with the Player's eye in the way I have described. I am satisfied that contact was not accidental but was reckless. It was reckless because he knew or ought to have known that in grabbing an opponent's head and face in the way described, there was a risk of committing an act of foul play; there was a risk he would make contact with the opponent's eye or eye area as in fact, he did.
  - (c) Therefore I am satisfied on the balance of probabilities that he committed an act of Foul Play (TDP Clause 10.8.4)
- 4.5 Accordingly in light of my findings, I uphold the citing (TDP Clause 10.8.4).

## 5. Submissions as to sanction

- 5.1 On behalf of the Player it was submitted that this act of Foul Play merited a low-end entry point. In summary, it was submitted that the conduct was reckless, it did not cause any injury, it had no effect on the game and NZ4 played on. It was further submitted that NZ4 was not vulnerable. It was submitted that there were no aggravating factors. As for mitigation I was urged to have regard to his exemplary record. It was submitted that he apologised once he knew of the allegation. I was invited to take into account all I had heard of his good character and was told that he was a fifth year medical student. I considered all of those submissions in assessing the appropriate sanction.
- 5.2 I was invited to apply TDP Clause 10.10.7 and conclude that by application of Appendix 3 to the TDP, the sanction would be wholly disproportionate to the type and level of this offending and therefore impose a sanction less than 50% of the lower end entry point specified therein. I was also invited to have regard to the fact that if suspended he would miss matches in a Rugby World Cup, a competition played only once every four years.
- 5.3 In advance of the hearing, the DDO placed before me the following written decisions: *Leonardo Ghiraldini*, 5 October 2011, *Sam Dickson*, 26 January 2014, *Ray Barkwill*, 28 November 2014 and *Lewis Carmichael*, 9 June 2015 as well as the 2009 and 2014 Memoranda. He made no submissions as to the entry point other than that RWCL would not "*object*" to a low-end classification.
- 5.4 So far as aggravating factors are concerned, he (correctly) recognised that the usual approach to the 2009 and 2014 Memoranda is to impose an additional period of suspension to reflect the need for a deterrent. However, he observed that TDP Clause 10.10.4 does not mandate such an approach. On the question of TDP Clause

10.10.7, he submitted that RWCL “*would not oppose*” the Player’s submission if I considered this “*to be an appropriate case*” for “*consideration of a lower sanction than 50%*”.

## 6. Assessment of sanction

6.1 Paragraph 2 of the 2009 Memorandum provides:

*“Over the years, regrettably there have been an increasing number of cases involving contact with the eyes or eye area. Among the first cases was the 1992 case of Loe who was initially suspended for a period of nine months. On appeal the period of suspension was reduced to six months. More recently, generally less severe sanctions have been imposed. Some of the sanctions are referred in the Chairman’s letter. However, In Hartley (2007 case imposing a 26 week suspension) the Judicial Committee made the following apposite comments:*

*‘Contact with an opponent’s eye or eye area is a serious offence because of the vulnerability of an eye and the risk of permanent injury. It is often the result of an insidious act and is one of the offences most abhorred by rugby players. Serious offences of this sort – and particularly those known colloquially as “eye gouging” must be dealt with severely to protect players, to deter others from such activity and to remove offenders from the game to ensure that they learn the appropriate lesson. Clearly “contact” encompasses a wide range of activity from applying pressure with an open hand to a finger intentionally inserted into the eye socket intending to cause injury. Offences which would properly be classified as at the Lower End of the scale of seriousness would include, but not be limited to, wiping with an open palm or fist without any real force or intent and causing no injury. In certain circumstances it might also include reckless contact with a finger into the eye area. Offences which would properly be classified as at the Top End of the scale of seriousness would include, but not be limited to, an intentional act designed to cause serious discomfort or injury to the eye or area around the eye of an opponent. The most serious offences in this category would be where permanent damage is caused.’”*

6.2 As the 2014 Memorandum makes clear the 2009 memorandum remains “*in force*”.

6.3 In assessing the seriousness of the Foul Play and by reference to TDP Clause 10.10.2 I find as follows:

- (a) The offending was not intentional or deliberate (TDP Clause 10.10.2(a)).
- (b) The offending was reckless, as described above in paragraph 4.4 (TDP Clause 10.10.2(b)).
- (c) Doing the best I can with the timings and evidence available to me, the contact was finger to eye, with pressure being applied directly across the eye. Contact with the eye was for approximately 2 seconds (TDP 10.10.2(c)(d)).
- (d) There was no provocation, the Player did not retaliate, nor did he act in self-defence (TDP Clauses 10.10.2(e)(f)(g)).

- (e) I am satisfied the conduct caused the loss of the contact lens but did not cause any injury and NZ4 played on (TDP Clause 10.10.2(h)).
  - (f) The conduct had no effect on the match (TDP Clause 10.10.2(i)).
  - (g) The NZ4 was not particularly vulnerable (TDP Clause 10.10.2(j)).
  - (h) The offending was complete and was not premeditated (TDP Clause 10.10.2(k)(l)).
  - (i) There are no other relevant features of the offending (TDP Clause 10.10.2(m)).
- 6.4 Accordingly I conclude that the act of Foul Play merited a low-end entry point, namely 12 weeks on the World Rugby Sanction Table, Appendix 3 to the TDP. That assessment, which is my own, accords with the general guidance in *Hartley*.
- 6.5 Turning to aggravating factors, the Player is not an offender of the Laws of the Game within the meaning TDP Clause 10.10.4(a). As for the need for a deterrent to combat a pattern of offending (TDP Clause 10.10.4(b)), paragraph 3 of the 2009 Memorandum provides:
- “...judicial personnel should note the IRB’s concerns with regard to the increasing number of incidents of this insidious form of foul play and in all proven cases where appropriate impose a condign sanction which clearly denounces the player’s conduct.”*
- 6.6 To that 2009 Memorandum was attached a letter dated 1 July 2009 from Bernard Lapasset, Chairman of the International Rugby Board (as it then was) and a Press Release to which the Chairman refers. In that letter M. Lapasset expressed the “*strongly held view*” that such “*serious offences must be dealt with severely to protect players, to deter others from such activity and to remove offenders from the game...*”
- 6.7 As for examples of the application of the 2009 and 2014 Memoranda, additional periods of suspension to reflect the need for a deterrent were imposed in *Leonardo Ghiraldini* (an additional 6 weeks to a top end entry point) *Ray Barkwill* (an additional week to a low end entry point) and *Lewis Carmichael*, 9 June 2015 (an additional week to a low end entry point). This case is not dissimilar to, though in some respects factually different from, *Carmichael*. I note there was no such additional period in *Sam Dickson* though the reason for not doing is not obvious from the written decision.
- 6.8 As paragraph 2 of the 2014 Memorandum observed, cases of contact with the eye or eye area continue to occur, notwithstanding the earlier Memorandum. The Memoranda remain in force and so have not been withdrawn. The only sensible inferences are that offending of this kind continues and such offending remains a matter of concern for World Rugby. I have not approached the question automatically but rather have considered whether *in this case* an additional period for *this* offence is required. Looking at this act of Foul Play, I have concluded that there is a continuing pattern of offending of *this kind* and the need for a deterrent to combat it remains. I therefore add a period of one week to the entry point of 12 weeks.
- 6.9 There are no other off-field aggravating factors (TDP Clause 10.10.4(c)).

- 6.10 As such I increase the sanction by 1 week from the entry point.
- 6.11 Turning to Mitigating factors and with reference to TDP Clause 10.10.5 I find as follows:
- (a) The Player denied committing an act of Foul Play and did not acknowledge culpability or wrongdoing. In fact, he denied contact with the eye or eye area (TDP Clause 10.10.5(a)).
  - (b) The Player has an excellent disciplinary record and is of good character; he has no previous red or yellow cards for Foul Play and has never been cited before. I was impressed with the character evidence I heard and read (TDP Clause 10.10.5(b)).
  - (c) The Player's conduct before and at the hearing was entirely in keeping with the many creditable things I heard and read about him (TDP Clause 10.10.5(d)).
  - (d) I note also Mr Barba's submission that once the Player was made aware of the allegation he offered his apologies if there had been any such contact (TDP Clause 10.10.5(e)).
- 6.12 The mitigating factors identified above merit a reduction of the suspension by a period of 4 weeks.
- 6.13 In respect of the submission made that I should apply TDP Clause 10.10.7, I conclude as follows. There are mitigating factors here as I have identified in paragraph 6.11 (TDP Clause 10.10.7(a)). However I do not consider that the sanction (absent application of TDP Clause 10.10.7) would be "*wholly disproportionate for the level and type of the offending*". The adverb "wholly" means completely, totally or entirely and modifies by addition "*disproportionate*". It connotes a sanction which is really exceptional for that level and type of offending. It is worth noting that the sanctions are of universal application and were determined at the 2012 Morality of the Game conference, with contributions from all stakeholders. Further, it is to be remembered that the 2009 and 2014 Memoranda addressing this type of offending remain in force.
- 6.14 On my factual findings, the Player made deliberate contact with the head and face of an opponent. In the course of so doing, he made reckless and direct contact with his eye. Having regard to the sensitivity and vulnerability of the eye, that contact was more than fleeting. In those circumstances, a sanction of nine weeks notwithstanding the off-field mitigating factors is not, in my judgment, wholly disproportionate.
- 6.15 Accordingly, the period of suspension from playing rugby union is one of 9 weeks.

## **7. Finding as to Sanction**

- 7.1 The Player is suspended from playing Rugby Union for 9 weeks. The suspension will take effect immediately and run up to and include 25 November 2015.
- 7.2 I was told and accept that once Argentina's participation in the Tournament is complete he will return immediately to play for his club Gloucester Rugby. Having

regard to TDP Clauses 10.10.10 and 10.10.11, the effect of the suspension is that he is suspended from the following matches:

- (a) Argentina's remaining Pool matches on 25 September, 4 and 11 October 2015;
- (b) Should Argentina progress to the quarter-final he is suspended from that match. If they do not, he is suspended from Gloucester's English Premiership match against Newcastle Falcons scheduled for 16 October;
- (c) Should Argentina progress to the semi-final he is suspended from that match or if not, from Gloucester's English Premiership match against Saracens scheduled for 23 October;
- (d) Should Argentina progress to the final or play in the bronze final he is suspended from that match or if they do not, from Gloucester's English Premiership match against Worcester Warriors scheduled for 31 October;
- (e) Thereafter he is suspended up to and including 25 November 2015. The effect is that he will miss the following of Gloucester fixtures:
  - (i) English Premiership match against Wasps for 8 November
  - (ii) European Challenge Cup match against Zebre scheduled for 14 November; and
  - (iii) Either the friendly against Barbarians on 17 November or the European Challenge Cup match against La Rochelle on 19 November. In respect of those two matches I conclude that it is inconceivable that he would be selected to play in both.

7.3 As for the submission that I should have regard to the fact that any suspension will result in his missing RWC matches, the TDP (and its derivation World Rugby Regulation 17) does not permit a qualitative assessment of playing consequences of a suspension. If a player commits an act of Foul Play which merits a suspension from playing, then he must be suspended even if the suspension would cause him to miss important international matches, including (for example) a Rugby World Cup final. Ultimately the Player is responsible for his actions (see by way of example *Sam Warburton* 17 October 2011).

7.4 Accordingly the Player is suspended until **25 November 2015** and is free to play from **26 November 2015**.

## 8. Right of Appeal

8.1 The Player has a right of appeal from the decision in accordance with the TDP Clause 10.13.



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Christopher Quinlan QC  
Judicial Officer

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24 September 2015

Still 1



Still 2



Still 3



Still 4



Still 5



Still 6



Still 7



Still 8



**Still 9**

