



Decision of the Independent Judicial Officer

Hearing held at the offices of Clifford Chance, 10 Upper Bank Street, Canary Wharf, London on Tuesday 13 October, 2015 commencing at 11.00 am

In respect of

Ross Ford and Jonny Gray of Scotland (“the Players”)

And

A citing by **Scott Nowland (Australia)** Citing Commissioner, **contrary to Law 10.4(j) or 10.4(e)** in the Match between **Scotland v Samoa** on Saturday 10 October 2015 at St James’ Park, Newcastle (**“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 Ross Ford committed an act of Foul Play, contrary Law 10.4(j).
- (ii) The Judicial Officer found that the Player Jonny Gray committed an act of Foul Play, contrary Law 10.4(j).
- (iii) The Player Ross Ford is suspended from taking part in the game of rugby union for a period of 3 weeks.
- (iv) The Player Jonny Gray is suspended from taking part in the game of rugby union for a period of 3 weeks.

1. Introduction

- 1.1 I was appointed to consider the Citing Complaint against the Player in the Pool B Match played between **Scotland** and **Samoa** on Saturday 10 October 2015 at St James' Park, Newcastle ("the match") in the Rugby World Cup 2015 ("the Tournament").
- 1.2 **Scott Nowland (Australia)** was appointed as Citing Commissioner to this Match and cited the Players contrary to Law 10.4(j) or Law 10.4(e).
- 1.3 Pursuant to Section 2 of Appendix 5 to the Tournament Disciplinary Programme ("TDP") I issued pre-hearing directions. Therein I indicated that it was my present intention (subject to submissions from the parties) to hear the citing complaints together since the alleged acts of Foul Play arose out of the same incident and concerned the Players' simultaneous contact with the same opponent. Neither Player nor the Designated Disciplinary Official suggested that was wrong or invited me to do otherwise. Both were content that I proceed in that way and accordingly I heard both citing complaints together.
- 1.4 In addition to the Judicial Officer the following persons were present at the hearing:
- **The Players**
 - **Gavin Scott**, Scotland Team Manager
 - **Bruce Caldwell**, Players' representative
 - **Susan Ahern**, Designated Disciplinary Officer (DDO), Rugby World Cup Limited ("RWCL")
 - **Yvonne Nolan**, Designated Disciplinary Official, ("DDO"),RWCL
- Witness (present only by telephone when giving evidence)
- **Jaco Peyper**, the match referee

2. Summary of the Citing Complaints and Players' account

- 2.1 The Players were cited for an act of Foul Play contrary to Law 10.4(j) or Law 10.4(e). The incident occurred in the 57th minute of the match.
- 2.2 In his report in relation to Ross Ford the Citing Commissioner states:

"Samoa No.7 (Lam) was competing for the ball at the break down. Scotland No 2 (Ford), together with Scotland No 5 (Gray), lifted Samoa No.7 from the ground so that his legs were in the air and his body was past the horizontal. Ford continued with the tackling action so that Samoa No 7 head makes initial contact with the ground. Ford then falls onto Lam creating further downward pressure onto Lam. The tackle placed Lam in a vulnerable position where he was at risk of serious injury and as such has breached the Red Card threshold. This outcome of the tackle / action was contributed by Scotland No 5 (Gray) who has also been cited.

2.3 In his report in relation to Jonny Gray the Citing Commissioner states:

“Samoa No.7 (Lam) was competing for the ball at the break down. Scotland No 5 (Gray), together with Scotland No 2 (Ford), lifted Samoa No.7 from the ground so that his legs were in the air and his body was past the horizontal. Gray continued with the tackling action so that Samoa No 7 head makes initial contact with the ground.

The tackle placed Lam in a vulnerable position where he was at risk of serious injury and as such has breached the Red Card threshold.

This outcome of the tackle / action was contributed by Scotland No 2 (Ford) who has also been cited.

2.4 In support of the Citing Complaints 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% of full speed). In addition to the broadcast feed, the Citing Commissioner submitted footage from the following additional camera angles: numbers 2, 7 and 13. The remaining available footage was disclosed (to the parties) but not relied upon by the Citing Commissioner in support of his Citing. A careful analysis of the footage is needed and my findings in relation thereto are set out below (see paragraph 4.5 below).

2.5 In separate emails the assistant referees (JP Doyle and Marius Mitrea) said they did not see the incident

2.6 The match referee Jaco Peyper submitted an email in which he said:

“I can confirm I indeed saw the incident live referred to in the citing complaint. Samoa number 7 found himself in position competing for the ball with his head below his hips already. The Scotland arriving players, Scotland 5 and 2 in an attempt to remove the threat to possession as per normal and in the dynamics lifted Samoa 7’s legs and he tumble over, however the player supported on his hands through out.

After our internal performance review process I am satisfied that that I dealt with the incident appropriately.”

2.7 By TDP Clause 10.14.1 referees and/or assistant referees “*may only give evidence of fact not opinion*”. The last sentence is inadmissible opinion evidence and as such I disregarded it. He gave evidence before me. Before he did so I explained to him the limits of the evidence I was able to hear (namely as to fact not opinion) which he readily understood and accepted.

2.8 He said he was 3-4 metres away and his view was not obscured. He said that Samoa 7 (“S7”) was supporting himself throughout but did say to Mrs Ahern that he lost sight of S7’s hands “*probably when they [all of the players] dropped to the floor*”. He penalised Scotland for holding on. Questioned by Mrs Ahern he said he did not see either of S7’s legs pass through the horizontal. He said S7’s landing was obscured such that he did not see exactly how he landed.

2.9 In a witness statement dated 13 October, S7 Jack Lam stated that he had no “specific recollection” of, and was not injured in, the incident.

2.10 In compliance with my pre-hearing directions each Player supplied (in advance of the hearing) a written summary of his case. They were very similar in their terms. Ross Ford (“RF”) denied the breaching Law 10.4(j) or 10.4(e). He said

“I do not accept that the citing complaint is true and accurate in every respect. In particular, I dispute that my actions placed Samoa No.7 “past the horizontal” as Samoa No.7 was already bent over, with a body position beyond the horizontal.

I also dispute that I (Ford) “continued” with the tackling action “so that” Samoa No 7’s head makes initial contact with the ground. (my emphasis added).

I dispute that I fell onto Samoa 7 creating further downward pressure onto Lam. I believe the incident was different.

I also dispute that Samoa 7 was at risk of a serious injury as the dynamic of the incident was such that serious injury was not likely. In particular the player, Samoa 7, came down more on his side than anything, and on top of Scotland’s no 8. His hands were on the ground also. The impact was minimal and could not have been anything more than minimal because of the height he came down from and the momentum of the incident.”

2.11 In relation to the incident he said:

“I did not ‘spear’ him or ‘force’ him into the ground.

Samoa 7 had to be moved off the ball as he was over Scotland 8.

I lifted his leg. I wanted to drive him over on to his side. It is easier to move a player off to one side than to drive them back. If I could get him over and off his feet then he would have to release.

I didn’t lift him up. I tried to lift one of his legs and take him over. He had his hand on the ball.

Jonny Gray hit him from the other side. Samoa 7 popped up.

I did not try to drive him into the ground. I tried to drive him off the ball and on to his side, away from Scotland 8. I came down with him but he was across Scotland 8.

My chest is in contact with Samoa 7’s right arm and shoulder area and my momentum is across this area (at a right angle to his head and neck).

I am not forcing him down on to his head or his shoulders – my weight is across Scotland 8 and on to Samoa 7’s upper body (going across his back from shoulder to shoulder). I was not driving him down.

I did not try to ‘force’ him down or ‘spear’ him down in any way. I don’t believe I did ‘force’ him or ‘spear’ him down.

I believe I tried to knock him on to his side and I wasn't trying to force him or spear him - and not on his head or neck.

I believed that what I was trying to do was not against the Laws of the Game. I believe that my actions in holding and moving the player in the way that I did were not of themselves reckless."

- 2.12 RF repeated and expanded upon that account before me. He said he lifted his leg intending to roll him over. He explained:

"So as I'm lifting his leg up I suddenly feel that he's -- that he's going like very light. And I realise that Jonny, another Scotland player, has come in from the other side and that his legs are up. And at that point try and put him down. And as I'm falling I can't stand, because the Scotland no. 8 is on the floor so I can't place my foot anywhere stable and instead of dropping his leg or dropping him completely decide to hold on to him. And as I'm falling, I fell down across his upper back and then tried to roll out. And as he's fallen he has fallen on top of our no. 8 on the ground. So we all basically ended up on top of -- on top of him... Obviously realise that it's not an ideal situation for the player to be in so I tried to get him down to ground safely and then get out the way because, at that point, my job is, like, I've not been effective as a clearer so my job is to -- I've failed in my job to clear the 7 out."

- 2.13 From his recollection he did not apply force to S7 descent. His intention was to roll him away. He held onto him because he did not want to drop him. Questioned by Mrs Ahern about the moment he felt S7 going light he said

"when I felt him going light obviously both his legs were in the air, so that's far from ideal. And that's something that you don't endeavour to do because it endangers the player's safety and it's like something we're not coached to do. So you just try and control him down to the best of your ability."

- 2.14 Jonny Gray ('JG') denied breaching Law 10.4(j) or 10.4(e). He said

"I do not accept that the citing complaint is true and accurate in every respect. In particular, I dispute that my actions placed Samoa No.7 "past the horizontal" as Samoa No.7 was already bent over, with a body position beyond the horizontal.

I also dispute that I (Gray) "continued" with the tackling action "so that" Samoa No 7 head makes initial contact with the ground. (my emphasis added).

I also dispute that Samoa 7 was at risk of a serious injury as the dynamic of the incident was such that serious injury was not likely. In particular the player came down more on his side than anything, and on top of Scotland's no 8. His hands were on the ground also. The impact was minimal and could not have been anything more than minimal because of the height he came down from and the momentum of the incident."

2.15 As to the specifics of the incident, JG stated:

“In summary my position is that I attempted to bring Samoa 7 down. I did not ‘spear’ him or ‘force’ him into the ground.

The dynamic of this incident was that I had gone into try to drive the Samoa 7 off the ball as he was over Scotland 8. He had got to the ball early and I had to remove him – I had to try to clear him out.

I made to lift one of his legs because that is what to do in that situation. It is what we are taught to do – move the player by lifting one of their legs. I wanted to drive him over on to his side. Ross Ford hit him from the other side and tried to do the same thing. This forced Samoa 7 into the position he was in.

When I realized he was up and both feet were off the ground I tried to control the situation and stop applying force to him.

My left arm was under him and my right hand was on Samoa 7’s leg. I wasn’t driving into him with any part of my body at that point. My head is in contact with him but I am not trying to drive my shoulder or upper body through him or on him at that point.

I tried to bring him down with my left arm under Samoa 7 at all times and my right hand holding his leg.

I ended up getting pushed back and I moved my feet. I bent over and came down with him. At this point, I didn’t try to do anything other than stop the player coming down harder.

It was a difficult situation because of Samoa 7 already being over and coming down. Ford was also involved driving towards me so it wasn’t as if I could hold him up. I held on to him to try to bring him down better than if I had let go.

I wasn’t trying to ‘force’ him down or ‘spear’ him down. I don’t believe I did ‘force’ him or ‘spear’ him down. I didn’t ‘drive’ him down.

If it hadn’t been for Ford I think I would have knocked him over on to his side. If I hadn’t been there Ford would have done the same. I believe that my actions in holding and moving the player in the way that I did were not of themselves reckless.

I wish to make you aware that before I was told I was cited or even that there was a risk of being cited, I explained my actions to my team manager Gavin Scott, in this way and I did not know, at that time, I was at risk of being cited.”

2.16 He repeated and also expanded upon that account before me. He said:

“So I felt that the Samoa no. 7, Jack Lam, was in a strong position. And as soon as I moved the leg he was still in a strong position. And then, as he became weaker, when Ross -- we both felt that we had to take him down as light as possible. That’s when we realised we had lost the ruck. So then it was the player’s safety we had to take into account. So that’s why I there kept contact [sic]

and don't drive down and kept my legs back to try to take the weight out as much as possible."

- 2.17 He said he did not feel that he applied any "downward pressure" to S7 as he descended. To Mrs Ahern he said:

"So his upper half would be his hands on the ball. So he felt. So he was in a strong position. So as I tried to clear he was still strong, semi strong. And then, as he became weaker, I realised that Ross had come in. So then we both had to bring him down safely. And so we didn't continue to try and clear any more....Once that I realised that I had lost, I realised it could have become then that's when I knew, yeah, that the player's safety was at risk so we had to bring him down. So I had to try to react as best as possible."

3. Submissions

- 3.1 Mr Caldow analysed the footage and provided me with a helpful note in relation thereto. He submitted that neither Player committed an act of Foul Play, under Laws 10.4(e) or 10.4(j). In summary he submitted that the Citing Complaint was factually incorrect. He submitted that the ingredients of neither Law reference were satisfied. The Players were attempting to clear S7 out by rolling him over. S7 was already beyond the horizontal when he was taken hold of. He submitted that by lifting his legs the Players did no more than remove 2 of 4 of his points of contact with the ground or object/s on the ground. His hands remained on the ball and/or in the vicinity therefore of the Scotland No. 8 such that he was not lifted in any true sense. Neither dropped him nor forced him to ground. He accepted that S7's head came into contact with the ground but that was not determinative of the issues. All of those submissions applied equally to Law 10.4(e) and he submitted in that respect neither Player intended to nor did commit a dangerous tackle.
- 3.2 Mrs Ahern said that RWCL "supports" the Citing Complaints and submitted that I "ought" to find that both Players committed an act of Foul Play contrary to law 10.4(j) and if not, then contrary to Law 10.4(e).

4. Judicial Officer's findings in relation to act of Foul Play

- 4.1 I considered with care the evidence and all the submissions advanced before me. By TDP Clause 10.8.4 my function was to determine whether or not I was satisfied on the balance of probabilities that each Player, taken separately, committed an act of Foul Play. If so satisfied, I must uphold the citing complaint.
- 4.2 I emphasise that I approached the citing complaint of each Player separately. Necessarily that involved considering separately the evidence for and against each Player. The evidence was not the same and had to be, and was, considered individually. I reminded myself that my factual and 'legal' conclusions in relation to each Player need not be the same.

- 4.3 In so doing I had regard to the decision in *Luan De Bruin* (17 June 2013, Junior World Championship) where at paragraph 12 the Appeal Officer observed:

A final comment. This is yet another case which gives rise to the issue as to whether it is appropriate for Citing Commissioners to cite more than one player in respect of incidents similar to that which occurred in this case. In my view where more than one player has contributed to a dangerous lifting situation (whether in a tackle or otherwise) Citing Commissioners could give serious consideration to reviewing the totality of the actions of all the participants in relation to the incident and then decide whether the cumulative effect of their actions warranted the awarding of a red card to any and/or all of those players involved. If the Citing Commissioner considers that a participant's actions in such an incident do not meet the red card threshold but another participant's actions do and such player(s) is cited then that determination should be particularised in the citing report. It follows, if there are multiple citings of players involved in the incident and they are upheld then it would be the responsibility of the Judicial Officer to assess the extent to which each of the players involved contributed to the incident of Foul Play and sanction accordingly. What is paramount is that acts of Foul Play which meet the red card threshold test are cited and subject to the rigours of judicial scrutiny.

- 4.4 My approach was also informed by the observations of the Super Rugby 2015 Appeal Committee in *Francois Steyn* (31 March 2015, paragraph 41):

"The Committee considered the various methods of characterisation of the conduct of players involved in a 'gang tackle' or multiple players under consideration for foul play. The method of characterisation assists with answering the fundamental question of whether or not the player ordered off or cited for foul play breached the Laws of the Game. The use of concepts such as predominant role; main contributing factor; primary cause or primary offender are instructive, alerting the tribunal to the task at hand. However, the basic principle that must be followed is whether or not the player in question, before the JO or Judicial Committee, breached the Laws of the Game. This test is a simple one and is applicable whether one, or more players, were allegedly involved in the incident under review. If foul play is proven, the extent of a player's contribution should be assessed as part of the sanctioning process.

- 4.5 My findings of fact (on the balance of probabilities) were as follows:

- (a) Scotland No 8 ("Sc8") carried the ball into contact. He was tackled and brought to ground.
- (b) Once on the ground, S7 went over the top of him contesting for the ball. His legs are planted in a wide stance and he is bent over at the waist, head and arms down (or 'jackling') over Sc8 who was lying (initially) on his right side, before moving more onto his front.
- (c) JG and RF joined the breakdown. RF contacts with S7 as does JG. In the act of joining the breakdown, JG drove Samoa 3 away (from the breakdown).

- (d) S7 was competing for the ball. In the event he was successful, for the referee penalised Sc8 for 'holding on'.
- (e) However, RF and JG attempted to 'clear out' S7. With his right hand RF took hold of S7 in the region of his right shoulder. He grabbed hold of the inner aspect of S7's lower right thigh with his left hand.
- (f) At the same time JG took hold of S7. He did so by placing his left arm under his body and through his leg, taking a grip at the top of S7's left leg. From behind, he grabbed the inner aspect of S7's left knee. JG's left shoulder was against S7's lower left flank/hip.
- (g) Simultaneously, each either side of and holding S7 as I have described, they lifted him, each lifting one leg. He was bent at the waist, head facing down. The effect of the lift, was as follows
 - a. It raised his legs, each foot passing 'through the horizontal.'
 - b. It lifted his body up and forwards
 - c. It changed the angle of his body, from one that was (very roughly) 45 degrees to the ground to one where his head and body were almost perpendicular to the ground.
- (h) When he was lifted as I have described, S7's right hand was in the immediate vicinity of and at times touching the ball. He was not supporting his body weight with that hand. His left hand appears to be gripping the lower right side of Sc8's jersey, just above his shorts.
- (i) Each Player maintained those holds as all 3 went to ground. RF remained in contact with S7 as he descended. With his weight upon S7, he drove him across and down and thereby accelerated his decent. That is to drive for the purposes of Law 10.4(j).
- (j) With his grip maintained, his left shoulder/upper body against S7, JG accelerated his decent by applying downward pressure to S7.
- (k) S7's face landed on the back of Sc8 right leg and continued to ground, the left side of his face/head and left shoulder hitting the ground. His chest and upper body landed on Sc8's legs, lower body and side. He rested with neck bent left to right and RF over his right side, forcing his head, bent neck and right shoulder into the ground.

4.6 It is not necessary to add to the length of this document by particularising the factual differences between the citing complaints, the referee's evidence and my findings nor to analyse the reasons for such. Ultimately, it is my factual findings which are important, reached after careful consideration of the evidence, informed by the helpful and detailed submissions from both Counsel (for which I am grateful).

4.7 It is necessary to apply the relevant laws to those facts to decide whether the Players committed an act of Foul Play. I dealt first with Law 10.4(j):

- (a) There are four component parts to Law 10.4(j). If each element is present the conduct is *deemed* to be dangerous play and the player commits an act of Foul Play. They are as follows (i) The tackled player is lifted off the ground (ii) whilst his feet are still off the ground, (iii) he is dropped or driven into the ground such that (iv) his head and/or upper body come into contact with the ground.
- (b) The word “tackle” does not appear in the Law. Its application is not restricted to tackle situations.
- (c) “Horizontal” does not appear in the law. The term “passing through the horizontal” is a well-known indicator used by (for example) match officials and citing commissioners as a pointer for Foul Play contrary to Law 10.4(j).
- (d) Lifted off the ground
 - a. Mrs Ahern submitted that it would make a “*mockery of the law*” if it was found not to apply where all the other ingredients were present but the player had “*a fingernail or another small part of his anatomy still connected to the ground*”. She so submitted because she said the danger present in her factual situation was one the Law was designed to address.
 - b. The Law requires a lifting of a player from the ground. That, in my judgment it is a question of fact.
 - c. I am satisfied that the effect of each Player’s action was to lift S7 off the ground. S7 did not “pop up” but rather was lifted up. His feet were clearly lifted off the ground. His body and legs were lifted up and moved forward in the way I have described. One hand (his left) was on Sc8’s jersey, the other moving, both on and in the vicinity of the ball. Neither was in direct contact with the ground and he was not supporting his weight with them.
- (e) Drop or drive
 - a. RF
 - i. RF did not drop S7 in the conventional sense.
 - ii. RF remained in contact with S7 as he descended. With his weight upon S7, he drove him across and down and thereby accelerated his decent.
 - iii. That is to drive for the purposes of Law 10.4(j).
 - b. JG
 - i. Like RF he did not drop S7.
 - ii. JG remained holding S7 as he descended. With that grip and with his left shoulder/upper body against S7, he accelerated his decent by applying downward pressure. That is to drive for the purposes of Law 10.4(j).
- (f) Law 10.4(j) is breached if the offending player drops or drives his opponent into the ground while his feet are still off the ground.

- a. In the terms I have described and found, while his feet were off the ground, both Players drove S7 to ground.

(g) Head and/or upper body

- a. S7's head and/or upper body came into contact with the ground, as I have described.

4.8 Accordingly in light of my findings, I found each constituent element of Law 10.4(j) established in respect of each Player. I am bound in those circumstances to uphold the citings, which I did (TDP Clause 10.8.4).

4.9 In light of my findings in relation to both Players and Law 10.4(j), it was not necessary to go on to consider Law 10.4(e).

5. Submissions as to sanction

5.1 On 8 June 2009 the IRB issued a Memorandum, entitled Dangerous Tackles to Referees, Citing Commissioners, Judicial Officers and Non-Legal Judicial Committee Members. It was circulated to Member Unions on 10 June 2009 ("the 2009 Memorandum"). The purpose of the 2009 Memorandum was to "*emphasise that they [lift and tip tackles] must be dealt with severely by referees and all those involved in the off-field disciplinary process*".

5.2 On behalf of the Players it was submitted that this act of Foul Play merited a lower end entry point. It was submitted that there were no aggravating factors and the 2009 Memorandum did not apply to this specific incident. Mr Caldow relied on the *De Bruin* Appeal decision in support of that contention

5.3 As for mitigation I was told RF has only once been suspended before, two weeks in 2006. He is the most capped Scotland forward and has a Lions test cap. He told me he was "*very sorry*" and did not intend to harm S7. I was provided with a testimonial from Alan Solomons, Head Coach of RF's club, Edinburgh Rugby dated 13 October 2015 which described the Player, inter alia, as "*one of the finest men I have ever met*".

5.4 This was the first time JG has been cited. He has never been sent off before. He too expressed that he was "*sorry it happened*". A testimonial from his Head Coach, Gregor Townsend at Glasgow Warriors described him as a "*pleasure to coach and very personable young man who is respected by his teammates and coaches*".

5.5 In relation to both Players I was invited to apply TDP Clause 10.10.7 and conclude that by application of Appendix 3 to the TDP, any sanction imposed on either Player would be wholly disproportionate to the type and level of their offending. By application thereof, I was invited to impose no sanction on either Player. Once more he relied upon the *De Bruin* decision. In this context, it was also submitted that I should have regard to the fact that any suspension would involve missing the quarter final match against Australia (and any other Tournament matches).

5.6 Mrs Ahern made no submissions on entry point. Mrs Ahern submitted that the 2009 Memorandum “*ought to apply*” though said it was a matter for my discretion as to whether it did. She submitted that while it was in my discretion whether to apply TDP Clause 10.10.7, she submitted that RWCL “*don't believe this is a case where 10.10.7 would apply*”. She submitted that it would be “*inconsistent with the application of the [2009] memorandum to then apply 10.10.7*” but she acknowledged that Clause 10.10.7 did not specifically prohibit such an approach.

6. Assessment of sanction

6.1 I considered separately the individual roles played by each.

Ross Ford

6.2 In assessing the seriousness of RF's Foul Play and by reference to TDP Clause 10.10.2 I find as follows

- (a) The act of Foul Play was committed by the Player deliberately lifting one of S7's legs off the ground while his other leg was simultaneously lifted by JG. The effect of their combined action was to lift him. He accepted in evidence that S7 went “*light*” and he had a responsibility for his safety. However, no sufficient attempt was made to bring S7 safely to ground. In fact, as I have found, he drove him across and down and thereby accelerated his decent (TDP Clause 10.10.2(a)(b)).
- (b) I do not accept there was no danger or risk of serious injury. It is right that S7 landed (in part) on Sc8 and to that extent his landing was ‘cushioned’ or ‘broken’. Having been lifted, brought down as he was, with his face and head landing on the ground in a way and at an angle I have described, he was exposed to the risk of injury, potentially serious. I accept that RF did not intend to injure him but by acting in the way he did, he contributed to a situation which exposed S7 to the risk of injury, potentially serious (TDP Clause 10.10.2(c)(d)).
- (c) There was no provocation, the Player did not retaliate, nor did he act in self-defence (TDP Clauses 10.10.2(e)(f)(g)).
- (d) S7 was not injured and played on (TDP Clause 10.10.2(h)).
- (e) The conduct had no effect on the match (TDP Clause 10.10.2(i)).
- (f) S7 was vulnerable to the extent that he was propelled head first and not able to break his fall with his hands, He landed awkwardly and dangerously on the side of his head, (TDP Clause 10.10.2(j)).
- (g) The offending was complete and was not premeditated (TDP Clause 10.10.2(k)(l))
- (h) There are no other relevant features of the offending (TDP Clause 10.10.2(m)).

- 6.3 Accordingly I concluded that the act of Foul Play merited a lower end entry point, namely 4 weeks on the World Rugby Sanction Table, Appendix 3 to the TDP.
- 6.4 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). TDP Clause 10.10.4(c) does not apply.
- 6.5 As for the need for a deterrent to combat a pattern of offending (TDP Clause 10.10.4(b)), I considered the 2009 Memorandum. The said Memorandum followed Law Ruling No5 of 2005 and a IRB Council Laws Designated Members Ruling in 2007 which made clear that tackles involving a player being lifted off the ground, tipped horizontally and then forced or dropped to the ground are illegal and constitute dangerous play. They are inherently dangerous and can result in very serious injury.
- 6.6 This was not a 'dangerous tip tackle' in the classic sense. However, it was a clear out by two players, which involved a player being lifted, and driven into the ground. He landed on the side of his head. All of the component parts of Law 10.4(j) were satisfied. The Memorandum remains in force. The only sensible inference is that offending of this (10.4(j)) kind continues and such offending remains a matter of concern for World Rugby. I did not approach the question automatically but rather considered whether *in this case* an additional period for *this* offending was 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 added a period of one week to the entry point of 4 weeks.
- 6.7 Turning to Mitigating factors and with reference to TDP Clause 10.10.5 I found as follows:
- (a) The Player denied committing an act of Foul Play, but did not dispute the essential facts (TDP Clause 10.10.5(a)).
 - (b) He was suspended for two weeks in 2006. For a Player of his age and experience, that represents an excellent disciplinary record. I had regard to glowing testimonial from Alan Solomons; he is of exemplary character. (TDP Clause 10.10.5(b)).
 - (c) The Player's conduct before and at the hearing could not be faulted (TDP Clause 10.10.5(d)).
 - (d) He expressed regret which I accept as genuine (TDP Clause 10.10.5(e)).
- 6.8 The mitigating factors identified above merit a reduction of the suspension by a period of 2 weeks.
- 6.9 In respect of the submission made that I should apply TDP Clause 10.10.7, I concluded as follows. There are mitigating factors here as I identified in paragraph 6.5 (TDP Clause 10.10.7(a)). However I did not consider that the sanction (absent application of TDP Clause 10.10.7) of 1 week was "*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 Memorandum addressing this type of offending remains in force.

- 6.10 On my factual findings, the Player's conduct was dangerous. It exposed S7 to the risk of potentially serious injury. In those circumstances, a sanction of three weeks notwithstanding the off-field mitigating factors is not wholly disproportionate.
- 6.11 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. In fact it forbids it (TDP Clause 10.10.15). 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).
- 6.12 Accordingly, the period of suspension from playing rugby union for RF is one of 3 weeks.

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- 6.13 In assessing the seriousness of JG's Foul Play and by reference to TDP Clause 10.10.2 I find as follows
- (a) JG committed the act of Foul Play by deliberately lifting S7's left leg off the ground while RF simultaneously lifted his right leg. The effect of their combined action was to lift him. He accepted in evidence that S7 went "*light*" and he had a responsibility for his safety. However, no sufficient attempt was made to bring S7 safely to ground. In fact, as I have found, he accelerated his decent and drove him down (TDP Clause 10.10.2(a) (b)).
 - (b) As with RF, I did not accept there was no danger or risk of serious injury. He was exposed to a risk of injury, potentially serious. I accept that he did not intend to injure him but by acting in the way he did, he contributed to a situation which exposed S7 to the risk of injury, potentially serious (TDP Clause 10.10.2(c) (d)).
 - (c) There was no provocation, the Player did not retaliate, nor did he act in self-defence (TDP Clauses 10.10.2(e)(f)(g)).
 - (d) S7 was not injured and played on (TDP Clause 10.10.2(h)).
 - (e) The conduct had no effect on the match (TDP Clause 10.10.2(i)).

- (f) S7 was vulnerable to the extent that he was propelled head first and not able to break his fall with his hands, He landed awkwardly and dangerously on the side of his head, (TDP Clause 10.10.2(j)).
- (g) The offending was complete and was not premeditated (TDP Clause 10.10.2(k)(l))
- (h) There are no other relevant features of the offending (TDP Clause 10.10.2(m)).

6.14 Accordingly I concluded that the act of Foul Play merited a lower end entry point, namely 4 weeks on the World Rugby Sanction Table, Appendix 3 to the TDP.

6.15 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): he has never been cited or sent off. TDP Clause 10.10.4(c) does not apply.

6.16 As for the need for a deterrent to combat a pattern of offending (TDP Clause 10.10.4(b)), I considered application of the 2009 Memorandum. My methodology was as in relation to RF and my conclusions, separately reached, were identical for the same reasons. I therefore aggravated 4 weeks by 1 week, making 5 weeks.

6.17 Turning to Mitigating factors and with reference to TDP Clause 10.10.5 I found as follows:

- (a) The Player denied committing an act of Foul Play, but did not dispute the essential facts (TDP Clause 10.10.5(a)).
- (b) He has a clean disciplinary record. I had regard to testimonial in commendable terms from Gregor Townsend, Glasgow Warriors Head Coach. He is of excellent character (TDP Clause 10.10.5(b)).
- (c) His is young and relatively inexperienced but a player of prodigious talent and promise (TDP Clause 10.10.5(c)).
- (d) The Player's conduct before and at the hearing was impeccable (TDP Clause 10.10.5(d)).
- (e) I also accepted his expression of regret (TDP Clause 10.10.5(e)).

6.18 The mitigating factors identified above merit a reduction of the suspension by a period of 2 weeks.

6.19 I also considered TDP Clause 10.10.7. My approach to the meaning of that Clause was the same as with AF (and other cases I have decided in this Tournament – see *Galarza* 24 September 2015 and *Nadolo* 29 September 2015). I considered whether on my factual findings a sanction of three weeks was wholly disproportionate. Given my factual findings I concluded that it was not.

6.20 I treated the submission that a suspension would mean missing matches in the RWC in exactly the same way as I did in respect of RF.

6.21 Accordingly, the period of suspension from playing rugby union for JG is one of 3 weeks.

6.22 Having found that each Player committed an act of Foul Play in this joint incident, and having assessed their individual 'culpability' I asked myself whether one was more at 'fault' than the other. I was inclined to the view that JG lifted the leg higher than RF and RF drove with greater force than JG. But, in the event, I concluded that such differences as there are in their respective roles were not of such a degree that they merited different sanctions.

7. Finding as to Sanction

7.1 The Players are each suspended from playing Rugby Union for 3 weeks. The suspension will take effect immediately. In the context of the Tournament, 3 weeks equates to 3 matches and therefore both Players will be suspended for the remainder of Scotland's RWC 2015 matches.

7.2 I was told that once Scotland's' participation in the Tournament is over, each Player would be released immediately back to his respective club. Once back the clubs will "*decide, based on availability of other players in their positions, when they're able to rest the players*". Therefore should Scotland lose their quarter final match against Australia and so be eliminated from the Tournament, I direct that within 48 hours of the return to their clubs those respective clubs, Edinburgh and Glasgow must notify me and RWCL in writing of RF and JG's respective playing schedules. I will then be in proper position to determine the playing consequences of the sanction and the precise end dates thereof (TDP Clauses 10.10.10 and 10.10.11).

8. Right of Appeal

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



Christopher Quinlan QC
Judicial Officer

14 October 2015