



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 1.00 pm.

In respect of

Sean O'Brien of Ireland (“**the Player**”)

And

A citing of the Player by Douglas Hunter, Citing Commissioner, Scotland asserting contravention of Law 10.4(a) namely “*a player must not strike an opponent with the fist or arm, including the elbow, shoulder, head or knee(s)*”, in a match played between Ireland and France on 11 October 2015 at the Millennium Stadium, Cardiff (“**the Citing Complaint**”).

Judicial Officer appointed to hear the case:

Terry Willis, Australia (“**the Judicial Officer**”)

In addition to the Judicial Officer, the following persons were present at the hearing:

- **Sean O'Brien** (the Player)
- **Max Duthie** (Solicitor from Bird & Bird representing the Player)
- **Michael Kearney** (Ireland Team Manager)
- **Ben Rutherford** (Designated Disciplinary Official, Rugby World Cup Limited (RWCL))
- **Patrick Lloyd** (RWCL)

Decision of the Judicial Officer:

- (i) The Judicial Officer confirmed the admission of an act of foul play by the Player as alleged in the Citing Complaint.
- (ii) The Player is suspended from all forms of rugby up to and including 18 October 2015. Accordingly, the Player is suspended for the quarter final match between Ireland and Argentina on 18 October 2015. Thereafter he is free to resume playing.

1. Introduction

- 1.1 I was appointed to consider the Citing Complaint against the Player in the match between **France** and **Ireland** on 11 October 2015 at Millennium Stadium at the Rugby World Cup 2015 ("The Tournament").
- 1.2 **Douglas Hunter (Scotland)** was appointed as a Citing Commissioner to this match and cited the Player for striking contrary to Law 10.4(a). Pursuant to Section 2 of Appendix 5 to the Tournament Disciplinary Program (TDP), I issued pre-hearing Directions.
- 1.3 In addition to the Directions, I held two Preliminary Directions Hearings in which I requested that the DDO contact and appoint an independent medical practitioner to answer medical questions that I considered relevant. Mr Max Duthie ("Duthie") agreed to the appointment of an independent medical practitioner suitably qualified in sports medicine to provide medical evidence in relation to the matter. In consultation with Duthie and Ben Rutherford ("Rutherford") from Rugby World Cup, agreed questions were put to the medical practitioner, Dr Arthur Mone. Dr Mone provided a medical report referred to below. Dr Mone has over 25 years experience as a medical officer for Rugby League and was also the Chief Medical Officer for Leeds Rugby.
- 1.4 Subsequent to the Directions Hearing, I was notified by Duthie that the Player admitted striking in breach of Law 10.4(a)

2. Summary of the Citing Complaint

- 2.1 The Player was cited for striking. The alleged striking was described by the Citing Commissioner as follows:

"IR7 is standing to the left side of a ruck in midfield with the ball on the ground won by France. As F4 retreats around IR7 towards the French side, F4 appears to make contact with IR7 with his right hand and arm above the waist of back of IR7 but does not appear to have firmly gripped IR7. Then IR7 strikes F4 with a clenched fist to the midriff and F4 immediately drops to the ground as if winded. F4 remains on the ground whilst play has moved on for over a minute ultimately stopping for a penalty to France. Having awarded the penalty, the referee stops time and walks over to F4 who is being attended by 2 medics. On review IR7 has significantly swung his arm to strike F4. After receiving attention F4 resumes playing and completes the whole match.

Post match I asked the Match Commissioner to make enquiries of the player to the extent of any injury and whether he was wearing body armour. The answer was that there was discomfort, no particular mark and no body armour. Accordingly, I asked for a medical statement which was provided as a joint statement by the France team doctor and the Match Day Doctor which is attached to this report.

I asked the Match Commissioner to ask the referee if any complaint had been made by F4 when he had walked over to him as described above. The answer was no.

I received a formal referral of the incident from the French manager through the disciplinary officer at approximately 23.00, the game having finished at 18.38. The report clearly refers to the incident which I had already started to investigate.

Earlier today at approx. 09.35 I called the TMO who confirmed that he had not seen the incident until a further passage of play by which time he was unable to draw the matter to the attention of the referee.

I draw attention to the variety of images provided in the footage and conclude that the action of IR7 amounts to foul play which meets the red card test”.

- 2.2 In support of the Citing Complaint, I received recorded match footage of the incident. My findings in relation to the camera angles are set out in detail in paragraph [4.3] below. At this stage, I need to only record that the quality of the footage was excellent and accords with the narrative in the Citing Report.

THE HEARING

3. The Evidence

- 3.1 Duthie confirmed that the Player admits striking the French player, Pascale Papé (F4) within the first minute of the game. Accordingly, the hearing involved an assessment of the applicable sanction, if any.

- 3.2 I admitted into evidence the following documents as Exhibits:

'A' The camera angles referred to below and also clips relied upon by the Player as to the participation of F4 in the game after the incident.

'B' The Citing Commissioner's report from Dougie Hunter referred to above.

'C' Letter of referral from the DDO Ben Rutherford.

'D' Letter of service of preliminary documents from Patrick Lloyd (RWC).

'E' Match summary.

'F' Email exchange with the match officials:

- F1- from Nigel Owens, Referee
- F2- from Wayne Barnes, AR
- F3- email from Leighton Hodges, AR
- F4- email from Nigel Owens with respect to conversation held by the Referee with F4

'G' Joint report of the Match Day Doctor, Dr Gareth Jones and the French Doctor, Dr Grisoli.

'H' Agreed questions and answers directed to F4.

'I' Translated report from the French doctor, Dr Grisoli dated 12 October 2015.

'J' Statement from Pascal Papé dated 12 October 2015.

'K' Independent medical report provided by Dr Mone dated 13 October 2015.

'L' Reference provided by Brian O'Driscoll dated 13 October 2015.

'M' Reference provided by Joseph Schmidt, Head Coach IRFU.

'N' Match statistics as to F4's participation in the game.

3.3 In emails received from referee, Nigel Owens and assistant referees Wayne Barnes and Leighton Hodges, all the match officials confirmed that they did not see the incident. In Exhibit F4, referee Nigel Owens confirms that F4 *"told me with actions and few words that he had been hit in the stomach. But he did not say punched...I then took this as just a blow in the contact area and didn't even cross my mind as flow (sic) play as there was no hint of it from any other French player or Captain"*.

3.4 In a joint report from the match day doctors (ExG) it stated:

"Papé- French 4 sustained a blunt blow over the xiphisternum. Examination reveals marked tenderness over this site but no other clinical signs".

3.5 As a result of the Directions Hearings, Dr Arthur Mone (Dr Mone) produced his independent medical report (ExK). The report was significant in that it provided an explanation as to why a strike to the lower chest or abdomen region could potentially cause F4 to collapse and is of assistance in analysing the nature and extent of the injuries during the assessment of the seriousness of the player's conduct (TDP 10.10.2). In the report he stated:

1. What is the xiphisternum?

A. The xiphisternum is a small tongue of bone at the lower end of the sternum (breastbone) and is not attached to any other structure, such as the ribs; it lies, otherwise free, in the soft tissues. It begins as very flexible cartilage but becomes more bony and stiff with age. Throughout most of life, it has a flexible joint with the sternum.

2. Are the injuries observed by the French team doctor in his report (that is, 'marked tenderness over the [xiphisternum]'), consistent with a strike to the xiphisternum? (A copy of the "report" is attached for your reference)

A. A direct blow could cause tenderness.

3. Is a strike into the chest or sternum region of the body likely to cause tenderness over the xiphisternum?

A. A strike to the lower chest wall at the level of the lower sternum could cause such tenderness.

4. Could tenderness over the xiphisternum be caused by other forms of physical contact during a tough physically challenging game of rugby?

A. If the area is struck with any part of an opponent's body directly during a game of rugby, it is possible to cause such tenderness.

5. Does a strike to the xiphisternum generally cause a person (player) to collapse immediately? If so, why?

A. In general, a strike to area of the xiphisternum will have the effect of, in everyday language, "being hit in the solar plexus". This causes immediate pain and feeling of being unable to catch ones breath. In turn, this may bring the injured party to their knees.

6. What other injuries could be caused by a strike into the stomach or lower chest region?

A. A strike to the stomach or lower chest region in a fit, well-muscled athlete, usually causes minor injury only, such as bruising to the soft tissue. Fracture of the xiphisternum or injury to the joint between the xiphisternum and the sternum are unusual in rugby. There is a rare condition called commotion cordis where the heart stops due to a blow to the centre of the chest; this would be even more rare and unlikely with a blow around the upper stomach and xiphisternum. Injury to internal organs, such as the stomach or liver, can occur with blunt trauma to this area but require a lot of force and would be expected more in situations like motor vehicle accidents rather than rugby. A blow to the left or right of centre can cause injury to the ribs or rib joints.

3.6 F4 played on after the incident. It was agreed between Duthie and Rutherford that the Player was treated for approximately 2 minutes. The Player relied upon (ExN) which were match statistics. Duthie and Rutherford agreed that F4 was involved in between 30 and 40 collisions during the course of the game until he was replaced in the 74th minute. The Player used these statistics to argue and dispute the injury. The Player participated in a very physical match. The purpose of this evidence was to argue that pursuant to TDP Clause 10.10.2, that the Player's actions had little effect on the Match.

4. **Analysis of camera angles**

4.1 The match was recorded by many cameras at the field. The hearing was conducted on the basis that I viewed each one of the camera angles relied upon by the Citing Commissioner and submissions were made by Duthie during the course of viewing the vision of the angles. A helpful and detailed analysis was carried out by Duthie, by way of submissions. Discarded camera angles were made available to the Player, but were not referred to.

4.2 I have done my best to summarise the angles and make factual findings as set out below having regard to the detailed submissions made by Duthie in relation to the angles. Unless otherwise stated, these factual findings, together with the oral evidence of the Player; F4; Dr Grisoli and the written evidence referred to above, form the basis of the conclusions reached by me, during the course of the sanctioning process. I do not intend to refer to each submission and piece of evidence, as this will overly extend these Reasons. I am conscious of the need for the Player to have the benefit of consideration of my written Reasons within the robust time restraints agreed upon within the Tournament.

4.3 I accordingly make specific reference and observations in relation to the camera angles as follows:

Angle [1]- Camera [1]

Submissions

- I should consider what the medical staff were doing; what treatment they were administering and that after the treatment, the Player played on.

Findings

- F4 plays on.
- The incident is depicted at the top of the screen.
- F4 is treated for approximately 2 minutes.
- F4 is on 'all fours'.
- F4 is lifted up by medical staff, under the arms, but obviously collapses facing the ground and hands on the ground.
- F4, in his statement, refers to "*violent pain*". I find that he was certainly in significant pain and required intensive treatment.

Angle [2]- camera [2] (close up of the incident)

Submissions

- That the vision shows that F4 dragged O'Brien (OB) 2 metres towards the French half.
- O'Brien was looking at the ruck, until the point of contact by F4 upon him- his focus was on the ball and the next phase of play- it was clear that he was trying to release himself from the 'clutches' of F4.
- Vision clearly shows F4 dragged O'Brien "*some distance*".

Findings

- OB's body does move towards the French goal line.
- His feet do not seem to move as illustrated by his yellow boot near the white line in the image.
- The movement forward is with OB's left foot in the process of him striking F4.
- At [3.38], F4's right hand can be seen on OB's jersey.
- OB's upper body does move towards the French half but the right boot remains planted- illustrated as being close to the white line in the middle of the image.
- I find that there was contact between F4 and OB- it did occur whilst both OB and F4 were looking towards the breakdown and F4 does not appear to be exerting any meaningful force, but does make contact with OB.

Angle [3]- camera [21]

Submissions

- What F4 did was a significant contributing factor to what occurred.
- At [4.30] it illustrates the force that F4 applied to OB.

Findings

- F4 moved back into position with the other French players.
- Contact with OB was momentary and more in the form of brushing past OB rather than dragging him.
- F4 was not looking at OB at the time the strike was delivered.

Angle [4]- camera [22]

Submissions

- Illustrates at [5.13] that the strike was delivered in a lateral movement not the classic punch with the knuckles.
- OB was taken out of the defensive line.
- It was clear that OB was focused on getting on with the game.
- Illustrates that OB involved in unnatural body movement as a result of being dragged by F4.

Findings

- The striking action was delivered with a generally horizontal movement into the sternum region (xiphisternum) as defined by Dr Mone [5.27].
- OB has a clenched fist but the strike is with the forearm rotated and a clenched fist, with the thumb raised and the knuckles underneath the thumb.
- F4's legs buckle underneath him in an almost immediate response to being struck.
- OB's upper body certainly moves in an unnatural way consistent with being dragged or pulled, although only momentarily.

Angle [5]- camera [12] zoom

Submissions

- Shows F4 with the right hand around OB.
- That F4 holds onto OB just above the shorts and generally under the right armpit of OB.
- Illustrates that OB was dragged about a metre towards the French goal line- shown by OB's left boot moving forward.

Findings

- F4 had hold of OB as submitted by the Player.
- The movement of OB's left boot forward towards the French goal line was consistent with being grabbed but also used by OB as momentum for the swinging arm used to strike F4.
- There is a clear release of the right hand of F4 before the strike is made by OB.
- The right arm swings back and then forward into F4- F4 releases his right hand from OB before the strike is delivered.
- F4 is looking away from OB and is unaware that the strike is about to be delivered [6.28].
- Point of contact consistent with the evidence of Dr Grisoli as to his findings on examination and the anatomical region described as the xiphisternum.
- F4 buckles in an immediate response to the strike.

Angle [6]- camera [25] zoom

Submissions

- Further illustrates contact between the players.
- Shows OB moving forward.

Findings

- I agree with this submission.

Angle [7]- Hawkeye combination- camera [2]/camera [12] zoom/camera [25] zoom

Submissions

- No additional submissions

Findings

- Illustrates the incident at various angles played together.
- Also illustrates that the movement forward of the left leg of OB is more consistent with his planting his foot to deliver the strike rather than the result of being dragged forward by F4.
- Illustrates at [7.34] that the contact is made with the clenched fist, forearm rotated around and delivered horizontally.
- Top image is the best illustration of the incident. Does show the slight movement of the upper body of OB from left to right across the screen [7.45].
- Illustrates some crunching or crumpling of the jersey consistent with OB being grabbed- also slight movement of OB's left upper shoulder into the chest of F4- further illustrates an unnatural movement in the upper body but the lower body seems to be stable.
- At [7.51] the grabbing action of F4 is illustrated and then the fist releases prior to the delivery of the strike.
- The vision illustrates that there was a definite grabbing by F4 on OB and that there was a lateral movement of OB's body in response to being grabbed more consistent with impeding OB's forward movement. I find that OB was not "taken out of the defensive line" but rather that his ability to move forward was impeded by F4's actions. The grabbing was consistent with the submissions that there was a degree of provocation.

Clips provided by O'Brien

Submissions

- It was submitted that these illustrate that any injury sustained by F4 was not significant and allowed him to play the game.
- It was submitted that this is relevant to the issue of the level of entry point.

Findings

- I agree that F4 was capable of continuing to play. These findings need to be considered in the context of the evidence of F4 (referred to below) that he played on in pain.
- The clips also illustrate that F4 has a tendency to hold back players. This is clearly shown at [3.50] of these clips. I agree with the submission that F4 appears to hold onto players temporarily as a form of gamesmanship.

5. Evidence of the Player

- 5.1 The Player gave evidence that he has played the game since he was 9 and professionally since 2007. He has 42 caps for Ireland and 2 Test caps for the British and Irish Lions. Having played 6, 7 or 8, he has an unblemished disciplinary record. He agreed that he could be best described as a player that is *"firm but fair"*.
- 5.2 With respect to the subject incident, he stated that he felt a player come close to him on the right hand side and made contact on his hip bone, then up into the rib area and he felt that he was being grabbed and brought forward several steps. He explained how he was directing his tighthead prop to take guard position in the defensive line. He felt that he was being impeded and couldn't see who it was. He emphasised that:

"I just wanted to break free and try to get whoever it was off me at the time".

He went on to explain how he was:

"fully focused on the next play and what my job was. It was early in the game and I wanted to make sure I wasn't making any mistakes at that stage, so I was fully focused on the next job. I was just trying to get rid of the player off my side and get to where I wanted to be in the defensive line".

- 5.3 With respect to remorse, the Player said:

"...looking back now, it's something that I wish didn't happen and I'm embarrassed...it hasn't been easy the last couple of days. It's something I wish I could take back now."

- 5.4 I also heard evidence of the charitable works that the Player conducted with his community including being an Ambassador for Special Olympics Ireland arranging cycling events for the disabled.

6. Evidence of Pascal Papé (F4)

- 6.1 F4 provided a written statement (relevantly):

"I received a violent punch on the area of the sternum. Due to the instantly pain (sic), I collapse (sic) to the ground and couldn't breathe anymore (sic). I have received care from Dr Grisoli. All along the game I felt a violent pain in the area where I had been beaten".

- 6.2 Duthie requested that F4 be available for questioning. F4 gave evidence via a telephone whilst at the training ground. He was asked whether or not he grabbed O'Brien. He indicated that he didn't recall, but denied that he was pulling O'Brien to *"my side"*. He acknowledged that he may have touched O'Brien but denied that he pulled the jersey. He emphasised that he was just trying to get back onto his side of the defensive line and did not recall pulling O'Brien. F4 confirmed that after the striking, he couldn't breathe and the medical staff assisted him to regain his breath. He

confirmed that he continued to play the game but was in pain and needed assistance at half time. His evidence was that he complained to the referee in the form of gestures which was consistent with Mr Owen's recollection of the events (ExF4).

6.3 I directed that specific written questions be asked of F4 with respect to the injury diagnosed by Dr Grisoli (ExH). He confirmed that he had not received a previous injury to the sternum or xiphisternum but he complained of the symptoms in the sternum region after he had been punched by O'Brien. He stated that he did not have any injury or tenderness to his sternum region when he went into the match.

6.4 I found that F4 gave credible evidence in a difficult situation where he was being asked questions on the training field. His explanation as to what happened is not inconsistent with what can be seen when viewing the angles of the incident. His recollection of not pulling or grabbing does not mean that he didn't carry out that act. However, it was not a dramatic dragging or pulling of O'Brien onto the French side of the breakdown. His evidence of "violent" pain must be viewed bearing in mind the clips showed by O'Brien as to the collisions entered into by F4 after the incident, but tempered with the knowledge of his desire to play test match rugby at the highest level.

7. Evidence of the French team doctor, Dr Grisoli

7.1 He provided a medical report (ExI) in which he certified that:-

"The player Pascal Papé was victim (sic) of an abdominal contusion with sternal contusion (sic) and a wrench of the costo-sternal cartilage forming an oppression (sic) on 11.10.15 during the game..."

7.2 Duthie asked questions of Dr Grisoli who gave evidence via telephone. His answers, in my view, were unhelpful as to the argument that was sought to be developed by the Player, that the injuries sustained by F4 were inconsequential. Dr Grisoli confirmed that the Player had difficulty breathing, was bent over on all fours and that he adopted the usual protocol to lift the Player under the armpits to assist him to breathe. Dr Grisoli indicated that he carried out a palpation of the region to determine whether or not there was any fracture or other serious injury. He confirmed that F4 wanted to try and continue to play on and he allowed him to do so. He did however continue to observe F4 as he was concerned that there may well have been internal haemorrhaging, following such an injury. Dr Grisoli described how such a strike could cause haemorrhage to the liver or spleen, as well as fractures to the ribs and the Player needed to be monitored. He confirmed that he treated him at half time consistent with the evidence of F4. He confirmed that after the incident, he treated him and determined that certainly as at the date of the hearing, F4 was unable to engage in contact training for fear of re-injuring or exacerbating the ongoing pain that F4 has in the injured area.

8. Sanctioning assessment

Argument as to general discretion

- 8.1 The essence of the argument put before me was that TDP Clauses 10.10 considered with 10.8.4 allowed a general discretion for a Judicial Officer (JO) not to embark upon the sanctioning procedures set out in TDP Clause 10.10. Further, that it enabled a JO to determine that offending in any instance of foul play, did not warrant a sanction, without applying Clauses 10.10 *et seq* of the TDP.

Finding in relation to the general discretion

- 8.2 With respect to the very forceful arguments of Duthie, I reject this submission. I consider that once a JO has determined that an act of foul play has been committed, or that a player admits that his actions constitute foul play, that I am required to embark upon a consideration of the detailed provisions of Clause 10.10 of the TDP.

- 8.3 TDP Clause 10.8.4 provides:

"In the case where there has been a citing complaint, the function of the Judicial Officer is to determine whether an act of Foul Play was committed by the Player. The citing complaint shall not be upheld unless the Judicial Officer is satisfied on the balance of probabilities that the Player concerned committed the act(s) of Foul Play that are subject to the citing complaint. If the citing is upheld, the Judicial Officer shall determine the sanction, if any, to be imposed on the Player in accordance with Clause 10.10 below. In determining the appropriate sanction, the Judicial Officer may take account of any action taken during the Match in respect of the Foul Play by the Referee".

- 8.4 After having O'Brien admit to the act of foul play, I am required to determine the sanction, if any, to be imposed on the Player in accordance with TDP Clause 10.10. In my view, if no sanction is to be imposed upon the Player, it requires me to find that, in the circumstances of this case, that TDP Clause 10.10.7 applies.

9. General submissions in relation to sanction

- 9.1 The general argument developed by the Player was that the striking was an instinctive reaction to being dragged or pulled by F4. It was argued that there was a significant component of provocation in this incident and that the actions ought to be best characterised as reckless, rather than intentional. It was argued that the Player was focused on freeing himself and the striking with the arm was to free himself from the grasp of F4. Further, it was argued that there was significant provocation because the Player was dragged or pulled by F4 and that the injuries sustained by him were of little consequence. It was submitted that I ought assess the degree of offending as being lower end and apply TDP Clause 10.10.7, such that no sanction should be imposed.

10. Findings in relation sanction

- 10.1 Within the time restraints, I will make a general finding in relation to the facts. I have done the best I can when referring to the vision above, to make findings in relation to

specific issues raised by the Player. After analysing the evidence of the Player; F4; Dr Grisoli and the angles, I make the following findings:

- (a) there was a degree of grabbing by F4 as he came back on side to join the defensive line. I cannot accept that the Player was taken out of the Irish defensive line. I find that F4 was involved in a degree of gamesmanship having his hand temporarily on the back of the Player in the event that the ball was passed to his side of the breakdown which would mean that he could slow down, or impede the Player, in his line speed in defence. I cannot accept that there was a significant degree of pulling or dragging of the Player by F4. On an analysis of the images and angles, in my view, it was best classified as minor, but did provoke a response from the Player;
- (b) the injury was significant and resulted in an immediate buckling of F4's legs and obvious discomfort. The vision was consistent with his evidence that he couldn't breathe. He required the assistance of the medical staff, including Dr Grisoli to assist him to gain his breath;
- (c) having regard to the evidence of Dr Mone, it is entirely consistent that the type of striking executed by the Player could result in the injury diagnosed by Dr Grisoli and which persists to date;
- (d) I reject the argument that the injury was inconsequential. I accept that playing at the RWC is the pinnacle of F4's career and I accept F4's evidence that he wanted to play on. It was submitted on behalf of the Player that the striking should not be compared to a punch with the knuckles and should be determined by me as being less serious. I reject this argument. The striking that occurred in this incident resulted in an immediate reaction from F4 in collapsing and being in severe pain and discomfort requiring treatment for a period in excess of 2 minutes. I accept the evidence of Dr Grisoli that the strike in the area received by F4 can result in internal injuries to the liver and spleen. It is for this reason that striking is foul play within the Laws of the Game;
- (e) I accept that the Player is a person of good character and I accept his evidence that his focus was not on inflicting injury upon F4 but releasing himself from a player, who he believed was holding him back from getting into the defensive line.

10.2 Having made the general findings, it is necessary to carry out an assessment of the seriousness of the Player's conduct that constitutes the offending and categorise that conduct in accordance with TDP Clause 10.10.2. I intend to assess the seriousness of the Player's conduct in accordance with the features identified in TDP Clause 10.10.2 as follows:

- (a) The offending was intentional. This finding is tempered on the basis that I specifically find that the Player did not intend to inflict the consequential injuries that occurred to F4.
- (b) See (a) above.

- (c) As to the gravity of the Player's actions in relation to the offending, I accept the submissions made by the Player that what occurred was an instinctive reaction to being held, although the consequences had an impact on F4.
- (d) With respect to the nature of the actions, a strike with a fist to the sternum region has the potential to cause quite serious injury and I cannot accept that the consequences are any less than an 'orthodox punch'. I do accept that, had the Player wanted to deliver an 'orthodox punch', that he did have an opportunity but, instead, struck with a lateral movement with a closed fist and the forearm turned over into the sternum region of F4. The seriousness of this type of blow is confirmed by both Dr Grisoli and Dr Mone.
- (e) There was some provocation. I referred to this issue above. Whilst it was present, it was not significant.
- (f) There is no issue in relation to retaliation or the Player acting in self defence.
- (g) See (f) above.
- (h) With respect to the affect on F4, this issue was 'ventilated' extensively in questions asked of Dr Grisoli and, considered by me, having regard to the report of Dr Mone. I find that the injury had an immediate and significant effect on F4, although, he was able to play on, with minor discomfort and has ongoing disabilities, which may not prevent him from playing.
- (i) With respect to the affect of the Player's action on the match, I have referred to this issue above and find that it did not have an effect on the match.
- (j) In terms of vulnerability, F4 was not looking towards the Player at the time of the strike. He did not have the opportunity to brace or ready himself for the strike. Other than this issue, there was no other particular vulnerability.
- (k) There was no issue in relation to pre-meditation.
- (l) The act of striking was completed.
- (m) There are no other issues identified.

10.3 Bearing in mind the task required of me in TDP Clause 10.10.2, I determine the seriousness of the Player's conduct is best characterised as lower end on the scale of seriousness, namely two weeks on the World Rugby sanctions table, Appendix 3 TDP.

10.4 In relation to aggravating factors, I accept the submissions that there are no relevant aggravating factors pursuant to TDP Clause 10.10.4.

10.5 With respect to mitigating factors, and a reference to TDP Clause 10.10.5, I make the following findings:

- (a) I accept that the Player acknowledged that he committed the act of foul play at the first possible opportunity.
- (b) The Player has an exemplary disciplinary record. The record is referred to above. He has not come under notice in all the years of playing rugby from 9 years of age. With respect of good character, I accept the references from Brian O'Driscoll (ExL) and Joseph Schmidt (ExM) and the oral evidence given by the manager, Michael Kearney. He is a young man with an exceptionally good character.
- (c) There are no issues with respect to his youth and experience.

- (d) During a lengthy hearing and extensive submissions made by his legal representative and sitting through the evidence of F4 and Dr Grisoli, I had the benefit of observing him. His conduct during the hearing was exemplary and consistent with the evidence given by Mr Kearney and the other referees.
- (e) I accept that the Player has genuine remorse for what occurred in the incident.
- (f) There were no other off-field mitigating factors identified that I consider to be relevant.

10.6 Having regard to the mitigating factors identified by me pursuant to TDP Clause 10.10.5, I consider a reduction of the otherwise applicable sanction down to one (1) week is appropriate in all the circumstances.

10.7 It was submitted on behalf of the Player that pursuant to TDP Clause 10.10.7 that there were off-field mitigating factors and that I should consider that the sanction of one (1) week would be *wholly disproportionate* to the level and type of offending involved, such that I should reduce the sanction of one (1) week to no sanction, in all the circumstances. I have identified in paragraph [10.5] the mitigating factors relevant in this matter. I am required to make a finding as to whether or not one (1) week, in all the circumstances, is '*wholly disproportionate for the level and type of offending*'. It was submitted by Duthie on behalf of the Player that the seriousness of the offending was at the very lowest end, with no intent and no real injury. He put the submission in the context that the Player would miss a Rugby World Cup quarter final and that the price to be paid by his team and his country, will be significant. Whilst making this submission, Duthie accepted the importance of the doctrine of universality and that it is a core principle within the sanctioning regime, that all games must be treated equally. Duthie then referred to various cases including *Levave* and *Thompson* with respect to the concept of wholly disproportionate. It was urged upon me that I should interpret the word 'wholly' in a manner other than its ordinary meaning. Reference to previously decided matters are of little assistance to the task that I am required to determine, which is whether or not the Player's offending, in all the circumstances, was wholly disproportionate to the level and type of offending. Duthie's submission on behalf of the Player was that the word 'wholly' in fact doesn't mean 'totally' or 'entirely', but means "very". 'Wholly' informs the enquiry that I need to make, which is whether or not the sanction of one (1) match, is disproportionate in all the circumstances of this case. Further, it needs to be considered in the context of the fact that the sanctions to be applied are of universal application and were determined at the 2012 Morality of the Game conference with contributions from all stakeholders.

10.8 I do not accept that 'wholly', in the context of the sanctioning regime, means 'very'. Even if I applied the interpretation as suggested by Duthie, I cannot accept that a one (1) week sanction is disproportionate, let alone 'very disproportionate', in all the circumstances. On my factual findings, the Player's striking was dangerous. It resulted in F4 sustaining an injury with ongoing disabilities. In those circumstances, a sanction of one (1) week, notwithstanding the off-field mitigating factors, is not wholly disproportionate.

11. Findings as to sanction

11.1 The Player is suspended from playing all forms of rugby for one (1) week. As one (1) week equates to one (1) match in the RWC 2015, the Player is suspended up to and including 18 October 2015. The affect is that he is suspended for the upcoming quarter final between Ireland and Argentina on 18 October 2015.

12. Right of appeal

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



Terry Willis
Judicial Officer

14 October 2015

