

**RUGBY FOOTBALL UNION**

**DISCIPLINARY HEARING**

**At:** Park Inn, Heathrow  
**On:** Thursday 29 March 2012

**JUDGMENT.**

**Player:** Calum Clark                      **Club:** Northampton Saints  
**Match:** Leicester Tigers v Northampton Saints  
**Venue:** Welford Road                      **Date of match:** 18 March 2012  
**Judicial Officer:** Jeff Blackett  
**Secretariat:** Bruce Reece-Russel  
Rebecca Morgan  
**Attending:** The Player.  
Richard Smith QC (Counsel)  
Jim Mallinder (Northampton Director of Rugby)

**Preliminary Issue**

1. The Player did not object to the RFU Disciplinary Officer sitting as a single judicial officer under RFU Regulation 19.2.4.

**The Citing Complaint**

2. The Player was cited for, and admitted, an act contrary to good sportsmanship in that he hyperextended the right arm of an opponent, causing significant injury.

3. The citing complaint stated:

“Time on Elite Hub

21.56 No 1 for Northampton Tonga’uiha makes break from ruck, Leicester forwards retreating.

21.58 Tonga’huia goes to ground tackled by Leicester No 15 Murphy.

21.59 Leicester No 2 comes from open play and wraps his arms over Tonga’huia who is on the ground

22.00 Northampton forwards drive over the forming ruck.

22.01 Leicester No 2 Hawkin’s left arm can be seen over the body of Tonga’huia

22.03 Referee close to the incident on the open side of play, blow his whistle for an infringement and brings the game to a halt. Hawkins has arms wrapped round Tonga'huia

22.04 Northampton No6 Clark, on the left side can be seen to go down towards the ground

22.05 Clark's left arm can be seen withdrawing and then returning back towards the ground

22.06 Clark can be seen rotating onto his back, using other players as a fulcrum as he pulls on the right arm of Hawkins, hyper extending the arm at the elbow causing a significant injury. This action takes place three seconds after the whistle has been blown

22.07 Clark rolls away from ruck. Hawkins can be seen clutching his right arm/elbow region.

22.10 Hawkins can be seen in considerable discomfort and receives medical treatment in the field of play. Medical report is available.

24.30 Replacement hooker for Leicester enters the match.

The referee said that he saw nothing of the incident recorded above; he looked back on hearing a scream after the whistle had gone.”

4. I viewed the DVD footage which included two angles and reflected the sequence of events recorded by the citing officer. At the crucial moment, after the referee had blown his whistle and the ruck was breaking up, the Player held Rob Hawkins' right arm under his own right arm pit and pulled the arm in the opposite direction to its natural bend. A Northampton player was lying on top of Hawkins so that he could not move when the Player pulled his arm backwards. The ruck broke up and Hawkins was left lying on the ground in obvious pain. He was tended by Leicester support staff and eventually left the field.

5. Hawkins subsequently had an X-Ray and CT scan on his right elbow, which, according to an email from Puresportsmed dated 19 March, showed a comminuted undisplaced fracture of the coronoid process. There were too many fragments for surgical reconstruction but it should heal. It suggested that Hawkins would be out of rugby for 8 – 10 weeks. A further medical report was submitted by Andrew Wallace, a consultant shoulder and elbow surgeon. It stated:

“When I took Rob to theatre on Monday, I examined his elbow under fluoroscopy. Whilst the joint was reasonably stable to varus-valgus loading in the coronal plane, it immediately subluxed at any flexion angle less than 90 degrees. When I explored the medial aspect of the joint, I incised the flexor origin to expose the underlying medial collateral ligament. Fortunately this was intact, but I split it longitudinally to remove some small intra-articular fragments of the coronoid fracture that were loose in the joint. I then repaired the ligament and flexor origin but the coronoid fracture was too comminuted for internal fixation.

Postoperatively he was placed in a backslab in 120 degrees flexion. My plan is to see him in 2 weeks and inspect the wound, and transfer him into a dynamic Mayo elbow brace. We will then gradually increase his extension range over a

further four week period, hoping to achieve close to full extension by 6 weeks. This will depend on how well the fracture and the torn anterior capsule heals. After this six week period of relative immobilisation, he can then start to regain strength over a further 4 – 6 weeks. Therefore it will be 10 – 12 weeks before he will be fit to return to competitive rugby.

There is a risk of recurrent subluxation, wound infection, residual stiffness and in the long term degenerative arthritis of the joint. Fortunately there was no nerve injury either preoperatively or postoperatively. His injury was entirely consistent with a forced hyper extension injury.”

6. The Player said that Northampton had made a break and were on the ascendancy. He entered the ruck looking for a body to clear out but there was none so he looked for the ball. He found a player (Rob Hawkins) obstructing the ball. He first moved to place his hand on the ball and then the whistle blew. Hawkins’s had moved his hand back to the ball, and that prompted him to take action so Northampton could play quickly. He said: “I grabbed his arm to use as a lever to roll him away in desperation to win the ball. I was not fully aware of how vulnerable he was and that his body could not roll – mainly because another Northampton player was lying on top of him. I felt some resistance from his hand and continued to roll back. I pinned his arm to my chest and hyper extended his elbow. Never any intention for that to happen – I expected his body weight to follow him. Because of his position he was unable to move.” He continued: “I had realised what I had done – I put my hand to my mouth. I knew I was responsible and played rest of game in a fog. After game I was approached by their coach who made it clear what he thought. For me the result of the game was insignificant.”

7. The Player said that after the game and since he has been devastated for lots of reasons, primarily for Rob Hawkins himself. He said that he would not wish an injury such as this on anybody. The most upsetting thing was how this reflects on him as a player. He said: “I am physical and aggressive but always play within laws of the game. It has been hard to deal with how others now think of me as a player.” He said that he tried to apologise to Hawkins and sought him out at after match function. But that was not well received – understandably – and he now intends to take it up further by writing to him to say how sorry and upset he is and express how he feels about it. Last weekend he went to coach local children and he was afraid that their parents would not want someone perceived as a violent player to coach them. That fear was difficult to deal with, although they were very understanding.

### **Submissions on behalf of the Player**

8. The player is 22 years old. He has played 50 games for Northampton and represented England at U16, U18 and U20 levels. He has a good disciplinary record – with one matter recorded which occurred 5 years ago when he was 17 when he was sent off for a head butt which led to a sanction of 5 weeks. He is part of the EPS squad and had every expectation to be part of the England tour to South Africa in June.

9. Mr Mallinder provided a written character reference to which he spoke. He said he had known the Player since he was under 18 and has watched his development. He has seen his desire and willingness to give 100% commitment and he has watched him develop. He appointed the Player as captain while the international players away. He is a hard and committed man although he does become very frustrated at times and something he has to learn is how to cope with frustration. This incident has caused him great pain and upset and it is completely uncharacteristic.

10. Mr Smith traversed the criteria for assessing the seriousness of the offending and submitted that the heart of this matter lay in the severity of the injury and the fact that the victim player was vulnerable. He conceded that there was no guidance within the recommended sanctions but suggested that, given there was no malicious intent to hurt or injure, and that the Player had not intended the consequences this was not at the top end of a scale of seriousness. Fortunately Mr Hawkins will be able to play in about 3 months and, without playing down the seriousness of the injury, it is important that any sanction was applied within the context of what occurred. He conceded that it would be unfair for the Player to return to play before Mr Hawkins was fully fit and suggested that period during which Mr Hawkins would be injured echoed sensibly where the appropriate sanction should lie.

11. Mr Smith submitted that the one previous incident of foul play could be ignored because it was five years old and committed when the Player was under 18 and that he could be treated as a man of good character. He said that it was clear to see that his remorse was genuine and that he was fully aware of what he had done. He asked that the Player be given full credit for all of these matters.

### **Sanction**

12. I undertook an assessment of the seriousness of the Player's conduct.

- a. The offending was intentional. The Player clearly intended to pull Hawkins' arm backwards after the whistle had been blown so that the ball became available and his side could play the ball quickly. I accept that he did not intend to harm Hawkins or cause him injury. I come to that conclusion because the Player is not known as one who commits foul play, and by the way he presented and expressed himself at the hearing. He is not a thug and presented as a genuine young man who was prepared to, and accepted, responsibility for his actions and their consequences.
- b. There was no provocation. The act was designed to remove an opponent from the ball.
- c. The effect of the Player's action on the victim were considerable. He caused him significant pain and fractured his elbow. This injury required surgery, will keep the victim out of the game for three months and may have long term effects (residual stiffness and degenerative arthritis).

- d. Hawkins was very vulnerable – he was trapped beneath another body and was unable to anticipate the Player’s actions nor take any action to avoid the pain and subsequent injury.
- e. The incident took about 2 seconds and there was no premeditation
- f. There was no effect on the game.
- g. The incident occurred after the referee had stopped play, and the Player knew that to be the case. He then applied force against an opponent so that his side could gain quick advantage. Taking this action after the whistle was blown is a pertinent feature of the Player’s conduct which constitutes the offending which makes it more serious, because it was not something that occurred during play when opponents might have been competing for the ball.

8. In those circumstances I assessed that this offence was high on the scale of seriousness, not least because the Player intentionally bent a vulnerable opponent’s arm backwards causing a very severe injury, and he did so after the referee had blown his whistle to stop play. In assessing it as serious I would like to stress that I accept that the Player is not malicious and did not intend to cause serious injury. Although he did intend to pull Hawkins’ arm backwards he did so in an attempt to move Hawkins away from the ball in his eagerness to maintain his side’s momentum. Nevertheless he was reckless in not taking greater care to avoid causing serious injury. This is a unique set of circumstances and so it would be meaningless to attempt to set Low End, Mid Range or Top End entry points – it is enough to say this is a serious matter. There is no guidance in the Recommended Sanctions for this offence and in those circumstances the appropriate sanction to be imposed is at the discretion of the Judicial Officer.

9. In exercising that discretion to determine the appropriate sanction I have considered the rationale behind the sanctioning process. On field discipline is based on at least three principles or tenets:

- a. the protection of victim players from injury;
- b. the protection of offending players from prosecution in the criminal courts (on the basis that provided a sport’s sanctions are sufficient the courts are less likely to intervene); and
- c. the protection of the image of the Game.

10. In this case:

- a. there has been a serious injury, and any sanction must demonstrate that players who commit foul play – particularly interference with an opponent after the referee has blown his whistle to stop play - which leads to significant injury will be punished severely
- b. police intervention is unlikely as the Player did not have the requisite *mens rea* to have committed a criminal offence; and finally

- c. this act looked dreadful and it had the potential to damage the image of the Game and undermine the core values of discipline, respect and sportsmanship.

11. In considering an entry point I have searched for precedents from the RFU and other jurisdictions to see if they can render any assistance. I was unable to find any. In those circumstances, the sanction is at large. Had there been any evidence that the Player intended to hurt an opponent (even if he did not mean to injure him) the appropriate entry point would have been in the order of five years' suspension<sup>1</sup>. That is not the case here, so the entry point can be considerably lower. However, I do not agree with Mr Smith's submission that the sanction should equate to the period of Hawkins injury. In my view that approach would be inadequate because it would not reflect the serious matters noted above. The Player must be suspended for a good deal longer than Hawkins is absent from the game to reflect the seriousness of the offending.

12. To a certain extent the entry point depends on my view of the offending and its effect on the Game, based on my rugby experience. It is certainly worse than the worst sort of punch which might attract a maximum suspension of 52 weeks, so it must be longer than that period. In calculating the entry point I have therefore taken that figure and added to it the length of time Hawkins is likely to be absent through injury – that is 12 weeks. In those circumstances I have determined that the entry point should be 64 weeks. This formula seems appropriate to reflect the importance of preserving the image of the game, acknowledging the injury and discomfort caused to Hawkins and the other factors noted which make this so serious, whilst taking account of all that has been said by the Player and on his behalf.

13. There are no aggravating features and all of the standard mitigating factors are present. The Player is genuinely contrite, he realises the damage done to an individual and to the wider image of the Game, he admitted culpability at the earliest opportunity and he undoubtedly wishes to make reparation for his offending. He is, therefore, entitled to 50% discount from that entry point which leads me to conclude that the appropriate sanction is a suspension of 32 weeks. Since this is a long sanction it will run continuously through the summer vacation without a break.

**14. The Player is therefore suspended for 32 weeks from 22 March to 1 November 2012. He may play again on 2 November 2012.**

#### **Right of Appeal**

15. The Player is reminded of his right of appeal which should be notified to the RFU Disciplinary manager within 48 hours of the publication of this judgment (not including the weekend). For the avoidance of doubt, any appeal must be lodged by 1200 on Tuesday 3 April.

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<sup>1</sup> Based on the ERC case of Trevor Brennan (2007) who left the playing arena to attack a spectator and was suspended for five years (on appeal).

**Costs**

16. The Player/Club will pay the standard costs of £500.

**Comment**

17. I commend the Club for their prompt action in suspending the Player pending the outcome of this hearing. I also wish to thank Mr Smith for his very helpful submissions and assistance in determining the correct approach to sanctioning.

Signed: ***HHJ Jeff Blackett***

Date: **29 March 2012**