

## **RUGBY FOOTBALL UNION DISCIPLINARY PANEL**

### **JUDGMENT**

**Governing Body:** Rugby Football Union (“**the RFU**”)

**Charged:** Jack Nowell

**Player’s Club:** Exeter Chiefs RFC (“**the Club**”)

**Independent Panel:** Matthew O’Grady (Chair)

Martyn Wood

Guy Lovgreen

**Secretary:** Rebecca Morgan-Scott

### **HEARING**

**Date:** Wednesday 19 April 2023

**Venue:** Zoom

**Attending:** Robert Cumming (Counsel Representing the RFU)

Chris Over (Solicitor Representing Jack Nowell)

Jack Nowell

Rob Baxter (Exeter Chiefs Director of Rugby)

**Observing:** David Barnes (RFU Head of Discipline)

Josh Pieterse (RFU Discipline Case Officer)

**Available material:** Hearing bundle

### **FINDINGS, SANCTIONS AND COSTS**

1. Mr Nowell committed conduct prejudicial to the interests of the Game and or Union.
2. Mr Nowell must pay a fine of £10,000 by the commencement of the 2023-24 season in France.
3. £2,500 of that fine be suspended until the end of the 2023-24 season on terms of good behaviour.
4. The fine be paid to a charity or charities proposed by Mr Nowell and approved by the Panel.
5. Mr Nowell must complete a Referee’s course and provide evidence of his qualification within 12 months of this judgment.
6. Mr Nowell have leave to apply to the Chair on notice to the RFU as to the timing of payment of the fine.
7. Costs of £500 payable in accordance with RFU Regulation 19, Appendix 3.

## PRELIMINARY MATTERS

8. There was no objection to the Panel's composition. No conflicts of interest were raised.

## THE CHARGE

9. Mr Nowell was charged with a single offence of conduct prejudicial to the interests of the Union and the Game, contrary to RFU Rule 5.12 ("**the Charge**"). The particulars allege that on 16 April 2023 Mr Nowell "tweeted criticism of the referee's decision in the Leicester v Exeter match to his 61,000 plus followers."
10. Mr Nowell admitted the charge.

## BACKGROUND

11. Exeter Chiefs played Leicester Tigers at Welford Road on Sunday 16 April 2023 ("**the match**"). Mr Nowell did not play in the match. In the 42<sup>nd</sup> minute of the match Leicester Tigers were awarded a penalty try because the Referee determined Ollly Woodburn of Exeter Chiefs prevented a probable try being scored.
12. On awarding the penalty try, the Referee was required by Law 8.3 to Yellow Card the player "guilty" of preventing the probable try. The Referee duly showed a Yellow Card to Mr Woodburn. Mr Woodburn had been earlier shown a Yellow Card in the 29<sup>th</sup> minute of the match. As a result of being shown a second Yellow Card, Mr Woodburn was sent off.
13. The decisions to award Leicester Tigers a penalty try and to Yellow Card and then send off Mr Woodburn have drawn very significant media comment by prominent public Rugby figures, including a Rugby World Cup Final Referee (who has a current media role for World Rugby), former and current professional players and many hundreds (if not thousands) of members of the public.
14. Unsurprisingly, perceptions of the merits of the decision to charge Mr Nowell are seen by some through the prism of the merits of the on-field decisions. We note World Rugby have remarked that the Referee "correctly applied the Law during the game which saw the penalty try and a yellow card awarded. Law 13.4 is clear that players cannot fall on or over players on the ground and tackle Law 14.8 says arriving players at a tackle must come from the direction of their own goal line and stay on their feet."

**THE RFU CASE**

15. The RFU relied upon a screen grab of Mr Nowell's tweet:



16. When the screen grab was captured the tweet had been viewed over 600,000 times, had been retweeted several times and liked a few thousand times. Each of the Retweets and Likes will have further published the tweet. The tweet was captured by numerous media and press platforms before the initiation of these disciplinary proceedings. The tweet was published extremely widely.

17. Mr Nowell's tweet was replied to by a large number of other Twitter users, including many of whom who used abusive language about the Referee. One comment remarked that the Referee was "*stealing a living*". On any reasonable view, such opinion is both wrong and disgraceful.

18. Within the list of other tweets presented by the RFU was a tweet by another Gallagher Premiership player:



19. Mr Marler has not been charged, nor have any other players who tweeted content around the same time. We express no view whether Mr Marler's tweet infringed Rule 5.12.

20. The RFU relied on written submissions prepared by Mr Cumming which were supplemented orally at the hearing.
21. It was submitted that the express statement that the Referee's decision was one of the worst seen was objectively insulting and showed contempt towards the Referee. The RFU argued that the emphasis of 'EVER' reasonably leads to an inference that the Referee's integrity and honesty were under question.
22. The RFU submitted that we should impose an immediate playing suspension on Mr Nowell to reflect the gravity of his actions. We questioned whether a playing suspension was the only or most appropriate means of achieving the purposes behind sanctioning Mr Nowell and why, for example, a fine at an appropriate level could not achieve the same ends. It was submitted that a playing suspension was the 'ultimate' sanction and Mr Nowell's conduct warranted that outcome.

#### **MR NOWELL'S CASE**

23. Mr Nowell provided a written statement and gave oral evidence. He relied on the written and oral submission of his lawyer.
24. Mr Nowell accepted he committed conduct prejudicial to the interests of the Game and/or Union. He necessarily accepted that his tweet was about the Referee's decision and was intended to be so understood. Mr Nowell could have tried to argue that his comment was so ambiguous that it could not be said it was about the Referee's decision. Very sensibly and to his credit, Mr Nowell did not pursue that defence. The timing of the tweet and its contents lead to the very strong (indeed inevitable) inference that it was about the Referee.
25. We were told that Mr Nowell was watching the match at home. The match mattered a lot to him because, as he is soon to leave Exeter Chiefs, the window for a Top 4 place in the Gallagher Premiership is closing. Mr Nowell saw the decision on television and was "overcome by a feeling of utter frustration". He said he has never publicly criticised a decision before and will never do so again.
26. Mr Nowell apologised and said that the object of his tweet was the game and not the Referee personally.
27. Mr Baxter spoke in support of Mr Nowell. He told the Panel that there have never been complaints about Mr Nowell's behaviour reported to him Mr Baxter has reiterated to the squad the importance of the need for care when commenting publicly.

28. We indicated to Mr Over that a fine was a sanction we were considering. We afforded him an opportunity to take instructions from Mr Nowell on what of his financial circumstances he wished to disclose to us. We have set out those circumstances, below, and we have redacted from the Panel's public judgment to maintain the confidence of that information.

29. Mr Nowell volunteered to the Panel that he would prefer to receive an immediate playing suspension than a fine.

MR NOWELL'S FINANCIAL CIRCUMSTANCES

30. [REDACTED]

**DISCUSSION AND ANALYSIS**

RIGHT TO FREE EXPRESSION

31. The right to express oneself is a fundamental part of a free and democratic society. Given that is the case, some may question how Mr Nowell could ever be charged for expressing his opinions publicly on Twitter. Whilst there is no doubt that Mr Nowell has a right to express himself, no player is free from the consequences of how they choose to express themselves because all players, coaches, officials and other rugby participants subject themselves to the RFU's Rules and Regulations.

32. Regulation 19.1.9 states:

"In accordance with these Regulations and Rule 5.12, the RFU shall have the power to investigate, conduct disciplinary hearings and impose sanctions upon any:

- (a) Member;
- (b) Rugby Body;
- (c) non-voting member of the Union;
- (d) player, official, member or employee of a Member or a Rugby Body; or

- (e) other person or body that submits to Union's jurisdiction to discipline them (for the avoidance of doubt this includes clubs and players from another Union playing in England in relation to both on and off field matters, where there is an agreement which specifies that disciplinary matters shall be dealt with by the RFU);

for any infringement of the RFU Rules, the RFU Regulations, the Laws of the Game or the World Rugby Regulations and/or for any conduct which is prejudicial to the interests of the Union or the Game or which amounts to cheating, irrespective of where the conduct is alleged to have occurred."

33. One of those Rules is not to behave in a way that is prejudicial to the Game or Union. It has long been established – *and well known by professional players* – that public comment is captured by such rules where it is disrespectful, disparaging and/or abusive of match officials, their authority and their decisions. This is reiterated to elite players when they undertake social media training with their clubs, in their national camps and World Cup camps.
34. There is nothing unique about such a rule. Most employers prohibit their employees and ambassadors from behaving in ways that undermine their organisation's values. Is there any doubt that whilst Mr Nowell would be able to make adverse comments about his club's sponsors – he would not be free from the inevitable sanctions his employer would impose on him for those comments? Just as Mr Nowell has contracted away his right to speak adversely about Exeter Chiefs' sponsors by playing for the club, his right to comment disrespectfully and disparagingly about match officials and their decisions is constrained by the fact he plays professional Rugby.
35. None of this is controversial. Mr Nowell accepts that he does not have an absolute right to say what he wants about the decisions match officials make. By admitting the charge Mr Nowell has also accepted he crossed the line with his tweet.

#### ASSESSMENT OF SERIOUSNESS

36. Although it does not apply to a Rule 5.12 charge, we had in mind the well-known contents of Regs 19.11.8 in assessing the seriousness of Mr Nowell's conduct.

37. We had regard to all the circumstances including:

- a. The tweet was a deliberate act in a moment of poor judgment;
- b. Mr Nowell intended to express a critical view of the Referee's decision;
- c. The tweet unambiguously criticised the Referee's decision;
- d. A reasonable consumer of the tweet would infer Mr Nowell was being highly critical and disrespectful of the Referee himself;
- e. There was a level of contempt for the match official in the tweet;
- f. The tweet was strident in how it expressed Mr Nowell's views;
- g. The tweet was broadcast extremely widely across multiple media platforms to many hundreds of thousands of people;
- h. The tweet was posted during the match;
- i. We do not accept there was naivety in Mr Nowell's behaviour, he is an experienced player who has received extensive media training;
- j. The tweet did not name the Referee personally;
- k. The tweet was highly disrespectful and disparaging, rather than abusive;
- l. The tweet contributed to a 'pile on' by others who engaged with the tweet directly;
- m. The conduct charged was a single tweet;
- n. Mr Nowell did not use profanity;
- o. The tweet did not attack the Referee's honesty or integrity, but the inevitable inference was that it seriously called into question the Referee's competence;
- p. The conduct was not committed to an audience on live broadcast television; and
- q. Mr Nowell deleted the tweet.

38. We noted the evidence of the RFU Referees' Union:

"... [the] situation [is] exacerbated by our members leaving the game having become disillusioned with, amongst other things, persistent challenging of their decisions and unfortunately, some serious incidences of match official abuse.

Worse still, enticing new referees, especially young match officials, into the Game becomes that more challenging. The refereeing community is a relatively tight knit

one and incidents of abuse and disrespect for the role soon permeate amongst officials, undermining their confidence and commitment.

Furthermore, we cannot stress the impact that poor behaviour towards match officials, be it challenging decisions, appealing, disrespect or abuse, within the professional end of our Game has on the wider game. We welcome the approach the RFU has taken with recent incidents as our members are very concerned that if high profile incidents are not dealt with appropriately, this sends a signal into the Community Game that such behaviour is acceptable, in the same way that professional playing styles are emulated lower down the Game.”

39. We accept that conduct of this kind strikes at the mission to retain and recruit match officials because, left unchallenged, it gives cover for unacceptable behaviour in the community game.

40. We are careful in how we evaluate the tweet’s reach. We recognise that the act of charging Mr Nowell likely amplified his comment and may have brought it to an audience that was otherwise unaware of his tweet and will not have seen it before it was deleted.

41. The RFU Sanctions Table does not apply to an offence under Rule 5.12, although we note for an offence of Disrespect contrary to Law 9.28 the Entry Points are:

<b>Low End</b>	<b>Mid-Range</b>	<b>Top-End</b>	<b>Max</b>
2 Weeks	4 Weeks	6+ Weeks	52 Weeks

42. Given the seriousness of the conduct, which we have detailed, we were left unpersuaded that this was conduct that would have sat at Low End. We are not required to express a concluded view on what an Entry Point would have been, had the offence been contrary to Law 9.28, and therefore we do not do so – save we do record that we consider the circumstances here are more serious than those in *Anthony Watson (2021)* and *Nathan Hughes (2018)*.

#### MITIGATION

43. We had regard to the considerations in Reg 19.11.10 further noted:

- a. Mr Nowell admitted the charge promptly;



- b. Mr Nowell deleted the tweet (although the damage was done and it remains available to view on other accounts);
- c. Mr Nowell apologised for his actions;
- d. This is the first occasion Mr Nowell has been charged with an offence of this kind and he has hitherto had an exemplary disciplinary record with no Red Cards against him;
- e. Mr Nowell is an extremely experienced player, having played at the most competitive level of the sport for several years and captained his club;
- f. Mr Nowell's conduct at the hearing befitted a player of his experience; and
- g. Mr Nowell had the strongest of character references from Mr Baxter.

### SOCIAL MEDIA AND CONCLUSIONS ON SANCTION

44. As social media use has grown, it appears that public targeting and criticism of match officials and their decisions has increased in frequency and prominence in the professional game. The consequences of this use of social media by professional participants can be very serious.

45. Even those with the shortest of memories will recall the harrowing account of England's most experienced referee, who shared the threats of sexual violence made against his wife and the threats against his children, which led him to contemplate ending his career prematurely. That Referee made those remarks following tweets by a prominent international coach. His tweet was significantly more ambiguous than Mr Nowell's, but also said in the more prominent space of international rugby:

Both the 🇫🇷 and 🇿🇦 9's under immense pressure !! We just have to get that on side right!!Sorry 🇿🇦💔



46. That international coach received a 2-match international coaching suspension.

47. Fortuitously, there is no evidence Mr Nowell's public comments triggered a 'pile on' of that severity. However, he did contribute to a significant 'pile on' and very many of those who engaged directly with his tweet were abusive of the Referee. The danger of this type of public criticism by prominent figures is that once the fuse is lit on social media it is difficult to put out. The person who lights the fuse is unlikely to intend to cause such an ugly 'pile on', but they cannot say they are naïve to the risk of it occurring.
48. In the sadly all too often recited judgment, a World Rugby Disciplinary Panel remarked (see *Rassie Erasmus (November 2021)*):

“Match officials are integral to the Game. They are entitled to, and must receive, appropriate respect, particularly from participants such as players, coaches and directors of rugby. They have a very difficult job. The constant sniping, questioning, and challenging of officials' decisions by players besmirches the professional and international Game”.

49. Respect for match officials – even when we disagree with their decisions, indeed especially when we disagree with their decisions – is a core value of Rugby Union. Whilst rigorous media and public debate about the decisions of match officials is an inevitable part of professional sport and professional entertainment, public disrespect and disparagement of match officials by professional players cannot be accepted. Players are bound by Rules and Regulations that commentators and the media are not. One need only understand the value of player image rights to understand that players are in positions to influence others in a way that the media cannot. Left unchallenged, the criticism contributes to a slow drip effect that makes it harder to find referees for matches up and down the rugby levels. It disinhibits other players in positions of influence from similarly crossing the line of acceptable behaviour.

#### PRINCIPLES OF THE SANCTION

50. Our task is to determine the 'appropriate punishment'. We had regard to the following principles to evaluating the appropriate type and terms of a sanction:
- a. **Just** – the sanction should be just and fair in all the circumstances;
  - b. **Deterrence** – to deter Mr Nowell and other people generally from behaviour of a similar character;
  - c. **Denunciation** – to censure and denounce the offending conduct; and

- d. **Restorative** – to establish conditions that will enable Mr Nowell repair the damage done to the Game by the conduct.

51. At the front of our minds was the need for the sanctions we impose to be reasonable and proportionate to the gravity of offence and no more than is necessary to meet the identified principles.

#### TYPE OF SANCTION

52. The sanction is at large. Regulation 19.11.7 states:

"Appropriate punishment" referred to in Rule 5.12 and Regulation 19.6.5 shall include, but not be limited to:

- (a) for a person, a reprimand, a financial penalty or suspension from playing, coaching and/or administration."

53. The RFU urged us to impose an immediate playing suspension on Mr Nowell. Through his representative, Mr Nowell submitted that we should treat his offence and Mr Woodburn's on-field Red Card with parity – namely Sending Off Sufficient / Reprimand. We did not consider either of these sanctions married with the principles we were to apply.

54. In our judgment a playing suspension is a blunt instrument, which is inapt for an off-field offence of this kind. Furthermore, it was unclear why Mr Nowell's club and teammates should suffer punishment for off-field conduct outside of the club's immediate coaching and control, if an alternative appropriate sanction could be found. A reprimand would be wholly inadequate for the gravity of the offence.

55. We concluded the principal sanction should be a fine.

#### LEVEL OF A FINE

56. There is no guidance on the appropriate fine for cases such as Mr Nowell's. It was accepted by the RFU and Mr Nowell that our power to sanction Mr Nowell is fettered only by the requirement not to impose a sanction so excessive as to be unreasonable.

57. In our judgment, alongside the principles we have identified, there are two central elements to evaluating the appropriate level of a fine – such that it is proportionate and reasonable. First, the seriousness and gravity of the offence. Secondly, the financial circumstances of the person to be fined.
58. We noted that under a Premiership contract a player could be fined up to four weeks' pay when behaviour is off-field and a repeat offence. In other cases, the contract provides for two-weeks' pay. This excludes other remunerated work such as image rights, sponsorships and appearance fees. It was common ground we were not bound by that contract, however.
59. Taking all the circumstances into account, we determine the appropriate fine is one of £10,000 with £2,500 of that fine suspended until the end of the 2023-24 season. We have regard to Mr Nowell's financial circumstances as he has explained them to us and are satisfied the fine is entirely proportionate having regard to those circumstances and the gravity of the offence. We consider it sits at an appropriate level (with the Premiership contract at the back of our minds). In arriving at the figure, we have first given Mr Nowell the benefit of all the mitigation we have identified, which is to say had that mitigation not been available the level of fine would have been greater and/or an element of it not suspended.

#### OTHER SANCTION

60. We consider it appropriate for Mr Nowell to undertake a referee course and complete a qualification in refereeing as a piece of restorative work.

#### SANCTIONS AND COSTS

1. Mr Nowell must pay a fine of £10,000 by the commencement of the 2023-24 season in France.
2. £2,500 of that fine be suspended until the end of the 2023-24 season on terms of good behaviour.
3. The fine be paid to a charity or charities proposed by Mr Nowell and approved by the Panel.
4. Mr Nowell must complete a Referee's course and provide evidence of his qualification within 12 months of this judgment.
5. Mr Nowell have leave to apply to the Chair on notice to the RFU as to the timing of payment of the fine.
6. Costs of £500 payable in accordance with RFU Regulation 19, Appendix 3.

## **APPEAL**

Mr Nowell has a right to appeal these findings of fact and conclusions on sanction within 14 days of this judgment being sent.

## **COMMENT**

Mr Nowell is not the only Gallagher Premiership player to have expressed online comment that some might think from the language used and its timing was critical of the Referee and his decision. Only Mr Nowell has been charged for online comment made during and after the match. Some in the rugby community may be left questioning why that it so and may perceive inequity in the treatment of the individuals. It is not our role as an independent panel to decide cases that are not put before us. We express no judgment about the comments of other professional players.

Public understanding is important to maintaining confidence in the disciplinary system. It may not be clear to external observers what causes Mr Nowell's comment to meet the threshold for prosecution by the RFU whereas other players have not. We consider the Game would benefit from public and player understanding of the RFU's approach to cases of this kind.

**Matthew O'Grady**

21 April 2023