

**RUGBY FOOTBALL UNION**

**DISCIPLINARY PANEL**

**JUDGMENT**

**Player:** Michael Noel Brown (RFU ID: 92320; DOB 4.9.1985)  
**Panel:** Matthew Weaver (Chairman), Mitch Read & Rob Vickerman  
**Secretary:** Rebecca Morgan

**HEARING**

**Date:** 11<sup>th</sup> May 2021  
**Venue:** By video  
**Attending:** The Player  
Richard Smith QC (for the Player)  
Graeme Bowerbank (Harlequins RFC)  
Angus Hetherington (RFU)  
David Barnes (RFU)  
Conal Gallagher (RFU – Observing)  
**Documents:** Charge Sheet  
Referee’s red card report  
RFU Regulations 19, Appendix 2  
Medical Report from Ali James (Wasps)  
Letter from Nick Evans (Harlequins)  
Letter from John Kingston (Harlequins)  
Letter from Andy Friend (Connacht Rugby)  
Letter from Stuart Lancaster (Leinster Rugby)  
Written submissions from Angus Hetherington  
Written submissions from Richard Smith QC

**DECISION**

1. The Panel considered that the appropriate sanction for the breach admitted by the Player is a 6-week suspension from playing.
2. The Panel also ordered the Player to pay costs in the sum of £500.

### **PRELIMINARY MATTERS**

3. The members of the Panel identified themselves and the Chairman explained the procedure to be followed. There were no objections to the composition of the Panel from any of the parties.
4. At the beginning of the hearing, Richard Smith QC for the Player raised the Player's understandable concern that the nature of this hearing, being by video link, would hinder the Player in being able to adequately explain his actions and thought processes. The Chairman confirmed that the Panel would, given their experience of conducting hearings by video, ensure that the Player was not prejudiced by giving his evidence other than in person.
5. This judgment is, by necessity, a summary of the matters before the Panel and the basis for the Panel's decision. By not referring specifically to any element of the hearing, it should not be taken that the Panel did not properly consider the same. The Panel took into account all of the evidence, both written and oral, and all submissions made to them, both written and oral, before arriving at their decision.

### **THE CHARGE**

6. The Player was charged with stamping or trampling on the head of Tommy Taylor (Wasps) ("TT") during second half of the match between Harlequins RFC and Wasps on 9<sup>th</sup> May 2021, contrary to World Rugby Law 9.12.
7. The Player admitted that charge. As such, the only matter for the Panel to determine was the appropriate sanction.

### **THE REFEREES' REPORT**

8. The Referee's red card report dated 10<sup>th</sup> May 2021 described the incident as follows:  
*"In the 43rd minute of the match, the TMO asked me to look at the big screen for potential foul play committed by H15. I looked at the screen and saw the following: W2 clears out Q15 and both players go off their feet. As Q15 stands up, W2 is no longer holding on to Q15. Q15 is aware that W2 is still on the floor. Q15 then stands on the head of W2. I deemed this as a highly reckless action and therefore issued a red card. As Q15 left the pitch, he stopped to apologise to W2. Following the match, Q15 approached me as I was leaving the pitch, apologised and said that he did not mean to do it."*

9. References within the report to “H15” or “Q15” are references to the Player. References to “W2” are references to TT.

#### **THE VIDEO FOOTAGE**

10. The video footage provided was extensive. It showed the incident from a number of different angles. The Panel watched the video prior to the hearing, during the hearing (with the benefit of Richard Smith QC and the Player commented on it at length) and during deliberations. The Panel watched the video footage at various different speeds.
11. In simple terms, the video footage showed the Player being cleared out from a ruck by TT. Having moved the Player away from the ruck, TT held onto the Player's upper body, arm and left leg. As TT was releasing the Player, the Player can be seen to remove his right foot, raise it so that his knee was at around 90 degrees and then move his right foot towards the floor, making contact with TT's face/head. The Player carries out a 'hopping' movement immediately after making contact with TT's face/head and fell backwards, landing on TT and then on the ground.
12. The video also shows the Player apologising to TT as he leaves the pitch (after the red card has been issued).

#### **MEDICAL EVIDENCE**

13. The letter from Ali James (Head of Medical Services, Wasps) confirms that:
- a. TT was attended to on the field of play;
  - b. On examination TT reported that an opposition player had stood on his head. He had a small laceration on his forehead. This was initially managed effectively with gauze and strapping;
  - c. TT did not display any concussive symptoms and the bleeding was quickly controlled with the measures mentioned previously to permit returning to play;
  - d. Following the game, the wound was checked, stabilised with steristrips only;
  - e. The player has been checked today and has reported that the wound remains well controlled and has no further issues have arisen since the incident.

#### **THE PLAYER'S EVIDENCE**

14. The Player gave evidence concerning the incident in the main by answering questions put to him by Richard Smith QC and then by members of the Panel.
15. The Player talked the Panel through the incident by reference to the video footage, taken frame by frame. He explained that he was 35 years old and had been a professional rugby player since he was 18, spending his entire career to date at Harlequins. He has played 351 games for Harlequins and won 72 caps for England.

He described his approach to the game as hard, tough and physical but never overstepping the mark and always being respectful to opponents.

16. He was clear that this was not a deliberate act and that the thought of stamping on another player's head had never entered his mind, whether on this occasion or throughout his career. The Player explained that he knew TT from England camps and got on well with him. There was absolutely no bad feeling between the two men.
17. The Player described what he was trying to do during the incident. He explained that he was trying to return to the game as quickly as possible, something that his club constantly encourages and expects, particularly given that his team were defending their own try line at the time. He attempted to avoid falling to the ground to maximise the chances of him returning to the game as quickly as possible. He was being held by TT on his upper body and on his left leg. As he tried to go back into the game, he became unbalanced and when he placed his right leg on the ground, he felt immediately that he had made contact with something other than the ground (namely, TT's head/face) and attempted to remove all weight and force from his right leg by hopping. This action caused him to fall onto the ground but was intended to avoid putting any force through his right leg. The Player denied that TT's actions had caused him to become frustrated and to lash out in any way.
18. When asked about the unnatural looking placement of his right leg (i.e. towards TT rather than to the Player's right) the Player explained that as he was unbalanced, he was simply attempting to correct his balance and stop himself leaning (and possibly falling) to the left. He maintained that he was focussed on the game and not on TT and that as soon as he was aware of making contact with TT, he attempted to take all weight or force out of his right leg.
19. The Player confirmed that when he got to his feet, he turned around to check how TT was and did not return to the game until a physio attended TT on the pitch. After receiving the red card, the Player felt that it was important to speak to TT and apologise for what was an accident in his view.

### **SUBMISSIONS ON BEHALF OF THE PLAYER**

#### **(A) ENTRY POINT**

20. In his written submissions, Richard Smith QC made the following points:
  - a. the conduct might more appropriately be described as an act of trampling rather than a stamp;
  - b. the Player's actions were not deliberate. He accepts by his plea that the placing of the foot onto the opposing player was reckless, having regard to his appreciation of where that player was on the floor;

- c. the key issue in deciding whether there needs to be any elevation in seriousness from that mandatory entry point, is a consideration as to whether the actions of the Player were *deliberate* or (as is the Player's case), *reckless*;
- d. that if the Panel were satisfied to the requisite standard of proof that (contrary to his evidence and submissions) the Player's actions were deliberate, then the Panel would be correct to categorise the seriousness of the offending as a Top End entry point. Similarly, the Player submits that if the Panel were not so satisfied, and the case were to be sanctioned on the basis of a reckless act, in such circumstances the appropriate entry point would be one of Mid-Range. The factors supporting a Mid-range entry point are:
  - i. the gravity and nature of the Player's actions were not an extreme or grave example of foul play of this kind. The Panel will have regard to the fact that the foul play includes contact with the head is *already* recognised in the requirement that a Mid-Range entry point is applied;
  - ii. the Player did not act under provocation, in self-defence or in retaliation. The fact that Wasps 2 was taking hold of the Player's leg is relevant to the understanding of the facts that led to the incident;
  - iii. in respect of the effect on the opposing player, the Panel have the benefit of correspondence from Wasps RFC which confirms that TT was fit to continue to play and has suffered no ill effects of the contact beyond the application of steri-strips to the (minor) laceration;
  - iv. TT was vulnerable by reason of his position on the floor. However, by the nature of the offence (namely stamping/trampling) the opposing player will necessarily usually, if not always, be in such a position of vulnerability. Accordingly, it will be submitted that this factor adds little informative weight in the circumstances of this particular case and offending;
  - v. the Player was the sole participant in the offence and his offending conduct was completed; and
  - vi. there are no other relevant features connected to the offending.
- e. the Player's own account of that which he did and intended is central to the Panel's deliberations and conclusions. If what the Player says about his actions is, or may be right, then the Panel would be wrong to conclude other than that the foul play was reckless. The Panel would have to reject the Player's account as untruthful to be satisfied that the conduct was deliberate;
- f. the video footage is not of a kind to render the Player's account of his actions unquestionably incredible and unworthy of belief. The Player's account of where he was looking, his eagerness to return to the defensive line, and his collapse onto the opposing player when he appreciated where he had unintentionally placed his foot, are relevant considerations in this regard;

- g. the Player's reactions of apology can properly be said to be inconsistent with an act intended to cause harmful contact;
- h. the Panel should also have careful regard to the Player's character in assessing his credibility as a witness;
- i. the Panel should have in mind that where a man has played over 350 games at Club level and appeared many times for his country without offending in a similar way (or in any way that required the imposition of a red card), proper account should be had to the proper inference that it is less likely that the Player would offend in the way now alleged against him; and
- j. the Player's (exemplary) character is of a kind that requires the Panel to have full and proper regard to the Player's integrity and honesty when judging his account of his intent on this occasion.

21. Richard Smith QC reinforced the above points in oral submissions to the Panel. He observed that the key issue for the Panel to determine was whether the act was deliberate. To find that it was, he asserted, would be to reject the evidence of the Player despite his character, reputation and previously unblemished disciplinary record. Further, it was submitted that the video footage does not present a sufficiently different picture of what occurred so that the Panel ought to conclude that the Player's version of events cannot be sustained in light of the video. Whilst TT holding on to the Player is a relevant factor in the incident, Richard Smith QC submitted that this was a relatively minor form of interference with a player at the breakdown and given the Player's vast experience of such situations over his career, not likely to create the type of frustration necessary to cause a deliberate stamp to the head.

22. It was again submitted that if this was not found to be a deliberate act, there was nothing to lead the Panel to properly view this as suitable for a Top-end entry point.

#### (B) MITIGATION

23. In respect of mitigation, Richard Smith QC made the following points in his written and oral submissions:

- a. the Player is entitled to the maximum credit for mitigation available to him, namely a reduction of 50% from the entry point;
- b. the Player indicated and entered his plea at the first opportunity;
- c. the Player has a clean disciplinary history. His character is spoken of in the references provided to the Panel; and
- d. the Player is remorseful. The Player even apologised on the field of play.

24. Mr Smith QC understandably relied heavily on the Player's previous unblemished disciplinary record and his positive reputation within the rugby world as evidenced by the letters from Nick Evans, John Kingston, Andy Friend and Stuart Lancaster.

**SUBMISSIONS ON BEHALF OF THE RFU**

25. The RFU, represented by Angus Hetherington, provided written submissions in advance of the hearing and supplemented those submissions orally at the hearing.

26. The RFU's written submissions made the following points (references to "*Michael*" are references to the Player and "W2" to TT):

- a. when considering all of the features under 19.11.8, the offence is open to a top end entry point if the Panel decide that this was an intentional act to stamp;
- b. the video evidence demonstrates that the Michael would have had an awareness of the body position of W2 having been involved with a wrestle to free himself from W2. The video further demonstrates that Michael looks down at W2 on a couple of occasions before the incident, which would have increased his awareness of W2's body position;
- c. Having freed himself from W2, Michael stands up on his left leg. He appears balanced before moving his right leg back and behind his left leg and stamps/tramples on the head of W2;
- d. the video evidence appears to demonstrate that Michael would have had an awareness of the body position, and therefore his likely head location, of W2 and that whilst balanced on his left leg, makes an unnatural movement with his right leg and stamps/tramples on head of W2. It was possible for Michael to simple move to his right leg away from W2 but the video appears to show that he chose the intentional act of standing back and across with his right leg before making contact with the head of W2. It was entirely foreseeable/inevitable that his foot would make contact with W2 head;
- e. The gravity and nature of the Player's actions are serious, though it is accepted there may be worse examples of foul play of this kind. There is firm pressure applied to W2's head;
- f. the actions could be said to be in retaliation to or provocation because of the actions of W2. However, the severity of the response is clearly not justified by any provocation that may have been present;
- g. the victim player was clearly vulnerable.

27. Quite properly, Mr Hetherington observed that the above submissions were made without the benefit of the Player's evidence or any explanation on behalf of the Player.

28. In his oral submissions, Mr Hetherington submitted that the key question of fact for the Panel was whether the Player was unbalanced immediately before his foot made contact with TT's head. If he was, this supported a finding of a reckless act, if he was not, this was more indicative of a deliberate act. Mr Hetherington also contended that even if the Panel concluded that the incident was a reckless rather than a deliberate act, a mid-range entry point was not automatic and a Top-end entry point might be appropriate given the seriousness of the incident.

### **CONCLUSIONS &**

### **DECISION OF THE PANEL**

29. Whilst the manner in which someone gives evidence, particularly via video link, is not always a good indication of the substance or veracity of the evidence itself, in this instance the Player came across as honest and straightforward, genuinely contrite, and upset by the incident and in having to engage with the disciplinary process for the first time in his career.

30. The Panel were unanimous that this was a reckless rather than a deliberate act. It was, despite the submissions from Mr Smith QC, a stamp rather than a trample in circumstances where the motion of the Player's right boot was down onto the face/head of TT. The video footage, at first blush and at full speed, was consistent with a deliberate act (the Player's right foot coming down in what might be thought to be an unnatural manner) but when the footage was viewed numerous times, at various speeds and with careful analysis, it showed the following:

- a. the Player was being held by TT right up until the moment before contact is made between the Player's right foot and TT's face/head;
- b. the Player's upper body is leaning to the left throughout the build up the incident itself and, as such, this is consistent with the Player feeling unbalanced at the time;
- c. the Player's main focus throughout the incident was the game rather than TT;
- d. as the Player raises his right foot and then brings it down onto TT, he is not looking at TT but is looking straight ahead at the game. He looks down at TT after he has made contact;
- e. as soon as the Player's right foot makes contact with TT, the Player performs an unusual hopping motion so as to lift his body weight off his right foot. This movement is sufficiently strong to cause him to fall over; and
- f. The Player's right foot does not continue down to the ground after striking TT which might be expected were this a deliberate stamp.

31. All of the above is consistent with an inadvertent stamp.

32. In addition, the Player's evidence was credible and persuasive. He described the incident and was clear that he never intended to stamp on TT but was unbalanced and struck TT accidentally whilst trying to return to the game having been cleared out of the previous ruck.
33. Further, but of less significance, the Panel took into account that the injury suffered by TT was relatively minor (a laceration which could be treated with steristrips rather than stitches) and the likely more severe injury that would be caused by a deliberate stamp in the circumstances.
34. Ultimately, the video footage was not conclusive of a deliberate stamp. The Panel had to determine whether the Player was giving dishonest evidence when he consistently asserted that this was not a deliberate act. The Panel did not consider that there was any basis to disbelieve the Player. His evidence, his actions immediately after the incident and his obvious and immediate remorse upon receiving the red card are consistent with this being inadvertent. Whilst the Player's previous disciplinary record was of very limited relevance to whether he committed a deliberate act, the Panel accepted the submissions that a player with no previous disciplinary matters in a long career might be thought to be less likely to commit a deliberate act of foul play. However, this was not a determinative factor in the Panel's decision.
35. Having concluded that the incident was reckless rather than deliberate, the Panel then had to decide the appropriate entry point for the offence, having regard to the factors at Regulation 19.11.8. Having reviewed the features of the offence, the Panel arrived at a majority decision that the offence merited a Top-end entry point. The factors which the majority of the Panel considered made this offence suitable for a Top-end entry point were:
- a. the Player knew or should have known that his actions gave rise to an extremely high risk of foul play and of serious injury to TT. The Player was aware of TT's position on the ground and was, up until the point of his right foot making contact with TT, in contact with TT including the Player's left hand being on top of TT. As such, the Player must have known that TT's head was in close proximity to his feet;
  - b. the impact was the sole of the Player's studded boot onto the face/head of TT. Contact with TT's eye was avoided by a relatively narrow margin. As such, the risk of very serious injury from the incident is obvious;
  - c. the contact was not a glancing blow with a boot but was a substantial impact between the Player's boot and TT's face/head. Whilst the Player's actions in hopping undoubtedly reduced the nature of the impact, it remained substantial;

- d. whilst TT was not seriously injured and is unlikely, so far as the Panel is aware, to miss any matches for Wasps, he still received a laceration to his head which required bandaging and steristrips. In short, he did not escape unscathed;
- e. TT was in an obviously vulnerable position and had no ability to protect himself from the Player's boot. Whilst Mr Smith QC sought to persuade the Panel that all victims of a stamp are in a vulnerable position by the nature of the offence, the Panel considered that TT's vulnerability was a relevant factor and had to be taken into account; and
- f. this was properly categorised as a "stamp" and not a trample. Given that the offence as charged can range from a trample at one end to a stamp at the other, this is plainly at the more serious end of the nature of offence as charged.

36. The Panel saw no basis for the entry point to be higher than the bottom of the Top-end, namely 12 weeks, and, as such, considered that a 12-week playing suspension was the appropriate entry point for this offence.

37. As for mitigation, the Panel were unanimous, and required little persuasion, that the Player's early admission of the charge, his obvious and genuine remorse (both at the time and during the hearing), his unblemished disciplinary record and the impeccable and impressive manner in which he conducted himself throughout the disciplinary process, including at the hearing, entitled him to the maximum mitigation of 50%, namely a reduced of 6 weeks from the starting point of 12.

38. As such, the Player received a 6-week playing suspension. This renders the Player unavailable for Harlequins final four domestic fixtures of this seasons (against Leicester Tigers (15.5.2020); Bath (29.5.2021); Sale (4.6.2021); and Newcastle Falcons (12.6.2021)). In addition, the Player will be unavailable for a further 2 meaningful fixtures, the precise details of which will have to be confirmed with the RFU as and when further fixtures are known.

#### **COSTS**

39. The Player was ordered to pay costs in the sum of £500.

#### **RIGHT OF APPEAL**

40. Pursuant to regulation 19.12.9, the Player has a right of appeal against this decision, such appeal to be submitted in writing to the RFU Head of Discipline within 24 hours from the time this written judgment was sent to the Player.

### **POST SCRIPT**

41. As is clear from the decision above, the Panel were unanimous that this was not a deliberate stamp by the Player. This decision was reached after detailed review of video footage (from a number of angles and at various speeds, including frame by frame) and hearing from the Player directly at length. The Player was clearly remorseful and conducted himself throughout the process in a manner which does him much credit. Whilst the Panel understands that every rugby supporter is entitled to voice their own views on incidents within matches via social media, it is hoped that this decision provides sufficient information for any views expressed on this incident (and, indeed, on the Player) to be informed and based primarily on the facts of the incident. Any abusive comments aimed at the Player (whether generally or as a result of this incident) are plainly unacceptable, inconsistent with the values and core principles of rugby and condemned by the Panel.

**Matthew Weaver**

Chairman

13<sup>th</sup> May 2021