RFU SHORT JUDGMENT FORM

Match	Worcester Warriors RFC	Vs	Bristol Rugby RFC
Club's Level	Level 1	Competition	Gallagher Premiership
Date of Match	4/9/2020	Match Venue	Sixways

Particulars of Offence			
Player's Surname	Kitchener	Date of Birth	15/7/1996
Forename(s)	Andrew Mark	Plea	Admitted ☑ Not Admitted ☐
Club name	Worcester Warriors RFC	RFU ID No.	299309
Type of Offence	Punching or Striking		
Law 9 Offence	9.12		
Sanction	3 match suspension from playing		

Hearing Details			
Hearing Date	7/9/2020	Hearing venue	By video
Chairmen/SJO	Matthew Weaver	Panel Member 1	Chris Skaife
Panel Member 2	Mitch Read	Panel Secretary	Rebecca Morgan
Appearance Player	Yes ☑ No ☐	Appearance Club	Yes ☑ No ☐

Player's Representative(s):	Other attendees:
Mark Hewitt (Team Manager)	Angus Hetherington (RFU) David Barnes (RFU)

List of documents/materials provided to player in advance of hearing:

Charge sheet
Referee's report
Statement of the Player
Letter from Rory Murray (Head of Medical, Bristol Rugby RFC) dated 7/9/2020
Letter from Daniel Walton (Senior Physiotherapist, Worcester Warriors RFC)
Character reference from Mark Hewitt

Summary of Essential Elements of Citing/Referee/s Report/Footage

The Referee's report states as follows:

"In the 79th minute of the match, the Bristol number 12 tackled the Worcester number 6 approximately on the Bristol 10 metre line. The ball was lost forward in the tackle by W6 and then both players fell to the floor with B12 on top of W6. They both grabbed hold of each other and were both pushing and holding each other. I told them both to stand up on numerous occasion. I then blew my whistle to award a scrum to Bristol for the knock on. W6 then walked towards B12 and both players exchanged comments which I cannot recall. Worcester number 19 then walked up to B12 and pushed him. I then saw both B12 and W19 push and grab each other. I did not see either player throw a punch at that point. Both B12 and W19 fell to the ground with W19 landing on top of B12. As this occurred, I saw W19 throw at least one punch to the head of B12 which made contact. The players were eventually separated. I spoke with the team of officials and explained what I had seen. I asked if anyone had anything to add. No-one had any further information, so I then explained that I would be yellow carding B12 and red carding W19. I confirmed everyone agreed with this course of action. The team of officials confirmed they agreed. I then called both captains and both B12 and W19 away from the rest of the players and explained what I had seen. I issued a yellow card to B12 who then left the pitch. After a few seconds, I issued a red card to W19, he replied “that’s fucking ridiculous”."

The video footage shows a dominant tackle by B12 on W6 which caused the ball to be dislodged. The tackle ended with B12 on top of W6 and the footage shows B12 and W6 pushing and shoving on the ground and B12 shouting in the direction of W6 (see 1.09 to 1.31 of the video). B12 then returns to the defensive line. The game is then stopped and the Player walks towards B12 to confront him following his exchange with W6. The Player and B12 grab each other by the top of the shirt and there is some pushing and shoving. The footage then shows the Player appearing to throw a punch with his right hand at B12 and missing or the punch being blocked (see 3.03 of the video). B12 then punches the Player with his right hand to the left side of the Player's face, making contact around the Player's jaw (see 3.11 to 3.15 of the video). This causes a general melee and B12 and the Player to fall to the ground, B12 falling underneath the Player. The Player then throws 2 or 3 punches at B12's head, making contact at least once (see 3.25 to 3.48 of the video).

B12 was yellow carded for his involvement in the pushing and shoving with W6 and the Player was red carded for punching B12 on the ground. Whilst the Player's comments after receiving the red card cannot be heard clearly, the Referee can be heard to say that he will be adding them to his report.

Essential Elements of Other Evidence (e.g. medical reports)

The Head of Medical at Bristol Rugby RFC confirmed that B12 suffered no injuries.

Summary of Player's Evidence

The Player's statement asserts that:

"During play there was a scuffle going on between Siale Piutau and Ted Hill, then when it broke up Piutau appeared to be taunting Hill, so I went over to confront Piutau. There was some pushing and shoving from both of us, then I felt him strike me in the face. I reacted by grabbing him and as more players came in I pushed him to the floor. I hit him in retaliation before being pushed off by other players."

The Player's oral evidence was that he was concerned by B12's apparent taunting of W6 during and after the tackle. Whilst he did not hear anything specific which upset him, he was annoyed by B12's actions and wanted to defend W6 whom the Player viewed as being antagonised by B12. He recalls pushing B12 and grabbing his shirt. He then felt a strike by B12 to the left side of his face which he states provoked him and caused a 'rush of blood'. He and B12 fell to the floor As a result, he aimed punches at B12's head whilst they were lying on the ground. He cannot recall whether they landed but accepts that at least one did.

To the best of his recollection, the Player asserted that B12 threw the first punch. When shown the footage of him appearing to throw a punch at B12 first, his evidence was that he thought that he was defending himself with his right arm rather than trying to throw a punch. After the game, the Player went to the Bristol Bears RFC changing room and apologised to B12.

Immediately after he received the red card from the Referee, the Player accepts that he used the words "that's fucking ridiculous". The Player accepted using those words but denied that it was aimed at the Referee or intended to be disrespectful and was a result of his frustration at losing control and being sent off. However, he acknowledged that it could appear to have been disrespectful.

Findings of Fact

Given the Player's admission of the charge, it was accepted by the Player that he punched B12 at least once. As such, the Panel was primarily concerned with the appropriate sanction for the offence.

The Panel concluded that this incident was as a result of the Player approaching B12 and unnecessarily involving himself in a dispute between B12 and W6. Whilst the Player described the movements of his right arm as defensive, the Panel concluded that the video footage shows the Player aiming a punch at B12 and missing. Following this, B12 punches the Player to the left side of his face, causing the Player to retaliate by aiming at least 2 (possibly 3) punches at B12's head whilst both players were on the ground. At least one of these punches made contact with B12's head. The Panel accepted that the Player's actions in aiming punches at B12 were as a result of a 'rush of blood'. That said, the Panel were clear that such actions were not acceptable or excusable in any way.

As for the words used by the Player when leaving the pitch, despite the Player's explanation that the words were simply an act of frustration, not aimed at the Referee, the Panel concluded that, on the balance of probabilities, the words were used to express criticism of the decision to send him off and, as such, were aimed at the Referee and were a disrespectful act towards the Referee and his authority.

The Panel make it clear that outbursts such as this, which express a player's dissatisfaction with a decision and amount to a clear lack of respect shown to match officials, are unacceptable and contrary to the core values of the game. The Panel condemn the Player's outburst in the clearest terms possible.

That said, whilst the RFU sought to persuade the Panel that the Player's language should be seen as an aggravating factor in the offence of punching or striking (pursuant to regulation 19.11.10) and, as such, increase the entry point for the offence for which the Player was red carded, the Panel do not consider that this can be the case. As the RFU quite properly accepted, the Player's language was sufficient to entitle the RFU to bring a charge against him under law 9.28. The RFU chose not to do so and whilst the Panel do not criticise that decision, regulation 9.11.10 is not an alternative means to address the wrong doing concerned, given that it is limited to "off-field" aggravating factors. Whilst the Panel considered the words used by the Player when assessing the seriousness of the offence and the appropriate entry point for sanction (pursuant to regulation 19.11.8(m)), it was not considered that the words used were sufficient to render a top-end entry point appropriate in all the circumstances.

Decision			
Breach admitted ✔	Proven ☐	Not Proven ☐	Other Disposal (please state below) ☐

SANCTIONING PROCESS

Assessment of Seriousness		
Assessment of intent - Ref 19.11.8		
PLEASE TICK APPROPRIATE BOX	19.11.8(a) Intentional/deliberate ✔	19.11.8(b) Reckless ☐
Reasons for finding as to intent:		
This was a deliberate punch to the head		
Gravity of player's actions - Reg 19.11.8(c)		
The Player punched B12 to the head at least once		

Nature of actions - Reg 19.11.8(d)
See above
Existence of provocation - Reg 19.11.8(e)
The Player reacted to the punch to his face from B12, albeit the incident was instigated by the Player who approached B12 after an incident involving W6
Whether player retaliated - Reg 19.11.8(f)
See above
Self-defence - Reg 19.11.8(g)
Not applicable
Effect on victim - Reg 19.11.8(h)
B12 suffered no injuries
Effect on match - Reg 19.11.8(i)
None
Vulnerability of victim - Reg 19.11.8(j)
B12 was lying on the ground below the Player and, as such, was vulnerable to some extent
Level of participation/premeditation - Reg 19.11.8(k)
This was not premeditated

Conduct completed/attempted - Reg 19.11.8(l)
Completed

Other features of player's conduct - Reg 19.11.8(m)
The Player showed clear disrespect to the Referee when leaving the pitch

Assessment of Seriousness Continued					
Entry point					
Low-end	Weeks	Mid-range	Weeks	Top-end*	Weeks
☐		☑	6	☐	

*If Top End, the JO or Panel should identify, if apropriate, an entry point between the Top End and the maximum sanction and provide the reasons for selecting this entry point, below.
In making this assessment, the JO/committee should be consider RFU Regulation 19

Reasons for selecting entry point:
As this was a punch to the head, the mandatory minimum entry point is mid-range. In the absence of any injury and premeditation there were no factors present to warrant a top-end entry point.

Additional Relevant Off-Field Aggravating Factors - Reg 19.11.10
Player's status as an offender of the laws of the game - Reg 19.11.10 (a)
Not applicable
Need for deterrent to combat a pattern of offending - Reg 19.11.10(b)
Not applicable

Any other off-field aggravating factor that the disciplinary panel considers relevant and appropriate - Reg 19.11.10 (c)
None

Number of additional weeks: 0

Relevant Off-Field Mitgating Factors	
Acknowledgement of guilt and timing - Reg 19.11.11(a)	Player's disciplinary record/good character - Reg 19.11.11(b)
The Player accepted the charge	The Player has a previously unblemished disciplinary record
Youth and inexperience of player - Reg 19.11.11(c)	Conduct prior to and at hearing - Reg 19.11.11(d)
The Player is 24 years old and has previously represented England U20s	The Player conducted himself entirely appropriately
Remorse and timing of Remorse - Reg 19.11.11(e)	Other off-field mitigation - Reg 19.11.11(f)
The Player sought out and approached B12 to apologise after the match	Mark Hewitt praised the Player's attitude to rugby and his involvement in community and charity activities on behalf of the club

Number of weeks deducted: 3

Summary of reason for number of weeks deducted:
The Player's clean disciplinary record, contrition and guilty plea were grounds for the full 50% mitigation. For the avoidance of doubt, whilst the Panel condemn the Player's reaction to his red card and the words used towards the Referee, regulation 19.11.11 limits mitigating factors to "off-field" matters only and, as such, was not relevant for the purposes of mitigation.

Games for meaningful sanctions:
The Player will miss the following fixtures: vs Bath vs London Irish vs Saracens (TBC - the date for this game is yet to be confirmed)

Sanction

NOTE: PLAYER ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING

Total sanction	3 match playing suspension	Sending off sufficient	
Sanction commences	8/9/2020		
Sanctions concludes	Immediately after the third match of the suspension is concluded		
Free to play	Immediately after the third match of the suspension is concluded		
Final date to lodge appeal	9/9/2020		
Costs (please refer to Reg 19, Appendix 3 for full cost details)	£500		

Signature (JO or Chairman)		Date	8/9/2020

NOTE: YOU HAVE THE RIGHT OF APPEAL AGAINST THIS DECISION AS SET OUT IN REGULATION 19.12 OF THE DISCIPLINARY REGULATIONS. YOUR ATTENTION IS SPECIFICALLY DRAWN TO THE TIME LIMIT AND DIRECTIONS/REQUIREMENTS RELATING TO AN APPEAL SET OUT IN REGULATION 19.12.9