

# RFU SHORT JUDGMENT FORM



Match	London Irish	Vs	Worcester Warriors
Club's Level	1	Competition	Gallagher Premiership
Date of Match	05/03/2022	Match Venue	Brentford Community Stadium

Particulars of Offence			
Player's Surname	VAN DER MERWE	Date of Birth	04/06/1995
Forename(s)	Duhan	Plea	Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name	Worcester Warriors	RFU ID No.	2716196
Type of Offence	Red Card		
Law 9 Offence	9.11 - Reckless or dangerous play		
Sanction	3 week suspension - subject to completion of CIP		

Hearing Details			
Hearing Date	08/03/2022	Hearing venue	Remote
Chairmen/SJO	Jeremy Summers	Panel Member 1	Philip Davies
Panel Member 2	Mitch Read	Panel Secretary	Rebecca Morgan
Appearance Player	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Appearance Club	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Player's Representative(s):	Other attendees:
Steve Diamond - DoR Luke Broadley - Team Manager	Angus Hetherington - RFU

List of documents/materials provided to player in advance of hearing:
Charge Sheet Referee's Red Card report World Rugby Head Contact Process ("HCP") March 2021 RFU Regulation 19 Appendix 2 Medical Report dated 7 March 2022

The Referee's report stated:

Worcester 11 received the ball approximately 5 meters inside Worcester's half between the 5 and 15 meter lines. He proceeded to run towards London Irish defence. When the London Irish 14 came towards the Worcester 11 to attempt a tackle. The Worcester 11 raised his arm bent at the elbow. The contact point was visible in live play. Once play had stopped this incident was reviewed with the TMO. The facts established were the Worcester 11 lead with the fore arm and not the hand. The fore arm made direct contact with the head of the London Irish 14 establishing fault with the ball carrier. As the Worcester player was running at speed with a clear line of sight we saw this as high danger with no mitigation.

The match footage was viewed. This showed the Player take a pass slightly short of the half way line and attack at pace into the 5m channel adjacent to the left hand touchline.

As LI14 comes into effect a tackle, the Player has the ball in his left arm and his right arm is free. LI14 comes in, also at speed, in a close to upright position.

The Player's right arm starts adjacent to his body but raises up and into LI14 in an attempt to fend off the incoming tackle.

The Player's right hand is partially open and directed towards LI14, but his right forearm makes initial contact with the left hand side of LI14's head/chin. The forearm then slides along the face and there may have been some brief contact with his hand after the initial contact with the forearm.

The force of the contact knocks LI14 backwards and slightly away from the Player. He though remains in contact with the Player sliding round and down his back before effecting a wrap tackle.

LI14 is seen to receive some on-field medical attention, but it is unclear if this related directly to the contact from the Player's forearm. In any event, he was able to continue playing and finished the game.

The incident occurred in the 7th minute of the second half. The score at that point was 24-5. Conditions were reasonable and there had been no previous incidents of any materiality.

The Referee had been within 5m of the incident but had not had a clear view, and the Red Card was issued following an intervention by the TMO.

A medical report from London Irish read:

Kyle Rowe received a forearm to the face and was attended to on the pitch at the time. He reported well but had some bleeding in his mouth from either the impact or from biting his lip. Once this was cleaned up and he had no signs or symptoms of head injury and so was not considered at risk of sustaining a concussion so no Head Injury Assessment was required. The player reported no issues after the game and has rejoined the Scottish camp.

The Panel also considered a statement on behalf of the Player from Mr Rowe.

## Summary of Player's Evidence

The Player appeared before the Panel.

At the request of Mr Diamond, given that English is not his first language, he did not speak extensively. He accepted that he had committed an act of foul play but argued that this had not warranted the issue of a Red Card.

He had intended to execute a lawful hand-off and at the time had thought that he had connected with his hand.

On behalf of the Player Mr Diamond made 4 core submissions:

1. The Player had executed a passive action to defend himself from the oncoming LI14
2. LI14 had been - improperly - head high and, had the Player not acted as he had, there would have been a head on head collision.
3. The Referee had not correctly applied the HCP and had not given sufficient weight to the comments of a very experienced TMO.
4. He contrasted two cases on the World Rugby website, which he considered were similar and where Red Cards had not been issued.

## Findings of Fact

This is the reasoned decision of the Panel. Each member contributed to it and it represents our unanimous decision. Given the pressure of time it is necessarily only a summary. No significance should be attached to any particular point not being referred to in this decision. We considered all the evidence and submissions and gave appropriate weight to it all.

Having done so, and having reminded itself that the burden of proof lay on the Player to show that the Referee had been wrong to have issued a Red Card, the Panel made the following findings of fact:

1. The Player's right arm was directed away from his body and had led up and into the face of LI14.
2. The Player's right forearm made direct contact, with some force, to the left hand side of LI14's head.
3. As the Player accepted, this action constituted foul play for which he was at fault.
4. None of the factors listed in the HCP as being indicative of low danger were present.
5. The Player was moving at speed, had led with his forearm and made direct contact with LI14's head with force that could not be described as being low.
6. These are all factors listed in the HCP as being indicative of a high degree of danger and warranting the issue of a Red Card.
7. The Panel did not accept that the Player's action could be described as passive.
8. The Player had the time to have gone lower with his hand-off and/or to have used his hand to contact with LI14's face.
8. The audio recording of the discussion between the Referee and the TMO did not suggest that the Referee had failed to take account of the observations of the TMO as had been argued. The argument on behalf of the Player in this regard was accordingly rejected.
9. Previous cases are fact specific and therefore often of limited assistance to panels. In this instance however, the cases cited had factors relating to them that did not apply to this case.

### Decision

Breach admitted  Proven  Not Proven  Other Disposal (please state below)

Having regard to its findings above, the Panel was not satisfied that the Player had demonstrated that the Referee had been wrong in his decision, and the Red Card was accordingly upheld. In the finding of the Panel, the Referee had correctly applied the HCP.

The HCP has been adopted to protect player safety and prevent serious head injury. Whilst clearly this was not the most serious of offences, in light of the HCP it crossed the Red Card threshold.

## SANCTIONING PROCESS



### Assessment of Seriousness

#### Assessment of intent - Ref 19.11.8

PLEASE TICK APPROPRIATE BOX

19.11.8(a) Intentional

19.11.8(b) Reckless

#### Reasons for finding as to intent:

The Player had plainly hoped to execute a lawful hand off but his technique had been poor and he had been reckless in that regard.

#### Nature of actions - Reg 19.11.8(c)

Leading forearm making direct contact with the head of an opponent.

Existence of provocation - Reg 19.11.8(d)

Not relevant.

Whether player retaliated - Reg 19.11.8(e)

Not relevant.

Self-defence - Reg 19.11.8(f)

Not relevant.

Effect on victim - Reg 19.11.8(g)

Some minor transitory injury.

Effect on match - Reg 19.11.8(h)

None.

Vulnerability of victim - Reg 19.11.8(i)

Limited.

Level of participation/premeditation - Reg 19.11.8(j)

No premeditation.

Conduct completed/attempted - Reg 19.11.8(k)

Completed.

Other features of player's conduct - Reg 19.11.8(l)

None.

Assessment of Seriousness Continued

Entry point

<u>Low-end</u>	<u>Weeks</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Top-end*</u>	<u>Weeks</u>
<input type="checkbox"/>		<input checked="" type="checkbox"/>	6	<input type="checkbox"/>	

\*If Top End, the JO or Panel should identify, if appropriate, an entry point between the Top End and the maximum sanction and provide the reasons for selecting this entry point, below.

In making the above assessment, the Panel should consider the RFU Practice Note as set out in Appendix 5 to Regulation 19. Significant weight should be given to RFU regulation 19.11.8(a), 19.11.8(h) and 19.11.8(i).

Reasons for selecting entry point:

The Panel had to apply the minimum mandatory mid-range entry point, but found no reason to find that the offending went beyond that level of seriousness.

Relevant Off-Field Mitgating Factors - Reg 19.11.10

Acknowledgment of the commission of foul Play & timing - Reg 19.11.10(a)	Player's disciplinary record - Reg 19.11.10(b)
The Player accepted that he had committed an act of foul play from the outset. Whilst he contested the Red Card his argument was in no way spurious.	Clear record
Youth and/or inexperience of player - Reg 19.11.10(c)	Conduct prior to and at hearing - Reg 19.11.10(d)
Not relevant.	Befitting a player of his status.



Remorse and timing of Remorse - Reg 19.11.10(e)	Other off-field mitigation - Reg 19.11.10(f)
The Player was conscious that his action could have caused injury and of his duty of care in this regard.	None.

Number of weeks deducted: 3

Summary of reason for number of weeks deducted:
<p>Although the Player contested the Red Card, there was some merit to his argument, which could not be said to be entirely misplaced. Given that fact, and the other mitigating features in his favour, the Panel determined to allow the maximum possible 50% reduction from the entry point.</p> <p>The Panel was content to allow the Player to benefit from the CIP.</p> <p>On behalf of the Player, Mr Diamond did not seek to argue that the remaining period of suspension would be wholly disproportionate</p>

Additional Relevant Off-Field Aggravating Factors - RFU Regulation 19.11.13
<p>Player's status as an offender of the laws of the game - Reg 19.11.13 (a)</p> <p>Not relevant.</p>
<p>Need for deterrent to combat a pattern of offending - Reg 19.11.13(b)</p> <p>None.</p>
<p>Any other off-field aggravating factor that the disciplinary panel considers relevant and appropriate - (including poor conduct prior to or at the hearing) Reg 19.11.13 (c)</p> <p>None.</p>

Number of additional weeks: 0

Games for meaningful sanctions:

12.03.22: Scotland v Italy  
19.03.22: Scotland v Ireland  
25.03.22: v Gloucester (subject to successful completion of the CIP)

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 weeks (subject to CIP)	Sending off sufficient	
Sanction commences	08.03.22		
Sanctions concludes	28.03.22		
Free to play	29.03.22		
Final date to lodge appeal	10.03.22		
Costs (please refer to Reg 19, Appendix 3 for full cost details)	£500		

Signature (JO or Chairman)	Jeremy Summers	Date	09/03/2022
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**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

ANY PERSON SUSPENDED UNDER THESE REGULATIONS IS REMINDED THAT UNDER RFU REGULATION 19.11.16 THE SUSPENDED PERSON MAY NOT PLAY THE GAME (OR ANY FORM THEREOF) OR BE INVOLVED IN ANY ON-FIELD MATCH DAY ACTIVITIES ANYWHERE WHICH INCLUDES (BUT IS NOT LIMITED TO) ACTING AS WATER CARRIER/ RUNNING ON A TEE ETC