

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

JUDGMENT

Venue: Remote via Zoom

Dates: Thursday 4th February 2021 and Wednesday 10th February 2021

Independent Disciplinary Panel:

Ian Unsworth QC (Chair), Dr Julian Morris, Olly Kohn

Secretariat:

Rebecca Morgan, RFU Disciplinary Hearings Manager

The Players:

Player: Jonathan Joseph

Club: Bath Rugby

Player: Elliot Stooke

Club: Bath Rugby

Player: Gabriel Oghre

Club: Wasps

In attendance at the hearing

For the Rugby Football Union:

Angus Hetherington, RFU Legal Counsel in Discipline

David Barnes, RFU Head of Discipline

For the Players

Sam Jones, Counsel for Jonathan Joseph and Elliot Stooke

Dave Bassett, Manager Wasps representing Gabriel Oghre

Also, in attendance:

Sophie Bennett, Team Manager, Bath Rugby

Decision

Jonathan Joseph

1. Jonathan Joseph admitted the offence of breaching RFU Rule 5.12 by way of conduct prejudicial to the interests of the Union and/or Game, namely that on 23 January 2021 until the early hours of 24 January 2021, he hosted a social gathering with two other players, from two different households, in breach of Governmental guidance and paragraph 1.6 of Stage 2 of the Minimum Operating Standards.
2. The Panel determined that the Player should be suspended for a period of 2 weeks. He will be free to play from the 16th February 2021 and, in addition to a match which he has already missed (an Interim Suspension Order having been imposed on 4th February 2021), he will not be available to play in the scheduled match versus Sale Sharks on the 12th February 2021

Elliot Stooke

3. Elliot Stooke admitted two offences of breaching RFU Rule 5.12 by way of conduct prejudicial to the interests of the Union and/or Game,

4. Firstly, he admitted that on 23 January 2021 until the early hours of 24 January 2021, he attended a social gathering in the presence of two other players, from two different households, in breach of Governmental guidance and paragraph 1.6 of Stage 2 Minimum Operating Standards.
5. Secondly, he admitted that on 24 January 2021 shared a car with another player, from a different household, in the early hours of the morning in breach of Governmental guidance and paragraph 1.6 of Stage 2 Minimum Operating Standards.
6. The Panel determined that the Player should be suspended for a period of a total of 3 weeks. He will be free to play from the 23rd February 2021 and, in addition to a match which he has already missed, (an Interim Suspension Order having been imposed on 4th February 2021), he will not be available to play in the matches scheduled to take place versus Sale Sharks on the 12th February 2021 and Gloucester on the 19th February 2021.

Gabriel Oghre

7. Gabriel Oghre also admitted two offence of breaching RFU Rule 5.12 by way of conduct prejudicial to the interests of the Union and/or Game,
8. Firstly, he admitted that on 23 January 2021 until the early hours of 24 January 2021, he attended a social gathering in the presence of two other players, from two different households, in breach of Governmental guidance and paragraph 1.6 of Stage 2 Minimum Operating Standards.
9. Secondly, he admitted that on 24 January 2021 shared a car with another player, from a different household, in the early hours of the morning in breach of Governmental guidance and paragraph 1.6 of Stage 2 Minimum Operating Standards.

10. The Panel determined that the Player should be suspended for a period of 3 weeks. He will be free to play from the 23rd February 2021 and, in addition to a match which he has already missed, (his Club having sanctioned him to a one-week suspension), he will not be available to play in the matches scheduled to take place versus Worcester Warriors on the 14th February 2021 and Leicester Tigers on the 20th February 2021.

Preliminary Matters

The Panel

11. There was no objection to the composition of the Panel.

Evidence

12. When first listed, on the 4th February 2021, the Panel was presented with documents which were redacted. The Panel wished to understand why.
13. It was clear from the papers that there had been a road traffic accident at the end of the evening in question. It was the detail of this (such as is available) that had been redacted. Counsel for the RFU and Elliot Stooke argued that this was not a matter which ought to concern the Panel. It was said that this was not relevant to the charges laid.
14. The Panel took time to consider this matter and reminded ourselves of the nature of these charges that an issue in the case would be for us to consider the whole circumstances of the breaches, they having been committed during a well-publicised National Lockdown.

Moreover, we had to consider the consequences of any breach which included the likely reputational damage to the game.

15. In our judgement, the Panel would not be in a position to properly discharge our duties without knowing the facts of that matter. We did not accept arguments advanced by Counsel for Mr Stooke that we ought not to know about those matters and rejected the suggestion advanced by the RFU that we ought not to refer to the matter.

16. We were mindful of ensuring that Elliot Stooke's rights as the potential subject of a criminal investigation were protected but were clear that knowing the facts of the matter would not offend those principles. The Panel was perfectly capable of respecting those rights (Elliot Stooke being an unconvicted Defendant) whilst making a proper enquiry as to the whole circumstances of the sorry events of the evening in question. At the outset of the resumed hearing Mr Hetherington for the RFU properly acknowledged, on reflection, that the previous stance had been wrong.

Directions at the first hearing

17. We informed the parties of our decision and made consequent directions which included:

1. The hearing was adjourned to 1800 on Wednesday 10 February 2020.
2. An Interim Suspension Order was imposed upon Jonathan Joseph and Elliott Stooke until the date of the adjourned hearing. (One was not made in the case of Gabriel Oghre, he already having missed one game pursuant to action taken by Wasps).

3. The RFU to consider any amendments to the charges/charge sheets by 1600 on Monday 8th February.
4. The parties were to provide any and all information in relation to the crash by 1600 on Monday 8th February.
5. The RFU were to provide any further written submissions by 1600 on Tuesday 9th February
6. Players to provide any further written submissions by 1700 on Wednesday 10th February

The adjourned hearing

18. Prior to the adjourned hearing and in accordance with the Directions:

- (a) The RFU indicated that the charges were to remain as they were.
- (b) The Panel were provided with unredacted bundles.
- (c) Counsel for Elliot Stooke provided further factual details as to the circumstances of the accident; and
- (d) The Parties provided further written submissions.

The Charges

Charges Laid

19. The charges brought by the RFU and accepted by the players relate to two entirely separate factual events

- (i) Meeting at the home address of Jonathan Joseph; and
- (ii) In the cases of Elliot Stooke and Gabriel Oghre sharing a car after they left the home address of Jonathan Joseph.

20. Whilst the latter followed the former, it was clear that the RFU were correct to formulate these two events as two distinct offences.

Other Acts

21. By travelling (separately) to Jonathan Joseph's house, both Elliot Stooke and Gabriel Oghre rendered themselves liable to be considered as persons being outside their home otherwise than for a permitted purpose. Clearly, leaving one's home to enjoy a beer and a game of cards with friends would not obviously fall into the category of a permitted purpose. This was not reflected in any charge. That is clearly a matter for the RFU.

22. However, in our judgment the circumstances of *how* the players came to be together (the first charge) was clearly relevant to our assessment of the facts.

23. The position of the RFU was that a subsequent incident (a car crash) is a matter for the Courts and that, if appropriate, the RFU can level further charges following the outcome of the criminal proceedings.

24. Unsurprisingly, Elliot Stooke relied upon that stance and, both in writing and orally, through his counsel, urged us to limit our consideration to all events upto and including the car sharing by Elliot Stooke and Gabriel Oghre.

25. We made it clear, as we do so now, that it was not our function, nor could it be, to adjudicate upon this latter matter. Elliot Stooke remains a man who is presumed innocent. However, it was, as was latterly accepted, wholly unrealistic for the Panel to be expected to properly assess this case without knowledge of all the facts. From first to last, our role was to discharge our responsibilities in hearing a case in relation to the charges laid and not any other matter. That, we have done.

Preparing for Cases

26. In any case, let alone one involving professional rugby players breaching the National Lockdown, it is vital that a panel being asked to consider sanction is provided with clear, precise and straightforward detail as to events. There should be a proper chronology of events which is capable of being understood by everyone. It should not be necessary for a panel to make enquiries as to the basic facts at the time of the hearing.

27. It is perfectly understandable that such hearings should be heard as quickly as possible. However, that must not be done so as to prejudice any party to a hearing. In these particular proceedings we had to adjourn the case for six days to be told basic material about events relating to a car crash. That should not have been necessary.

28. Given the timescales involved, it is vital that the parties work expeditiously to provide panels with full details of the events in question in order that the panel can make a proper assessment of the whole circumstances. As we made clear, not to do so may cause injustice to one side or the other.

29. Moreover, at the substantive hearing, and having been provided with further material, we found much of the written accounts of the evening to be vague and unconvincing. During the course of the hearing, we allowed Mr Jones, Counsel for Jonathan Joseph and Elliot Stooke time to take further instructions. We made it clear that we were being invited to make an assessment of this very serious matter on material which was vague as to the detail. We were grateful to Mr Jones for assisting us to the extent that he could.

Factual Background

30. Having given time to Mr Jones to take instructions and assist us (and we repeat our thanks to him), it was possible for us to understand the essential chronology and events of the night in question. As will become clear, these three players indulged in behaviour which displayed a wholesale deliberate and flagrant disregard for the National Lockdown, the welfare of their colleagues, support staff, opponents, family members and friends.

31. In summary over a period of several hours on the 23rd and 24th January 2021 the three players met at the home address of Jonathan Joseph. There, they socialised, ate, played cards and drank alcohol. They each acted as if the National Lockdown did not apply to them.

32. At around 3am, on the 24th January, Elliot Stooke and Gabriel Oghre left Jonathan Joseph's home, Jonathan Joseph having already retired to bed some time earlier. Elliot Stooke drove with Gabriel Oghre as his passenger. After travelling for about 3 miles Gabriel Oghre got out of the car in the centre of Bath.

33. A short time later Elliot Stooke was involved in what we were told was a minor road traffic accident. The police attended. He failed a

roadside breath test. As a precaution, and despite us being told that this was a minor road traffic accident, he was taken to hospital. He was subsequently released and taken into police custody. He provided further samples of breath. At the time the samples were taken at around 5am the readings were recorded as 53 micrograms of alcohol in 100 millilitres of breath (the legal limit being 35 micrograms of alcohol in 100 millilitres of breath).

34. He was interviewed under caution and made admissions concerning his consumption of alcohol. He has been charged with an offence of Driving with Excess Alcohol. He is due to appear before Bath Magistrates' Court on 24th February 2021.

35. The RFU have indicated that they will review matters further upon the conclusion of those proceedings.

The Pandemic

36. Ordinarily, 3 players meeting for a social gathering would not be the subject of attention. However, these are extraordinary times. The entire world is in the grip of a pandemic caused by Covid 19. This country is in the midst of a National Lockdown. At the time of this judgment, over 115,000 people have lost their lives in this country alone; 2,600,000 people have died worldwide. The National Health Service is under immense pressure. Businesses have been ruined. Millions of lives have been affected. People have not been able to attend funerals of loved ones or share last moments before their relatives die.

37. Against that backdrop, it is inevitable that sport has been affected. For months no sport was able to take place at any level. Governing bodies have had to work extremely hard to persuade Government and the relevant regulatory bodies that sport can resume,

albeit, not at most levels, and, when able to resume, in closely regulated and restricted ways.

38. The ability to play professional sport is not to be taken for granted. It has taken an enormous effort for it to resume. Those who play the game owe an enormous debt to the very many people who have made such efforts

The Resumption of Professional Rugby

39. During discussions with Government and Elite, Olympic and Paralympic sport Chief Medical Officers, it was agreed with Government that individual sports would develop sport specific Minimum Operating Standards underpinned by protocols and policy documents that were consistent with the Government guidance. That guidance should be viewed as an overview of the minimum standards that any sport must achieve. Sports are able to set higher standards based on a sport specific risk assessment providing that these standards do not conflict with UK Government advice.

40. In that context, Rugby Union introduced Minimum Operating Standards which had been put together by Premiership Rugby, the RFU and the RPA to help facilitate the safe return to professional men's rugby training for Rugby Union in England. It is supported by the latest guidance from the UK Government, Public Health England (PHE), the World Health Organisation and World Rugby.

41. Paragraph 1.6 of Stage 2 of that document provides (emphasis added in **bold**):

All players and staff must adhere to UK government guidance at all times outside of the training environment. The extent to which

*players and staff adhere to guidelines and standards both inside and outside of the training environment **has a direct impact on the risk of COVID-19 transmission to themselves and the close contacts around them.***

42. At the time of the events before us, there was (and still is) a National Lockdown in place. There is no clearer evidence that the transmission rate is high, and lives are at risk than it being necessary for there to be a National Lockdown. The situation in the country could not be more precarious.

43. The position could not be clearer:

(i) Persons cannot leave or be outside their home except where necessary for a permitted reason.

(ii) Person cannot leave their home to meet socially with anyone they do not live with or are not in a support bubble.

(iii) Persons cannot meet other people they do not live with, or have not formed a support bubble with, unless for a permitted reason.

(iv) Persons need to avoid car sharing with anyone from outside their household or support bubble

44. It is obvious that all 3 players acted in breach of the above and therefore paragraph 1.6 of Stage 2 of the Minimum Operating Standards.

45. Their actions, in the words of paragraph 1. 6 had a direct impact on the risk of COVID-19 transmission to themselves and the close contacts around them.

The Approach to Breaches of COVID19 Restrictions

46. To compliment the Minimum Operating Standards, in the Summer of 2020, a framework was agreed by the Professional Game Board, which included representatives from the Premiership, the Championship, the RPA and the RFU. This framework the 'Return to Play Disciplinary Framework' ("the Framework") was devised to deal with any breaches of the Minimum Operating Standards which was introduced into club rugby. The framework provides the Panel with indicative guidance.

Return to Play Disciplinary Framework

47. This document provides that any potential breach of the Minimum Operating Standards must be reported to the RFU Head of Discipline who will be responsible for assessing the matter and determining how it should be dealt with. Any decisions will be based on an assessment of 2 factors:

- i) Was the conduct Intentional, Reckless or Careless? and
- ii) Was the consequence of the breach, low, medium or high impact?

48. The Framework provides guidance as to how conduct and consequences should be approached by the RFU Head of Discipline.

49. In this case it was submitted to us (and accepted by the Players) that the conduct in question was intentional. This is defined in the Framework as,

“ the person engages in the conduct that constitutes the breach with the intention of committing that breach”

50. As to the issue of consequence of any breach, the following guidance is given (emphasis added in bold)

Any breach will be assessed to determine if its consequence was of a low, medium or high impact.

Any mitigating and/or aggravating factors will also be taken into account.

*When determining the level of consequence, factors that will be considered **can include;***

i) Harm to any individual, including, Players, Officials, Staff and member of the public

ii) Impact on the competition, either as a whole, as a part or on a participating club

iii) Reputational damage to the game

*In determining the **likely** consequence of the breach, the RFU Head of Discipline may obtain an expert opinion from any relevant member(s) of the PGB Restart Group in order to better assess the potential consequence of the breach. This expert opinion will not be binding on the RFU Head of Discipline.*

The expert opinion shall not include any recommendation for how the matter shall be dealt with, that decision sits solely with the RFU Head of Discipline.

51. Here, no expert opinion has been sought. We understand that decision.
52. However, it is clear that in terms of the consequences:
- (i) The list is non - exhaustive; and
 - (ii) The Framework clearly provides for an assessment of **likely** consequence of any breach which includes the reputational damage to the game.
53. It was asserted by the RFU that these cases fall within the category of low impact. The Players adopted that assertion in their submissions to us.
54. The Framework provides that after determination of the conduct and the consequence of the breach and considering any aggravating or mitigating factors, the RFU Head of Discipline will determine how any matter should be dealt with. The RFU Head of Discipline can determine that the matter be dealt with by an official warning and further education or direct that the matter be considered by an RFU Disciplinary panel.
55. If the matter is sent to an RFU Discipline Panel, any hearing will be conducted in accordance with RFU Regulation 19.
56. Thus, as a properly constituted Panel, we conducted the proceedings in accordance with RFU Regulation 19.

57. It is important to remember that the Framework document is guidance only. The offences these Players committed are all breaches of Rule 5.12 of the RFU Rules.

58. Rule 5.12 allows the Panel to impose

“any ... appropriate punishment for any such offence.”

59. There is a broad discretion as to the type and range of sanction open to us.

60. RFU Regulation 19.11.7 states that, “Appropriate punishment” referred to in Rule 5.12 and Regulation 19.6.5... shall include, but shall not be limited to

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

61. In proceedings arising from the cancellation of the Quilter Cup match between the Barbarian FC and England, a Disciplinary Panel (24.11.20 & 26.11.20) comprising Philip Evans QC, (Chairman) Mike Hamlin and Richard Whittam QC provided valuable assistance as to the approach to so -called Covid - 19 cases:

“81) The Panel has concluded it is appropriate and fair to use the Framework as indicative guidance in this case. It is after all a Framework decided upon

by representatives of the game who represent all of these Players with the

exception of Mr McFadden. The alternative is for this Panel to draw on its own experience and arrive at its own sanction having ignored the considered guidance devised by a representative cross-section of

stakeholders from the game. We do not think that would be a sensible or as fair a course for us to take.

82) We have therefore looked as to whether the offending was Intentional, Reckless or Careless as defined by the Framework and then considered the consequence of the Player's actions. Was the consequence High, Medium or Low again as defined by the Framework?

83) The Framework does however remain just guidance. We take the view the facts of this case are particularly unusual and were unlikely to be those envisaged by contributors to the framework despite it being "created to cover all eventualities." The Barbarians' game was an individual event, due to take place in different circumstances to those which are usually subject to the Framework. By necessity the Players were placed into a different 'Covid' management environment than would be expected if they were due to play in the Premiership or from within an international camp.

84) We therefore make it clear the sanction we consider to be appropriate in this case is fact specific, we have used the framework as guidance only and this judgment is not intended to be binding in relation to other Covid cases in the future.

85) The Framework also states any disciplinary process that forms part of the framework will be considered in accordance with RFU Regulation 19, that it is for the Panel to decide what level of sanction is appropriate and that full consideration, as laid out in Regulation 19, will be given to mitigation and aggravation.

86) We have additionally had regard to Regulation 19.11.8 which clubs and players should be more than familiar with. It requires Panels to undertake an assessment of the seriousness of the Player's offending by reference to a series of factors (19.11.8 (a)-(j)), a number of which are

relevant to off-field offending. Some of those factors have evidently been adopted into the framework. We have used them to assist us in our assessment of seriousness, most particularly (a) whether the offending was intentional or deliberate or (b) reckless; (c) the gravity of the Player's actions...; and (m) any other feature of the Player's conduct in relation to or connected with the offending. Regulation 19.11.8 makes specific reference to the categorisation of offending into lower end, mid-range or top end of the scale of seriousness to identify an appropriate entry point of foul play where such incident(s) is expressly covered in Appendix 2 of the Regulations. The framework adopts a similar approach and gives its own suggested entry points.

87) Where possible we think it is appropriate for Rule 5.12 cases to use the structure for sanction set out in Regulation 19 as guidance. This allows for transparency and a consistent approach to matters such as establishing seriousness, identifying a starting point and in the assessment and application of aggravating and mitigating features of a case or individual Player and we have had regard to that guidance."

62. To be clear, the approach outlined in the *Barbarians* case is the one we have adopted in this case.

Facts

63. Prior to these events all 3 players undertook the relevant COVID education modules for Stages 2 and 3 of the Minimum Operating Standards.

64. At the time of these events, all 3 players had recently received negative COVID test results. This did not, in any way, justify or minimise their subsequent actions.

65. Jonathan Joseph had received news that he had not been selected for the England Squad. We accepted, as was submitted, that he was disappointed. A character reference from Neil Hatley, Bath 1st Team Coach made clear the depth of his disappointment. However, we found Mr Jones' submission that his lay client was depressed and mental wellbeing affected, unsupported by any evidence.
66. Indeed, as became apparent, Elliot Stooke recalled he had been enjoying a game on a PlayStation (remotely) with Jonathan Joseph when he agreed to attend at Jonathan Joseph's house.
67. We reject as without foundation the suggestion that the attendance at Jonathan Joseph's home address came out of a "good place". This submission simply fails to recognise the responsibility that the Players had to comply with the restrictions.
68. As is clear, at the time that Jonathan Joseph was playing on a PlayStation with Elliot Stooke, Gabriel Oghre was already at Jonathan Joseph's house. There was conflicting evidence before us as to how he came to be in Bath, when his home is in the Leamington Spa area (an approximate 2-hour car journey). When questioned by his Club he had said that he had visited Bath to see his mother but had stupidly gone to see Jonathan Joseph. Before us, it was contended that he was living with his mother at the relevant time and had travelled just a few miles to the home address of Jonathan Joseph. We did not feel it necessary for us to adjudicate upon this manifestly obvious factual inconsistency. On either account Gabriel Oghre was in breach of COVID regulations and by returning to the home of his mother he selfishly put her at an increased risk.
69. What is clear is that by the late afternoon of Saturday 23rd January 2021, Gabriel Oghre attended at the home of Jonathan Joseph.

70. By early evening they were joined by Elliot Stooke who lived about 3 miles away.
71. All 3 players deliberately ignored and flouted the COVID restrictions. They continued to do so for hours. In the case of Gabriel Oghre and Jonathan Joseph this was for upto approximately 10 hours. In the case of Elliot Stooke for some 8 hours. We were told that, together with Jonathan Joseph's partner, they ate, played cards and drank alcohol for several hours. At approximately 1am Jonathan Joseph retired to bed with his partner, but the other two players remained there until around 3 am.
72. In our judgement the three players share equal culpability for this wholly unsatisfactory episode. Jonathan Joseph allowed the other two players into his home. Had he not done so; they would not have been able to breach the restrictions in the way that they did. Both Gabriel Oghre and Elliot Stooke deliberately chose to travel to Jonathan Joseph's address. Had they not done so they would not have breached the restrictions in the way they did.
73. The behaviour of all three risked a clear and direct impact on the risk of COVID-19 transmission to themselves and the close contacts around them. It is those factors above all else that lie at the heart of this case.
74. Elliot Stooke decided to drive home. Gabriel Oghre got in the passenger seat. We were told that Gabriel Oghre was dropped off in Bath Centre close to his mother's address. This was a second and clear breach of the restrictions. Car sharing in these circumstances is not only to be avoided but clearly increases the risk of transmission. This falls to be considered as a wholly separate offence.

75. We were told that a short time later there was a minor road traffic accident when Elliot Stooke momentarily lost control of the car having bent down for some water. His car was not capable of being driven further. The police attended. He failed a roadside breath test. He attended hospital as a precautionary measure. He was subsequently released and taken into police custody. He provided further samples of breath. At the time the samples were taken at around 5am the readings were recorded as 53 micrograms of alcohol in 100 millilitres of breath (the legal limit being 35 micrograms of alcohol in 100 millilitres of breath).

76. The fact of the arrest is what caused this matter to come to the attention of the players respective clubs. Bath Rugby Club, on hearing of these matters informed Wasps.

77. We were satisfied that but for this arrest none of the Players would have brought these events to the attention of their Clubs.

Club Disciplinary Hearings

78. Each Club brought their own disciplinary proceedings.

79. Jonathan Joseph faced a club disciplinary hearing on 2 February 2021. He accepted that he was in breach of Covid guidelines in hosting two friends outside of his household on 23 January 2021. Jonathan Joseph was sanctioned with a one-week suspension and fined two weeks' wages following his club disciplinary.

80. Elliot Stooke faced a club disciplinary hearing on 2 February 2021. Elliot Stooke accepted that he breached Covid guidelines by attending Jonathan Joseph's house for a social gathering and by sharing his car with Gabriel Oghre. Elliot Stooke was sanctioned with a first written warning, a one-week suspension, fined two weeks' wages

and ordered to do 15 hours community service following his club disciplinary.

81. Gabriel Oghre faced a club disciplinary hearing on 29 January 2021. Gabriel Oghre accepted that he was in breach of governmental guidance by socialising at Jonathan Joseph's house on the 23 January 2021. Gabriel Oghre was sanctioned with a one-week suspension, fined two weeks' wages and ordered to do 10 hours community service

Approach to Sanction

82. Insofar as is possible for his type of offence, we undertook an assessment of the Players' conduct under Regulation 19.11.8 as follows:-

- a) Intentional/deliberate;

In each case the conduct was intentional and deliberate

- b) Whether the offending was reckless

This was not reckless.

- c) The gravity of the Player's actions in relation to the offending;

At the time of the Barbarians decision, the country was subject to the "Rule of Six." At the time of these events, the transmission rate is such that the country is subject to a National Lockdown. That calls for compliance, responsibility and sacrifices. The minimum operating standards could not be clearer. Professional rugby players are not exempt from the sacrifices that every other member of the country has to make at this moment. Deliberately flouting the

restrictions brought about by National Lockdown in the way set out in the charges, in our judgement, mean that the players offending must be regarded as being serious. It is fortunate indeed that there was, in fact, no Covid transmission caused by their foolish actions. That is an important factor when considering where, on the relevant scale, this case falls.

- d) The nature of the actions, manner in which the offence was committed

We repeat our observations as above

- (k) The level of participation in the offending and the level of premeditation;

It was apparent that each player fully participated in the offending. There was no reluctant passenger amongst the group. They each did what they did with the eyes wide open and not one of them sought to withdraw

- (m) Any other features of the Player's conduct in relation to or connected with the offending.

We have been careful to avoid any "double counting". It is incumbent upon us, however, to emphasise that any breach of a National Lockdown must be regarded as a highly serious matter.

Aggravating Features

83. We considered the aggravating factors under regulation 19.11.10 as appropriate for each player. In our judgment, none of those factors are present.

Mitigating Factors

84. We considered the mitigating factors under regulation 19.11.11.

- (a) the presence and timing of an acknowledgment of culpability/guilt by the offending Player;

Each Player was swift to acknowledge their guilt.

In his written statement in these proceedings Jonathan Joseph stated:

“Having had time to reflect, I now fully understand the potential implications of my actions and the importance of minimising risk in the current climate. I understand that my actions were irresponsible and potentially harmful to the team, and want apologise to all of those at the club and wider public that I potentially put at risk, and I will ensure that this does not happen again.

I hope that as this is my first breach of this nature, the panel will appreciate the importance I put on following both the club and Covid guidelines to the best of my ability.”

In his written statement to the proceedings, Elliot Stooke stated:

“I understand the potential consequences of my actions and also understand how incredibly lucky I have been to not be hurt/been hurt, died myself or killed anyone. I have had time to reflect and understand that no amount of apologies can make this right. However I’d like to use this experience and let people know of my actions as it could help people make the right decision in the future, and more importantly save someone from being hurt or potentially death.

I know it’s been said and again no amount of apologies can come close, but I am truly and deeply sorry for my actions and the trouble they have caused”.

Both in his interview with his Club and his oral statement to the Panel, Gabriel Oghre was clear in his remorse at his actions.

- (b) the Player's disciplinary record and/or good character;

All were excellent in this regard

- (c) the youth and inexperience of the Player;

None could be described in this way although Gabriel Oghre was the younger of the three players.

- (d) the Player's conduct prior to and at the hearing;

All behaved appropriately. Only one player, Gabriel Oghre, addressed us. He spoke from the heart and he spoke extremely well. We were quite satisfied that he is ashamed of his behaviour. He is taking active steps to address it and that he appreciates the enormity of what he did. We were quite satisfied that he will learn from this experience.

- (e) the Player having demonstrated remorse for the Player's conduct to the victim Player including the timing of such remorse;

Gabriel Oghre spoke to us of his remorse. We accepted that as we accepted from Mr Jones that both Jonathan Joseph and Elliot Stooke were remorseful

- (f) any other off-field mitigating factor(s) that the Disciplinary Panel considers relevant and appropriate.

We took into account all factors advanced before us by Mr Jones on behalf of the Bath Players and Mr Bassett on behalf of the Wasps player.

Character

85. In each case we had regard to the Player's respective playing records and character. We were informed and accepted that they have contributed much to the game both on the field and off it.

86. Jonathan Joseph is a highly distinguished elite player. He has played for England on over 50 occasions and has 2 caps for the British and Irish Lions. In his case we had the benefit of a glowing testimonial from Neil Hatley, Bath 1st Team Coach

87. Elliot Stooke is a professional of some standing and has previously been called up to the England Six Nations Squad.

88. Gabriel Oghre has represented England Under 19s. Mr Bassett made clear that Gabriel Oghre is a genuine asset to the Club both on the field and off it.

89. Acknowledging the proper approach to such matters we also had regard to the Framework.

Sanction in respect of the charges

90. In our judgment, the behaviour of these 3 players, at a time of National Lockdown fell far below that which might be expected of professional rugby players. We do not accept that this behaviour can properly be described as having low consequence. By meeting together drinking and socialising at the home of Jonathan Joseph and in the

cases of Elliot Stooke and Gabriel Oghre compounding events by sharing a car afterwards this is conduct which in the truest sense of the phrase is prejudicial to the interests of the Game.

91. Their actions clearly had a direct impact on the risk of COVID-19 transmission to themselves and the close contacts around them.

92. The very nature of the facts of this case will have an obvious and significant impression and will undoubtedly cause reputational damage to the game.

93. We were unpersuaded by the argument advanced by the Players that we ought not to have any consideration to a future event. The very wording of the Framework provides for consideration of likely consequences. It is fanciful to suggest that the facts of this case will not cause reputational damage to the game

94. Finally, the matters set out in the Framework are clearly non-exhaustive. In our judgement the fact that these offences were committed at a time of National Lockdown is a clear and obvious additional factor for us to consider when making our assessment. We did not accept the argument advanced by Mr Jones that any breach equates with any other breach irrespective of the context. The context of a National Lockdown is a highly important one.

95. In our judgement, all of these factors mean that it would be utterly inappropriate to regard this case as being one in respect of any of the individual players as justifying the description of “low consequence.” It is manifestly obvious from the wording of the Framework that those charged with regulating discipline must look beyond whether there was an actual transmission and indeed are entitled to look at factors outwith transmission altogether. Hence the reference to “reputational damage to the game”.

96. In our judgement, this case certainly fell into the category of being at least medium impact in terms of consequences. We carefully considered the factors within the framework and bearing in mind the absence of factors, namely i and ii:

- i) *Harm to any individual, including, Players, Officials, Staff and member of the public*
- ii) *Impact on the competition, either as a whole, as a part or on a participating club*

we were of the view that this did not justify the description of high impact.

97. Accordingly, in respect of each of the charges we were of the view that the appropriate starting point was a four-week suspension.

98. Allowing for a full 50% deduction for the factors outlined above, we reduced the sanction in respect of each charge to one of two weeks.

99. In our judgement, the offences committed by Elliot Stooke and Gabriel Oghre were separate and distinct. As such, adopting ordinary principles consecutive sentences would be called for. However, we had full regard to the principle of totality and accordingly in relation to the second offence we made an adjustment by reducing the starting point to a two week suspension and, applying a 50% deduction, reduced the sanction for that offence to one of one week consecutive.

100. We gave proper consideration to whether or not it would be appropriate to suspend that one-week suspension but having due regard to all appropriate factors, we did not feel that this was a proper

case for suspension. On the facts of this case there is no logical reason to do so.

101. Accordingly, in relation to each player:

(i) Jonathan Joseph He is to be suspended for two weeks. He is free to play from the 16th February 2021

(ii) Elliot Stooke He is to be suspended for three weeks (two weeks on charge one and one week consecutive on charge two). He is free to play from the 23rd February 2021

(iii) Gabriel Oghre He is to be suspended for three weeks (two weeks on charge one and one week consecutive on charge two). He is free to play from the 23rd February 2021

102. In ensuring fairness to all players, at the first hearing we declined to make an interim suspension order in relation to Gabriel Oghre.

103. We would have imposed financial penalties in respect of each player had it not been for those penalties imposed by their clubs. In our judgement it would be wrong in principle for us to do so now.

104. In view of the overall sanctions imposed by their clubs we made no other orders in respect of sanction.

105. Each club is to pay the sum of £500 by way of costs.

106. Each player has the right to appeal within 14 days of this written judgement being sent.

Ian Unsworth QC

(Chairman)

11th February 2021