

# RFU SHORT JUDGMENT FORM



Match	Saracens	Vs	Wasps
Club's Level	1	Competition	Premiership
Date of Match	05/09/2020	Match Venue	Saracens

Particulars of Offence			
Player's Surname	Farrell	Date of Birth	24/09/1991
Forename(s)	Owen Andrew	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Saracens	RFU ID No.	455689
Type of Offence	Dangerous Tackle		
Law 9 Offence	Law 9.13		
Sanction	5 matches, suspended until 04/10/2020.		

Hearing Details			
Hearing Date	08/09/2020	Hearing venue	Remote (Via Zoom)
Chairmen/SJO	Mike Hamlin	Panel Member 1	Gareth Graham
Panel Member 2	Leon Lloyd	Panel Secretary	Rebecca Morgan (RFU)
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:
Richard Smith QC	Mark McCall - Director of Rugby at Saracens Warrick Lang- Team Manager at Saracens Angus Hetherington representing the RFU (Legal Counsel) David Barnes - Head of Discipline at RFU Angus Bujalski- RFU Legal and Governance Director

List of documents/materials provided to player in advance of hearing:
Charge Sheet Referee's (Christophe Ridley) Red Card Report Video of incident World Rugby High Tackle Framework Copy of RFU Regulation 19 - Discipline (Appendix 2) 2 Medical Reports dated 07/09/2020 & 08/09/2020 in respect of Charlie Atkinson (Wasps Player)

1. Christophe Ridley's report (the referee)

"Wasps ball carrier playing left to right, 1m inside his own half in the centre of the field. Running in space, the ball carrier was tackled by Owen Farrell at high speed with force to the neck/head area. No mitigation applicable. Owen immediately acknowledged his actions by apologising on the field & again after waiting by the side of the pitch for the injured player to be removed."

2. The video footage of the incident was of 6 minutes duration as it included the on field medical treatment of the Wasps player, Charlie Atkinson (CA) until he walked from the field of play. The clip showed the Player kicking the ball & chasing his own kick which had been caught by CA. CA was running slightly across field just inside the Wasps half. The Player was running at speed from CA's left side towards CA who was carrying the ball. There were no other players between CA and the Player appeared to have a clear unobstructed view of CA. The Player in a fairly upright position with left shoulder and left arm leading, tackles CA with the Player's head to the right of CA and the Player's upper left arm (bicep) comes into contact with the left hand side of CA's neck and head with considerable force. Just before contact CA checked his speed and line of running and slightly changes direction off his right foot, dipping his left shoulder and simultaneously lowering his head slightly. After the collision the Player goes past CA and falls to the ground on his back placing his hands momentarily on his head. CA goes to ground and lies motionless on the grass. The referee intervenes very quickly. The Player can be seen approaching CA. The Wasps medical team arrive to administer medical attention. The referee speaks to the Player and issues a red card. The Player leaves the field of play immediately and then waits at the touch line watching CA receive medical treatment. After a stoppage of approximately 5 minutes CA gets up and walks off the field. The Player can be seen to speak to CA and shake his hand. The collision incident was shown at normal speed and from numerous angles.

1.The Panel received 2 two medical reports from Ali James, Head of Medical Services at Wasps in respect of CA dated 07/09/20 and 08/09/20. The first report stated:-

"CA was removed from play in the 61st minute of the match following a high tackle by Owen Farrell resulting in a Concussion. Our observation from pitch-side was that CA had sustained a suspected loss of consciousness which was then confirmed on examination of CA on the pitch. These assessment features met the threshold for an immediate and permanent removal and CA was duly managed in this manner. A diagnosis of Concussion has been confirmed and CA will be managed via the age appropriate Graduated Return to Play Protocol."

2.The second report confirmed the above first report in identical terms and added:-

"Following the enhanced U19 Protocol the earliest return to full training would be Thursday 17th September which if he makes an uncomplicated return would render him available for selection w/c 21/09/20. Progress and timescales will be subject to being symptom free."

## Summary of Player's Evidence

1. The following is necessarily a summary of the Player's evidence and the submissions of Mr Hetherington for the RFU and Mr Smith for the Player. It does not repeat the evidence verbatim nor is it intended to be an exhaustive record of all the evidence and submissions at the hearing and the absence of a reference to some evidence or submission is not to suggest that such evidence or submission was not considered by the Panel at the hearing.

2. Prior to the Player giving his evidence Mr Hetherington on behalf of the RFU submitted to the Panel the following:-

1. He reminded the Panel of the increased risk of injury where offending involved contact with the head, which had occurred in this incident.
2. The Player had committed the offence at speed whilst he was accelerating towards CA.
3. He appeared to be attempting to make a dominant tackle.
4. He was quite upright and his technique was at fault in that he was unable to lower his contact with CA resulting in contact with CA's neck and head.
5. The offending was reckless, there was no suggestion by the RFU that the offending was malicious or that he intended to tackle CA around the neck and/or head. Due to his speed he had no opportunity to brace. The RFU were neutral as to whether this offending merited a mid or top end entry point under Regulation 19.11.8. He confirmed that the Player had one previous sanction for a dangerous tackle having been cited in April 2016 for which he received a suspension of 2 weeks.

3. The Player told the Panel he was 28 years of age, had 201 premiership games for Saracens, 83 England caps, 4 tests for the British & Irish Lions and he was also currently the England Captain. He had kicked the ball and intended to chase CA and tackle him from the side. He could see CA was a bit hesitant and thought he could get to him, he was aiming for his arm below the shoulder and simultaneously possibly dislodge the ball. He said he lunged at the middle of CA's arm in the hope of dislodging the ball as he tackled CA and as he did so his head went to the right hand side of CA, "I was expecting to hit him between his shoulder and arm" he told the Panel. He did not appreciate CA's slight change of direction given the pace he was running. CA looked across the field as if to pass and he was hoping to tackle before CA passed. He accepted that he did not control his contact with CA as he should have done. He did not set out to tackle high. He was unaware that CA dips slightly as CA checked. On contact he knew that he had gone over the shoulder and that the contact had gone wrong. He apologised on the field. After he was dismissed, he waited at the side of the pitch for CA, apologised to him and again in the clubhouse. He was gutted that he had caused the injury to CA. He had not stopped thinking about it and was very disappointed in himself, he never ever thought he would get a red card as he had much pride and energy in setting high standards for himself. He said what he had done set a bad example.

4. Mr Smith on behalf of the Player had provided, prior to the hearing a note for the Panel to consider, including a copy of a World Rugby Appeal decision arising from 2019 Summer Internationals (Paul Gabrillagues-France) chaired by World Rugby's Judicial Panel Chairman, Christopher Quinlan QC, which he submitted was relevant to the consideration of mitigation. This written information was supplemented by his oral submissions. His primary submission was that the correct entry point was a mid entry point of 6 weeks and that the Player was entitled to 50% mitigation. Furthermore:

- (i) The Player had promptly admitted the act of foul play;
- (ii) The Player did not intend the consequences which befell CA;
- (iii) The late change of direction and slight dip by CA did make a difference to the nature of the offending;
- (iv) The Player was genuinely remorseful;

5. Mr Smith then carefully and helpfully took the Panel through each of the factors relevant to determine the seriousness of the offending which can be summarised thus: Absent intent and/or premeditation this reckless act should properly merit a mid range entry point. The gravity and nature of the offence was already covered by the mandatory mid range entry point as the contact was with the head and therefore there was no requirement to elevate it to a top end entry point. The effect on CA was as set out in the medical reports but the Panel should not elevate or be very cautious to elevate the offending because CA was 18 years of age and therefore unable under the age grade return to play protocol until w/c 21st September. Had he been an adult player, subject to the concussion protocol for adults, he may have been fit to play the following week. Factors (e), (f), (g), (i), (k) and (m) were not present or relevant. CA was vulnerable to the extent that all players are to unlawful contact with the head but CA's checking and actions suggest that he was not ready for contact. Although the offending was reckless and committed at pace the facts of the offending did not merit elevation to top end.

6. Aggravating features under Regulation 19.11.10 were not present in this case.

7. With regard to mitigation under 19.11.11 before summarising Mr Smith's submissions it is helpful to set out the consideration of the World Rugby Appeal decision in Gabrillagues by the Appeal Panel paragraphs 71-75 which reinforced the discretionary approach to the application of the mitigating and the weight which may, in the appropriate case be applied to the relevant factors and in particular paragraphs 73-75 which are set out below:

"73 "He is entitled to credit for the mitigation we have identified. The extent is a matter for our Judgment. There is no rule or regulation which entitles him to 50%. A reduction of 50% is the maximum (absent the wholly disproportionate provisions which do not apply in this case) and has become, through practice over many years, to be expected by a player where of the factors in R17.9.5 are present. Having found against the Appellant on an important factual issue, and his record, the DC was perfectly entitled to conclude,(as it did) that he was not entitled to the maximum 50% credit. Indeed, had we made the same factual determination, we would have reached the same conclusion.

74. However, we have not found against the Appellant on the facts. Therefore, the remaining issue is his disciplinary record, which is not perfect. However, R17.19.5(b) does not refer to a perfect or clean disciplinary record. He has one serious matter recorded against him. But he was young and it was (effectively) four seasons ago. That fact is not such as to deprive him of some credit by way of mitigation for his disciplinary record. The question is how much? Anything less than 50% and he serves a suspension of four weeks, not three. There is no room for 40% discount in this case as the arithmetic does not work so as to leave a round number of weeks. On these facts it is either 33% or 50%.

75. Ultimately, it is not a matter of arithmetic. It is a matter of judgment, exercised to arrive at a just sanction for the 'offending' giving weight to the relevant factors. We conclude the appropriate discount is three weeks, resulting in a suspension of 3 weeks."

(The Player in the above case was 26 years of age, 22 when he committed the act of contact with the eye or eye area, for which he was suspended for 8 weeks). It is in the context of this case that Mr Smith advanced the submission that the Player was entitled to a 50% reduction.

8. Mr Smith's submissions in relating to mitigation under 19.11.11 were:

- (a) An immediate acknowledgment of culpability;
- (b) One matter recorded against him four and a half years ago for which he was suspended for 2 weeks. As to character, he made a bold assertion, that it would be very rare if the Panel had seen such references which speak so highly of a player and a man, not just the rugby references but in particular the work he undertook for 2 charities which is not widely known.
- (c) He is 28 years of age but not inexperienced.
- (d) His conduct at the zoom hearing had been appropriate.
- (e) He had demonstrated genuine remorse for his conduct to CA which had been immediate on the field of play and after the match.

## Findings of Fact

The Panel having considered all the above evidence made the following findings:

1. CA was the ball carrier, running slightly laterally across the pitch just inside the Wasps half. Prior to contact he appears to look to pass to his right.
2. The Player has run from his own 22 to chase his own kick and is running at speed at CA on CA's left hand side with the intent of tackling CA.
3. The Player intends to tackle CA from the side aiming below CA's shoulder to knock him to the ground. The Player is in a fairly upright position which is consistent with his intention to tackle below the shoulder.
4. The Player lunges/launches himself to make the tackle, leading with his left shoulder and arm, with his head to the right of CA looking away upon contact.
5. The Player's upper left arm (bicep) makes direct contact with the left hand side of CA's neck and lower head with considerable force. This was a tackle which was reckless and dangerous.
6. Immediately before contact CA checks and changes direction slightly and simultaneously dips his left shoulder. It is highly probable from viewing the video footage that CA did not see the Player coming from his left and did not brace himself prior to contact.
7. Immediately after contact CA falls to the ground is motionless.
8. CA lost consciousness and sustained a concussion. It took nearly 5 minutes for the on field medical treatment to be completed.
9. The Player admitted that he got it wrong and did not control his approach and contact to the requisite standard.
10. Given the Player's speed, height of approach and intention to make contact below the shoulder it was essential he executed his contact with care and there was always a risk of the tackle being unlawful if he got it wrong, which he candidly admitted at the hearing.
11. CA will not be available to play again until week commencing 21st September.

## 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:

Gravity of player's actions - Reg 19.11.8(c)

This was a badly executed tackle, committed at high speed which resulted in the removal of CA from the field of play.

Nature of actions - Reg 19.11.8(d)

A severe blow to the left hand side of CA's neck/lower head with the Player's left upper arm (the flexed bicep).

Existence of provocation - Reg 19.11.8(e)

None

Whether player retaliated - Reg 19.11.8(f)

Not applicable

Self-defence - Reg 19.11.8(g)

Not applicable

Effect on victim - Reg 19.11.8(h)

CA lost consciousness on the field of play. It took 4-5 minutes for the medical team to administer treatment on the field of play. He took no further part in the game. He sustained a concussion. He will not be eligible to play until week commencing 21st September providing he successfully completes the enhanced age grade return to play protocol.

Effect on match - Reg 19.11.8(i)

None and there was no adverse player reaction

Vulnerability of victim - Reg 19.11.8(j)

Any player who is in possession of the ball in open play is always vulnerable to illegal contact from a tackle to his neck or head. When a ball carrier cannot see the tackler and/or the tackle comes from the side, the ball carrier has less chance of bracing himself for the tackle and to that extent CA was slightly more vulnerable than had this tackle been within CA's sight.

Level of participation/premeditation - Reg 19.11.8(k)

There was no premeditation

Conduct completed/attempted - Reg 19.11.8(l)

Completed

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

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 type="checkbox"/>		<input checked="" type="checkbox"/>	<b>TEN</b>

\*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 this assessment, the JO/committee should be consider RFU Regulation 19

Reasons for selecting entry point:

The Panel considered Mr Smith's submissions carefully but respectfully disagree. The assessment is not formulaic. It is a discretionary exercise giving due weight to the factors present in the offending to arrive at a just sanction. The weight attached to some factors may be more than others (as in this case) but the absence of intent or premeditation in this case does not prevent the Panel from elevating the mandatory mid range to top end. The risk of injury where the head or neck is involved is well known and is not repeated here. Mr Smith is correct to the extent that the mandatory entry point of at least mid range reflects the gravity and nature of the offending as a result of the risk of injury to the head and/or neck but not where the victim actually sustains injury. All cases are fact specific and the Panel unanimously determined that significant weight should be given to the injury sustained. CA lost consciousness and was removed from the field of play and sustained a concussion and due weight must be given to this factor which elevates the offending to top end. For the avoidance of doubt, had CA been an adult player on these facts (absent the age fact) the Panel would have elevated the offending to top end. This was a reckless and dangerous tackle resulting in CA losing consciousness and sustaining concussion.

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)

One previous suspension for 2 weeks for a dangerous tackle in April 2016. The Player is not an habitual offender of the laws of the game.

Need for deterrent to combat a pattern of offending - Reg 19.11.10(b)

None

Any other off-field aggravating factor that the disciplinary panel considers relevant and appropriate - Reg 19.11.10 (c)

None

Number of additional weeks: None

Relevant Off-Field Mitgating Factors	
<b>Acknowledgement of guilt and timing - Reg 19.11.11(a)</b>	<b>Player's disciplinary record/good character - Reg 19.11.11(b)</b>
Immediate and unequivocal.	One previous sanction as stated above in April 2016. The character evidence provided by Mark McCall, Eddie Jones, the England Head Coach and in particular, Duchenne UK (Registered Charity) were very impressive and exceptional, rarely had the Panel seen such glowing testimonials.
<b>Youth and inexperience of player - Reg 19.11.11(c)</b>	<b>Conduct prior to and at hearing - Reg 19.11.11(d)</b>
An experienced international player, nearly 29 years of age.	Exemplary
<b>Remorse and timing of Remorse - Reg 19.11.11(e)</b>	<b>Other off-field mitigation - Reg 19.11.11(f)</b>
Immediate apology on the field to CA, having waited on the touch line for CA to complete his treatment. The Panel noted the manner in which he offered his apology from the video footage which was genuine and his remorse and contrition was expressed and evident at the hearing.	None relevant.

Number of weeks deducted: Five

**Summary of reason for number of weeks deducted:**

1. The Panel took into consideration RFU Regulation 19.11.12 which states that in assessing the reduction applicable for mitigating factors, the Disciplinary Panel shall start at 0% reduction and apply the amount, if any to be allowed as mitigation up to the maximum of 50% reduction.

2. The Panel considered Mr Smith's submissions relating to mitigation very carefully and determined, that having taken into account paragraphs 71-75 of the Gabrillagues Appeal Decision and our other findings above a 50% reduction was justified. Again it is not just a matter of arithmetics and a tick box exercise. The Player's disciplinary record is not perfect. However, the only matter on his record is a two week ban from four and a half years ago when he was 24. The Regulations do not refer to a time when a previous sanction may be disregarded for mitigation purposes. There is an element of discretion. The Panel concluded that such is the weight of other mitigating factors, including acknowledgment of culpability, obvious and genuine remorse and considerable (and exceptional) evidence as to the Player's good character, that the two week ban from four and a half years ago should not prevent the Player from receiving the maximum reduction by way of mitigation available.

Games for meaningful sanctions:

9th Sept Sale Sharks  
13th Sept Exeter  
19th Sept Leinster (Champions Cup Quarter Final)  
26th Sept Champions Cup Semi Final  
30th Sept Worcester  
4th Oct Bath

The Panel took into account the current temporary agreement between PRL and the RFU due to Covid-19 and the above represents a 5 week/match suspension. It was confirmed by Mr McCall that the Player would only have played in either the Champions Cup semi final or the match against Worcester.

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	5 weeks/matches	Sending off sufficient	
Sanction commences	6th September 2020		
Sanctions concludes	4th October 2020		
Free to play	5th October 2020		
Final date to lodge appeal	12 September 2020		
Costs (please refer to Reg 19, Appendix 3 for full cost details)	£500		

Signature (JO or Chairman)	Mike Hamlin	Date	11th September 2020
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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