RFU SHORT JUDGMENT FORM

Match (home)	Saracens	Vs (away)	Newcastle Falcons
Club's Level	1	Competition	Gallagher Premiership
Date of Match	30/12/2023	Match Venue	Stonex Stadium

Particulars of Offence			
Player's Surname	VUNIPOLA	Date of Birth	14/01/1991
Forename(s)	Makovina	Plea	Admitted ☐ Not Admitted ☑
Club name	Saracens	RFU ID No.	954099
Type of Offence	Red Card		
Law 9 Offence	9.13 - Dangerous Tackle		
Sanction	4 week suspension		

Hearing Details			
Hearing Date	02/01/2024	Hearing venue	Remote
Chairmen/SJO	Jeremy Summers	Panel Member 1	Leon Lloyd
Panel Member 2	Mitch Read	Panel Secretary	Rebecca Morgan
Appearance Player	Yes ☑ No ☐	Appearance Club	Yes ☑ No ☐

Player's Representative(s):	Other attendees:
Warrick Lang, Head of Culture and rugby Manager, Saracens RFC Mark McCall, Director of Rugby, Saracens RFC	Angus Hetherington, RFU David Barnes, RFU
Conflict of Interests — Conflict raised ☐ No conflict raised ☑	Conflict of Interests — Conflict raised ☐ No conflict raised ☑

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

☑ Charge Sheet	☑ Red Card report	☐ Player Statement	Video footage Yes
☑ Medical report	☐ Citing report	☑ Club Statement	☑ World Rugby Head Contact Process

Other (Please list below)

RFU Reg 19 App 2.
EPCR PowerPoint - "2023-24 Match Official Guidelines" - adduced by Saracens
Angle 1 real time and slow motion footage and 1 still image from Saracens

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

The Referee's (J Makepeace) Red Card Report stated:

"On the 82nd minute after a TMO review. It was deemed in consultation with the TO4 that the Saracens one left shoulder made direct contact with Newcastle 16's head. This was deemed to be foul play with it being a high degree of danger. Although the initial tackler was reviewed as part of the process to see if this changed the dynamics of the tackle enough to mitigate. There was no evidence found that the height or direction of travel from the ball carrier had changed significantly. As such no mitigation was applied. Red Card was issued with no communication with the player during or post the game."

Match footage was viewed from a number of angles, including "Angle 1" helpfully provided by Saracens, at both full speed and in slow motion.

This showed Newcastle attacking from within their 22 in what was the last passage of play of the game.

N16 takes the ball into contact in front of his posts just beyond the 5m line. He is initially tackled by S19 who effects a lawful tackle connecting with his right shoulder to the right side of N16.

Almost immediately the Player, who is closing on a line that appears to be largely horizontal to the goal line makes an assisting tackle. He is high as does so, leading with his left shoulder. His left arm is seen down by his body not making an attempt to wrap.

The tackle from S19 rotated N16 round to his left resulting in the Player's left shoulder making direct contact with the left side of N16's face. The force of the combined impacts knock N16 backwards and to the ground. Play continues before the TMO alerts the Referee of the need to conduct a foul play review.

Following that review, the Player is issued with a Red Card and the Referee blows for full time.

In presenting the case on behalf of the RFU, Mr Hetherington accepted that, as with many similar tackles, there was some movement caused by the dynamics of the contact, but in the view of the RFU the movement in this incident had neither been significant or sudden enough to warrant the Red Card being mitigated down to Yellow.

He referenced three points on the main footage (at 29, 54 and 10 seconds) to support his submission that there had been no significant change in direction. In the RFU's submission, the change in movement had merely resulted in the contact being made with the side of N16's head rather than full frontal contact that would likely otherwise occurred. He further submitted that N16 had not dropped in height to any significant degree.

He accepted that there had been some slight bend in the Player's knee and hip, but this was not sufficient enough to have taken him away from the risk of an upright tackle.

In respect of how "significant" should be addressed by the Panel, he noted that in many situations a player often got into a good position to effect a lawful tackle and there was then significant movement that led to contact with the head. That was not the case in the present offending, the Player had always been upright and there was accordingly a clear risk of contact being made with the head.

He noted that the burden of proof lay on the Player to show that the Referee had been wrong to issue a Red Card. The RFU's position was that the Red Card had been correctly issued.

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

A medical report from Newcastle Falcons dated 2 January 2024 provided the following information:

"Bryan Byrne did not sustain an injury during the incident at the end of the game vs Saracens. He was assessed on the field for potential head injury by myself given the impact he received. He denied any symptoms and he answered his maddocks questions correctly. No issues were therefore identified during the on-field assessment and no concern was raised by the match day doctor/ PVR. He did not report to injury clinic this morning with any new injury concerns today."

Summary of Player's Evidence

Written submission received in advance of the hearing from Saracens read:

"Written Submissions on behalf of the player Makovina Vunipola (MV)

1. Saracens and MV on assessment of the footage accept that this offence is an act of foul play but does not warrant a red card for the following reasons in these submissions.
2. Saracens and MV submit that there were no aggravating factors.

Plea
3. MV accepts the charge contrary to Law 9.13. MV accepts that foul play had been committed but that the foul play did not warrant a red card.

Facts

4. It is the end of the game and Newcastle Falcons (NF) are attacking deep within their 22m line. NF have a breakdown in the centre of the field and the ball is passed to NF16. NF16 carries the ball directly at the right shoulder of S19. S19 makes the first tackle from the inside which causes NF16 to change his direction to the right (as we watch the footage) as S19 makes a dominant tackle. MV as the adjust tackler accepts that when he comes in to make the tackle, he does make contact with his left shoulder to the head of NF16. MV was always aiming for the ball/upper chest and right bicep of the ball carrier NF16. MV feels majority of the force between his chest and shoulder of NF16. MV is the adjust tackler and his job is to target the ball area and add weight into the collision to dominate the tackle. NF16 knees are almost on the ground when MV joins the tackle. MV is in a good low position to make a tackle. (Please see appendix - image 1)

Submissions

5. MV to give his evidence to the panel.
6. MV accepts that foul play was committed.
7. MV accepts that there was head contact with his right shoulder to the head of NF16.
8. This is not an intentional act but rather a reckless act.
9. MV is in a good low position to make a tackle.
10. There is a very late change in dynamics to NF16 in the contact area due to S19 making the first initial tackle. You can see this by where the NF16 lands that the change in dynamics is from S19.
11. MV is always targeting the ball/upper chest and shoulder area of NF16.
12. MV had no time to adjust due to this sudden change in dynamics.
13. NF16 sustained no injury and got up straight away. The Injury report from NF states the player did not sustain any injury after the game.
14. Most of the force in the tackle is delivered by S19 as you can see how far to the right the player lands after the tackle. Mr Makepeace references that MV was always going forward and on his tiptoes in the tackle. We submit that MV plants his feet just before contact and it is only his left foot that he goes onto his toes. His right foot remains planted to stop moving forward. MV accepts that there was contact with NF16 but submits it was not a high level of force. MV submits that he felt most of the force in the tackle was from S19 and MV felt most of the force through his left upper chest and the shoulder of NF16. Should it have been a high level of force to the head NF16 would at least have sustained some sort of injury or at the very least gone off for an HIA or reported some sort of injury after the match.
15. During the TMO review, Mr Makepeace or Mr Kitt never referred to the reverse angle which shows the change in dynamics due to S19 making the initial tackle. Please see appendix - Angle 1 and Angle 1 Slo Mo.

Summary

16. Saracens and MV state that this was a reckless action. It was not intentional or highly reckless.
17. Saracens and MV submit that if the HCP process is followed a yellow card should have been awarded for this incident – for the following reasons.
18. Has head contact occurred – Yes.
19. Was there foul play – Yes.
20. What was the degree of danger – MV and Saracens submit this is a low degree of danger. Most of the force in the tackle is through S19. This is demonstrated by where the tackled player NF16 lands. Most of the force from MV is from his Upper left chest area and
21. Is there any mitigation – Yes there is mitigation. There is a late change in the dynamics due to another player in the contact area. There is an effort to wrap and there is no time to adjust to the very late change in dynamics of the tackle due to S19 making the first dominant collision pushing the player in the way of MV - changing the dynamics of the tackle."

The Player gave evidence. He indicated that he had intended to make a simultaneous tackle with S19 but had come up late, He could see why the Referee had issued a Red Card, but thought that his contact had not been that forceful, and that the decision was wrong.

He had been trying to target the top of N16's shoulder (shown by the white patch on his shirt) and also the ball, which was why his arm did not try to wrap. That intended contact did not happen because of the change in the dynamics brought about by S19's tackle. In response to a question from the Panel, he could see that in targeting N16's shoulder he could have been too high in any event.

Mr Lang and Mr Mr McCall both made submissions on behalf of the Player, which the Panel carefully considered.

Mr Lang commenced by indicating that, in a change from the written submissions above, it was now accepted on behalf of the Player that the offending involved a high degree of danger. As such, the only point remaining in issue was the level of mitigation that should have been applied. In the view of Saracens, the sanction should have been a Yellow Card.

He drew Panels' attention to the footage starting st 36 seconds, submitting that this showed that S19's actions had moved N16 to the right which he considered represented a significant change in the dynamics.

The Player had been the "adjust" tackler and did not go low to avid colliding with S19.

He also relied on the footage starting at 10 seconds, which in his submission showed that N16 had dropped by about half a foot. This had happened in a very short time and the Player had had no chance to react.

In his view, the changing dynamics caused by S19's tackle had made it unreasonable for the Player to have been able to foresee or predict the risk of contact with the head arising between the two contacts. He questioned whether that contact - and the Player's foul play - would have occurred without the actions of S19.

Findings of Fact

The Panel reviewed all the evidence and submissions and made the following findings:

1. The Player was always upright going into the tackle.

2. The Player's left arm did not attempt to wrap.

3. Contact was made to the side of N16's head by the Players left shoulder. That contact was direct with a leading left shoulder.

4. As accepted by the Player, the contact involved foul play and had a high degree of danger attached to it.

5. The actions of S19 did not give rise to a sudden or significant change in direction. The Panel rejected the submissions made on behalf of the Player in this regard. It found that whilst the impact of S19 had affected the dynamics, this had been limited to rotating N16 around so that the collision occurred with the side, and not the front, of his head/face.

6. There had similarly not been a sudden or significant drop in N16's height and the submissions in this regard were again rejected. The Panel noted that N16's left leg had bent so as to angle and drop, but by reference to the hoarding in the background, N16's upper body did not appear to drop to any material degree prior to the impact.

7. In the finding of the Panel, the contact from S19 and the separate contact from the Player were virtually instantaneous, and in its view, because the Player had always been high, there was not enough time for any intervening action between the two contacts to have mitigated down the offending to Yellow.

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

The Referee had correctly followed the Word Rugby Head Contact Process (HCP) and the Red Card had been the appropriate sanction to have arrived at, none of the mitigating features referred to in the HCP being present, or to a level that would have warranted the Red Card beoing mitigated down.

This was a poorly executed tackle attempted at the very end of the game. Whilst the Player could therefore perhaps be viewed as being somewhat unfortunate, if players go high into tackles, the risk that a Red Card will result is always there.

SANCTIONING PROCESS

England Rugby

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:

Offending comprised a poorly executed tackle with clearly no malice.

Nature of actions - Reg 19.11.8(c)

As described above. Player Upright in tackle with left shoulder leading into contact with the head.

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)
None.
Effect on match - Reg 19.11.8(h)
None.
Vulnerability of victim - Reg 19.11.8(i)
No inherent additional vulnerability in the tackle.
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					
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 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:
Due regard was had to the minimum mandatory mid-range entry point prescribed by Regulation 19 Appendix 2 where the offending involves contact with the head. In light of the reckless nature of the offending and the lack of injury, the Panel did not consider that any increase in the minimum entry point was required.

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)
Immediate.	One previous offence in 2022.
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 and experience.

Remorse and timing of Remorse - Reg 19.11.10(e)	Other off-field mitigation - Reg 19.11.10(f)
Player had apologised to N16.	None.

Number of weeks deducted: 2

Summary of reason for number of weeks deducted:
The Panel rejected the submission that, having regard to the Player's overall playing record, he should be granted the maximum possible 50% reduction from the entry point. In view of his previous suspension for foul play, the Panel considered that the appropriate reduction was one of 33%, equating to two weeks.

Additional Relevant Off-Field Aggravating Factors - RFU Regulation 19.11.13
Player's status as an offender of the laws of the game - Reg 19.11.13 (a)
Not relevant.
Need for deterrent to combat a pattern of offending - Reg 19.11.13(b)
None.
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)
None.

Number of additional weeks: 0

Games for meaningful sanctions:
20.1.24 - Leicester Tigers (GP) 14.1.24 - Bayonne (EPCR) 20.1.24 - Lyon (EPCR) 27.1.24 - Exeter Chiefs (GP) The Player was ineligible for the World Rugby Coaching Intervention having completed it in October 2022.

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	4 weeks	Sending off sufficient	
Sanction commences	30.12.23		
Sanctions concludes	28.01.24		
Free to play	29.01.24		
Final date to lodge appeal	04.01.24		
Costs (please refer to Reg 19, Appendix 3 for full cost details)	£500		

Signature (JO or Chairman)	J Summers	Date	03/01/2024

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