

RFU SHORT JUDGMENT FORM



Match	Newcastle Falcons RFC	Vs	Wasps
Club's Level	1	Competition	Gallagher Premiership
Date of Match	03/10/2021	Match Venue	Newcastle Falcons

Particulars of Offence			
Player's Surname	Penny	Date of Birth	
Forename(s)	Thomas Oscar	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name	Newcastle Falcons RFC	RFU ID No.	322418
Type of Offence	Contact with the eye; Conduct prejudicial to the game by disrespecting the authority of a match official		
Law 9 Offence	9.12; Rule 5.12 - Contact with the eye; Conduct prejudicial to the game by disrespecting the authority of a match official		
Sanction	2 weeks and reprimand		

Hearing Details			
Hearing Date	06/10/2021	Hearing venue	Remote by Zoom
Chairmen/SJO	Sir James Dingemans	Panel Member 1	Leon Lloyd
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:
Kingsley Hyland, Club disciplinary adviser. Dean Richards, Director of Rugby.	Angus Hetherington Legal counsel for the RFU. David Barnes Head of Discipline RFU. Dan McMeekin Legal & Governance Administrator RFU

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

2 bundles, one for each offence.

The bundle relating to contact with the eye contained the referee's report; the charge; the relevant extract from RFU Regulation 19; a statement from the Wasps player; a summary of the player's evidence and his statement; submissions from the player and the RFU; and a statement from the player.

The bundle relating to disrespecting the authority of a match official included: the charge; relevant extracts from Regulation 19; submissions on behalf of the RFU; and the presentation slides "2020-2021 Gallagher Premiership Rugby Values of the Game End of Season Review".

The referee stated: "Wasps had made a turnover on their 5m line after a line break by Newcastle. Wasps then cleared their line via a box kick which went out into touch. As I was setting the line out, the Wasps Captain approached me and said that there was an allegation of an eye gouge on Wasps 12. I looked back and saw Wasps 12 was receiving medical attention. I then asked the TMO to get any angles of the incident and I went to the screen with my AR1 to have a look at the footage. We watched the footage which showed Newcastle 15 pushing the head/face of Wasps 12 a number of times. As Newcastle 15 pushed Wasps 12 face for the final time his finger made contact with the eye of Wasps 12. After a discussion with my TMO and AR1, we agreed that the actions of Newcastle 15 was dangerous and warranted a red card. I issued a red card to Newcastle 15 and we restarted with a PK to Wasps on the 5m line."

The video footage shows a Newcastle break and then a successful Wasps counter ruck and drive forward leading to another ruck. The player attempts to take the ball, but is held into the ruck by the Wasps player, who is also raising his leg in his prone position. The player pushes the Wasps player on the shoulder and head. The footage shows that the player's left leg is pushed out after the Wasps player has made contact using his leg. The player then makes a final push at the head of the Wasps player and contact is then made between the player's finger and the eye of the Wasps player before the player gets away to rejoin the game. In the final push it is apparent that the player's feet are not firmly planted on the ground.

After the referee had been alerted to the incident the footage was then reviewed by the referee, assistant referees and TMO. The referee saw the contact with the eye and decided to give a red card to the player. When giving the red card the player replied by saying "are you having a laugh". The player then left the pitch.

The Wasps player reported that it was a messy counter ruck with bodies everywhere and he was holding onto a Newcastle player to stop him counter rucking. He felt pushes to his face and then a finger in his left eye. He did not know what had happened and appealed to the touch judge. The Wasps player reported it to the vice-captain saying "I've been poked in the eye, I don't think it was intentional or whether it was by one of them or one of our boys but it hurts ...". The Wasps player asked the referee to check. The Wasps player said he had seen the video and didn't think it was intentional and was unfortunate when you come into contact with the face.

Ali James, Head of Medical Services at Wasps, reported that: "The player was attended to on the field of play. He was assessed by the Wasps medical team and reported blunt trauma to his eye. He exhibited some redness and increased watering of the eye. Once able to open his eye, visual assessment did not demonstrate any visual disturbance. The eye was cleaned with saline and the player returned to play uncompromised.

Post-match assessment did not reveal any findings of concern and he has been reviewed today 2 days post-match and there does not appear to be any enduring legacy of injury."

Summary of Player's Evidence

The player's account was that: "I had supported Callum Chick in a line break when a breakdown occurred and we turned the ball over. One of the Wasps players picked the ball around the side of the ruck, at this point I was about 5m away. As he picked and came around the side, I stepped in to counter ruck along with another Falcons player at the same time as the Wasps 12. As he entered the ruck area he went off his feet and sealed off the ruck but in doing so managed to grab around my neck with his left arm and tie my left leg in with his right hand. I was attempting to compete for the ball initially but on realising the ball was lost, tried to remove myself from the ruck.

As I tried to release myself, Wasps 12 then gripped me harder pulling my left leg closer to the ruck, refusing to allow me to leave. His grip on my leg, neck and shoulder area was becoming dangerous as I tried more and more to release myself, my left leg was unsteady and ineffective as he had held on to it and all my weight because other people had joined the ruck was starting to move onto that left leg.

Without looking at him I pushed him with an open hand around the shoulder area to force him to release me, panicking, I pushed him once more on the shoulder and once again on the top side of his head area, both with an open palm and was just about to move away when his left leg swung through and hit my supporting outside knee causing it to jolt sideways about three feet. It wasn't an insignificant blow from his knee, it caught my knee on which I have had an ACL repair, and the initial pain caused me to react by leaning back to push him on his head once more.

As I pushed his head whilst still unsteady having been knocked sideways, I now believe my little finger caught him in the eye. I wasn't aware that I had caught him in the eye at the time and it certainly wasn't my intention and totally felt that I was never going to be anywhere near it, but had I not been off balance I know I certainly wouldn't have been as I am not that type of person. I was looking at him at the time so was surprised when I was told by the referee that I had made contact with the eye. I spoke to the player post match and apologised to him. He seemed fine about it saying it was just rugby. I am not happy about making contact with the eye and am angry that the whole incident happened in the first place."

The player continued his account saying he was attempting to get back to his position but was being fouled because he was being held in which caused his reaction.

The player accepted that he said "are you having a laugh" to the referee but at that time he had not realised that he had made contact with the Wasps player's eye. The player apologised for his actions.

Findings of Fact

There was a successful Wasps counter ruck and drive forward leading to another ruck. The player attempted to leave that ruck but was held in by the Wasps player. The player pushed the Wasps on the shoulder and head. The player's left leg was caught by the leg of the Wasps player and the player was unbalanced. The player made a final push at the head of the Wasps player and contact was made between the player's finger and the eye of the Wasps player before the player rejoined the game. The player did not intend to make contact with the eye, but the action was reckless because he made contact with the face of the Wasps player close to the eye at a time when it is apparent that his feet were not firmly planted on the ground and he was unbalanced. There was no lasting damage to the eye and the Wasps player was able to continue playing.

The comments made to the match official were intentionally made, because the player made the remark. The comment was brief, and it was disrespectful but not abusive.

Decision

Breach admitted	<input checked="" type="checkbox"/>	Proven	<input type="checkbox"/>	Not Proven	<input type="checkbox"/>	Other Disposal (please state below)	<input type="checkbox"/>
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The player admitted making contact with the eye, and the sanction for that is set out below.
 So far as the breach of RFU Rule 5.12 is concerned, this was admitted. The RFU submitted that the offence could properly be described as a low end offence under law 9.28 "A player must not disrespect the authority of a match official" for which a low end entry point (of 2 weeks) before mitigation was appropriate. It was submitted on behalf of the player that although there was a breach of Rule 5.12 the red card threshold was not passed, and in this respect it was noted that the player had not appreciated that his finger had made contact with the eye of the Wasps player at the time that he made the comment. It was further submitted that any suspension could be served at the same time as the sanction for making contact with the eye, or that a reprimand would be appropriate punishment. For breach of RFU Rule 5.12 the Disciplinary Panel has power to impose any other "appropriate punishment" for the offence. "Appropriate punishment" under Regulation 19.11.7 includes "a reprimand, a financial penalty or suspension from playing".

We consider that the breach of Rule 5.12 was properly charged as a separate offence, because there was separate harm to the values of the game caused by the comment made to the referee. This harm was different to the harm caused by the finger in the eye. For these reasons we find that a separate sanction should be imposed for the comments made which disrespected the authority of the match official.

We do not consider that the fact that the player did not appreciate that he had made contact with the eye of the Wasps player mitigated the seriousness of the offence. This is because the authority of the referee on the pitch has to be respected, regardless of whether the referee is right or wrong. Any errors made by the referee which result in a disciplinary process can be corrected by a disciplinary panel. Any other approach would lead to appeals on the field of play, which is not a reasonable approach to rugby. As it was the referee was, as is now common ground, right to issue a red card to the player, but that fact does not reduce, or increase, the seriousness of the player's comment.

So far as sanction is concerned we must note the actual words used ("are you having a laugh") and, particularly in this case, the fact that the player is being punished for a separate offence and the overall penalty for both offences must be proportionate. In these particular circumstances, we find that the appropriate sanction in this case is a reprimand. The reprimand will form part of the player's disciplinary record so that it can be taken into account if the player commits any further disciplinary offences or disrespects the authority of a match official in the future.

SANCTIONING PROCESS



Assessment of Seriousness

Assessment of intent - Ref 19.11.8

PLEASE TICK APPROPRIATE BOX	19.11.8(a) Intentional	<input checked="" type="checkbox"/>	19.11.8(b) Reckless	<input checked="" type="checkbox"/>
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Reasons for finding as to intent:

The player did not intend to make contact with the eye, but the action was reckless because he made contact with the face of the Wasps player close to the eye.
 The comments made to the match official were intentionally made, because the player made the remark.

Nature of actions - Reg 19.11.8(c)

There was reckless contact with the eye made by the player.
 The player asked if the referee was having a laugh when he was red carded.

Existence of provocation - Reg 19.11.8(d)

There was provocation in that the Wasps player was preventing the player from rejoining the game by holding him into the ruck, and there was then contact with the leg of the Wasps player with the knee of the player before the player made contact with the eye of the Wasps player.

Whether player retaliated - Reg 19.11.8(e)

The player pushed in response to being held and his knee being pushed.

Self-defence - Reg 19.11.8(f)

There was no self defence.

Effect on victim - Reg 19.11.8(g)

It is apparent that the contact with the eye did hurt the Wasps player but he was able to continue playing.

Effect on match - Reg 19.11.8(h)

The player was sent off.

Vulnerability of victim - Reg 19.11.8(i)

The Wasps player was on the ground, albeit that he was holding on to the player.

Level of participation/premeditation - Reg 19.11.8(j)

As set out above.

Conduct completed/attempted - Reg 19.11.8(k)

Both the contact with the eye and the statement to the referee took place.

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

None relevant.

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 checked="" type="checkbox"/>	4 weeks	<input type="checkbox"/>		<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:

So far as the contact with the eye is concerned, we have taken a low-end entry point because the contact with the eye was not intentional, there was an element of provocation in that the Wasps player was holding the player preventing him from rejoining the game, and it was in that context that the player pushed the Wasps player in the shoulder and head and made reckless contact with the eye. There was no lasting damage to the eye, and the Wasps player was able to continue playing.

So far as disrespecting the authority of a match official is concerned we have imposed a sanction of a reprimand for the reasons given above.

Relevant Off-Field Mitgating Factors - Reg 19.11.10

Acknowledgement of guilt and timing - Reg 19.11.11(a)	Player's disciplinary record/good character - Reg 19.11.11(b)
Both breaches were admitted.	The player has a good disciplinary record, and has never before had a red card.
Youth and inexperience of player - Reg 19.11.11(c)	Conduct prior to and at hearing - Reg 19.11.11(d)
The player is experienced	The player co-operated fully with the disciplinary process in respect of both offences.

Remorse and timing of Remorse - Reg 19.11.11(e)	Other off-field mitigation - Reg 19.11.11(f)
The player has apologised to the Wasps player and the referee.	None relevant.

Number of weeks deducted: **2 weeks**

Summary of reason for number of weeks deducted:

We have provided the maximum mitigation in this case because the player admitted the breaches; the player has a good disciplinary record; and the player has co-operated with the disciplinary process. Although the player's comment to the referee in relation to the first offence and the red card was disrespectful the player is being separately sanctioned for that and it would not be appropriate to penalise the player twice for the same conduct.

Additional Relevant Off-Field Aggravating Factors - RFU Regulation 19.11.13

Player's status as an offender of the laws of the game - Reg 19.11.10 (a)

The player has a good record.

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

This does not apply.

Any other off-field aggravating factor that the disciplinary panel considers relevant and appropriate - (including poor conduct prior to or at the hearing) Reg 19.11.10 (c)

The comment to the referee when the red card was handed out in relation to the contact with the eye is being separately sanctioned, and so it would be wrong to take it into account as an aggravating factor.

Number of additional weeks: **0 weeks**

Games for meaningful sanctions:

The games are against Saracens (9th October) and Bristol (16th October)

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	2 weeks and a reprimand	Sending off sufficient	
Sanction commences	4 October 2021		
Sanctions concludes	18 October 2021		
Free to play	19 October 2021		
Final date to lodge appeal	8 October 2021		
Costs (please refer to Reg 19, Appendix 3 for full cost details)	£500		

Signature
(JO or Chairman)

James Dingemans

Date

07/10/2021

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