

RUGBY FOOTBALL UNION

DISCIPLINARY PANEL

Venue: By video
Date: 30 December 2022

JUDGMENT

Player: Joe Marler, Harlequins RFC
Panel: Gareth Graham (Chairman), Becky Essex, Leon Lloyd
RFU Representative: Richard Booth KC
Player's Representative: Sam Jones
Attending: David Barnes, RFU
Angus Hetherington, RFU
Andy Sanger, Harlequins RFC
Secretary: Rebecca Morgan-Scott

DECISION

1. The Panel found the charge brought against Joe Marler ("the Player") proven.
2. The Player is sanctioned as follows:
 - i. The Player is banned for a period of 6 weeks.
 - ii. The first 2 weeks are to be imposed immediately; the remaining 4 weeks will be suspended until the end of the 2023/24 season.
 - iii. Should the Player be found to have committed a similar offence to the one with which this case is concerned during this period, the Panel considers any future disciplinary panel should activate the 4-week suspended ban and add them to any sanction the future offence warrants.
 - iv. The Player is to give two presentations; one to a local club or school; the other to a Premiership academy's staff and players (but which shall not be at Harlequins).

PRELIMINARY MATTERS

3. There was no objection to the composition of the Panel.
4. In advance of the hearing, the Panel received and read a bundle of documents running to 45 pages, including the charge sheet and a transcript of the incident, provided by Harlequins ("the Club"). The Panel also received helpful written submissions as to sanction from the RFU's legal representative, a brief note containing the Player's disciplinary record, and the *2020-21 Values of the Game End of Season Review*.
5. This document contains the Panel's reasoned decision, reached after consideration of the evidence, the written and oral submissions and documentation placed before us. It is a summary. The fact that specific reference is not made herein to any part or aspect thereof does not mean it was not considered and given the appropriate weight.

CHARGE AND PLEA

6. The Player was charged with "conduct prejudicial to the interests of the Union and/or the Game", contrary to RFU Rule 5.12.
7. The Particulars of Offence stated:

In the match between Harlequins RFC and Bristol Rugby RFC on 27 December 2022, [the Player] verbally abused another player, including using the phrase, "your mum's a fucking whore."

8. The Player accepted the charge. The events that gave rise to the charge are not in dispute.

EVIDENCE

9. In the 35th minute of the match, the Player made inappropriate and offensive comments to Jake Heenan ("B7"). The Panel received a video of the incident upon which an exchange between the Player and B7 can be heard.
 - i. The Referee, Karl Dickson, had given a scrum to Bristol. B7 was near the mark given by the Referee for the scrum; the Player was further away, walking to take his position in the front row of the scrum.

The Player and B7 enter a discussion, with B7 putting his hand gently on the Player's back as he walks past. B7 can be seen smiling.

- ii. As the two teams begin to form up for the scrum, the Player and B7 are on the same side of the scrum, on the side nearest the Referee. The two exchange comments, some of which can be heard on the video:

B7: *"Brother, you're better than that, eh?"*

The Player: *"I'm not your brother."*

B7: inaudible

The Player: *"I'm clearly not your brother am I."*

B7: *"You're better than that mate."*

The Player: *"There's no way I'm from the same mother as you mate, your mum's a fucking whore."*

- iii. B7 does not react towards the Player at that stage.
- iv. B7 speaks to the Referee briefly; the Referee nods his head to one side and says *"let's go boys"*. In his written evidence to the Panel, the Referee says *"During the incident I was made aware of a comment potentially said by [the Player] to B7. I never actually heard the comment therefore couldn't act on it."*
- v. As the players in the scrum begin to bind, B1 leans towards the Player and says, *"What the fuck did you just say to him?"*
- vi. The Player responds, *"I called his mum a whore."*
- vii. B1 walks towards the Player. It is at that stage that B7 took hold of the Player's shirt around the Player's chest area. A fracas then ensues, with various players pushing, shoving and grabbing one another.

viii. During the course of the fracas, B7 can be heard referencing that his mother is currently unwell, in hospital. This Panel takes note of the actual words used but considers it prudent to refrain from repeating them herein, wanting so far as is possible to keep such matters private.

10. B7 provided a statement to the Panel, the essential elements of which state as follows:

After being kicked on the ground by Joe Marler the ruck before the scrum, I told him to cut it out at the next scrum.

After a few words he said 'you're mother is a whore' I left the first time, then he repeated it a second time to which I looked at Karl Dickson. Karl looked at me, looked away and shook his head.

When I realized that he wasn't going to intervene I lost my head.

11. The Player gave evidence to the Panel. He told the Panel that he had looked back at what he did in the match against Bristol and did not think that he was attempting to verbally abuse B7. He said that he had made that mistake back in 2016 (referencing a previous disciplinary case in which he had verbally abused Samson Lee in the Six Nations match England v Wales on 12 March 2016). He said that this occasion (with B7) was a poor, unimaginative attempt to 'sledge' another player, part of what the Player said was commonplace winding each other up that goes on. The Player accepted entirely that his actions were contrary to good sportsmanship but said that he did not think it was abuse, because it was not based on race, sexual orientation, ethnicity or the like.

12. The Player says that he did not know that B7's mother was unwell at the time, and only learned of that after the event during a (private) exchange of messages with B7 via WhatsApp. The Player said that he realised he had overstepped the mark when he was substituted; during a discussion with other players on the bench, the Player said B7's reaction was bigger than the reaction he would normally expect from such a comment and he was concerned he may have "put [his] foot in it". The Player said he sought out B7 after the match but could not find him. He said that he later sought B7's mobile number from the Bristol Captain so that he could apologise personally. The Player said B7 had accepted the apology.

13. The Player said that he was not intending to abuse B7 but that he went for a "mum joke" because B7 mentioned the word "brother". In a candid response to a panel member's question, the Player accepted that this was a normal "go-to line" if he was trying to get a reaction when "sledging or ribbing" an opponent player. The Player

said that he would not do so in the future, not least because “*you never know what is going on in other people’s family.*”

SUBMISSIONS

RFU

14. The RFU representative made detailed submissions. The RFU said that this offence was akin to a breach of Law 9.12 and that it warranted a low-end entry point of a 6-week ban. The RFU said that this was an intentional act, not least because the Player had repeated the comment when asked by B1 what he had said. This was a case which highlighted the deeply unfortunate nature of making such comments, because one does not know a person’s circumstances when making them. The RFU acknowledged that B7 appears to have reacted on the basis that his mother was unwell and was receiving healthcare treatment. However, the RFU urged caution and said that the Panel ought not to sanction on this basis.

15. The RFU set out the Player’s previous disciplinary record and said that this was a case where the Panel should look to aggravate any sanction because of the Player’s status as an offender of the Laws of the Game (in accordance with RFU Regulation 19.11.13(a)). The RFU acknowledged the Player’s plea and his apology and accepted that such matters should be taken into account by way of mitigation.

16. The RFU submitted that the Panel ought to require the Player to give a presentation to two groups, for example the Club’s Academy staff and players, and (separately) to a local club or school. The RFU acknowledged the potential perversity in requiring a repeat offender to present to young, potentially impressionable persons. However, the RFU said that, on balance, this was a case in which the Player, who has spoken publicly about mental health challenges, and about the types of remarks with which this case is concerned, might be well-placed to illustrate the possible harm that could be caused to others by requiring him to perform such presentations to groups who might benefit.

The Player

17. The Player’s representative also made detailed submissions on the Player’s behalf. The Player reminded the Panel that this case was being dealt with under the auspices of RFU Rule 5.12 and that the Panel had a wider discretion as to how to sanction the Player, compared with the mechanistic approach required when a player is red-carded or cited. The Player referred the Panel to the sanction entry points for Law 9.12 and Law 9.27

but said that they were only relevant if the Panel was satisfied that the offending met the 'red card test'. The Player also said that even if the red card test was met, the Panel could consider suspending all or part of any sanction.

FINDINGS

18. The Panel considered all the evidence and submissions it had received and heard and made its findings on the balance of probabilities.
19. The facts of this case were not in dispute.
 - i. The Player made an inappropriate and offensive comment to B7, intending to antagonise him by 'winding him up'. B7 did not react towards the Player immediately. The Player then repeated the comment after the intervention of B1. It was at that stage that B7 reacted and a fracas ensued.
 - ii. At the time the Player made the comments, he did not know that B7's mother was unwell and was receiving healthcare treatment.
 - iii. The match was being broadcast live. Somewhat fortunately, the Player's comments could not be heard over the (normal) broadcast feed.
20. The charge had been brought under RFU Rule 5.12. As such, sanction is 'at large', and the Panel has the power to impose "any ... appropriate punishment for any such offence." "Appropriate punishment" is defined as including, but not being limited to, "a reprimand, a financial penalty or suspension from playing, coaching and/or administration" (RFU Regulation 19.11.7). The Panel also has the power to suspend the effect of any sanction imposed (RFU Regulation 19.11.20).
21. The Panel had regard to the decision in the *RFU v Lewington & others* (8 December 2020), a case brought under RFU Rule 5.12 against a number of players due to play for Barbarians FC. At paragraph 87 of that case, the Panel (chaired by Philip Evans KC), said:

"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 start point and in the assessment and mitigating features of a case or individual Player and we have regard to that guidance.”

22. We agree that using the structure for sanction set out in Regulation 19 as guidance is a useful tool, and do so here.

23. Using the factors set out at RFU Regulation 19.11.8 as to the assessment of seriousness, the Panel took into account the following factors:
 - i. This was an intentional act. The Player accepted that he had made the remarks deliberately in an attempt to put B7 off his game. The B7 did not react towards the Player following the first comment. The Player repeated the comment by way of response to the intervention from B1, following which B7 then reacted towards the Player.

 - ii. The language used by the Player, and the reference to B7’s mother at all, were offensive and were a wholly inappropriate response to the use by B7 of the word “*brother*”, a term synonymous with “mate” or “pal” regularly used in common parlance.

 - iii. There was no provocation. This was not an act of retaliation and plainly this was not an act of self-defence.

 - iv. The effect on B7 is unknown. The Panel understand from the Player that B7 accepted the Player’s apology.

 - v. The Player’s actions provoked an ugly confrontation in the match which was being broadcast live on television.

 - vi. To a degree, all players are vulnerable to this type of comment. This type of behaviour is, unfortunately, routinely used to put opponents off their game; players are unable to defend themselves without themselves descending to the level of the abuser.

 - vii. Only the Player acted in this matter. There was no premeditation. The Player reacted spontaneously, albeit using what he admitted was a “*go-to line*”.

24. By way of mitigation (pursuant to RFU Regulation 19.11.10), the Panel noted the following factors:

- i. The Player accepted his conduct was prejudicial to the interests of the Game.
- ii. The Player does not have a good disciplinary record.
- iii. The Player has played for the Club for around 15 years and has received 83 caps for England.
- iv. During the hearing, the Player was contrite and acted in an exemplary way, in the manner expected of an experienced, professional player.
- v. The Player had apologised for his comments to B7 privately. The Panel accepted that the apology was heartfelt and that it had not been contrived so as to be used as mitigation in any potential disciplinary hearing.

25. In relation to aggravating features (pursuant to RFU Regulation 19.11.13), the Panel noted the Player has a very poor disciplinary record. The Panel took account of the following relevant factors:

- i. During the course of the Player's career, he has received a total of nine bans, with a total suspension period of 34 weeks.
- ii. This includes using the words "Gypsy boy" and "back to your caravan" to Samson Lee in a Six Nations match against Wales on 12 March 2016.
- iii. On 7 March 2020, again in a Six Nations match against Wales, the Player admitted an act of foul play (in breach of Law 9.27, acts contrary to good sportsmanship) in grabbing, twisting or squeezing the genitals of Alun Wyn Jones for which the Player received a ban of 10 weeks.

CONCLUSION

26. England Rugby's Core Values are a fundamental part of the Game.

Under the heading *Respect*, it reads: "*Mutual respect forms the basis of our sport. We hold in high esteem our sport, its values and traditions and earn the respect of others in the way we behave...We respect opposition players...*"

Under the heading *Sportsmanship*, it reads: “*Sportsmanship is the foundation upon which rugby union is built. We uphold the rugby tradition of camaraderie with teammates and opposition. We observe fair play both on and off the pitch.*”

27. In *RFU v Steve Diamond* (19 November 2017), the Panel (chaired by HHJ Ian Unsworth KC as he now is) had said:

Rugby's Core Values are not empty words or slogans which can be signed up to and then ignored. They are not to be treated as useful bolt-ons dreamt up by a marketing team. They are integral to the game and are what make the game special.

28. These words are as true today as they were in 2017. The insulting and offensive comments by the Player were wholly inappropriate; such comments should form no part of the modern game.

29. The Player had, as he had accepted, acted in a way that was prejudicial to the interests of the Game. His comments were such that, in the Panel's view, they straddled the boundary between being an act of verbal abuse and an act contrary to good sportsmanship. Although strictly unnecessary, this being a matter brought under RFU Rule 5.12, the Panel concluded that the comments passed the red card threshold such that if they had been heard by a match official, the Player could have received a red card.

30. Following the structured approach under RFU Regulation 19, the Panel concluded that this was an incident of low-end offending. This was an intentional, albeit spontaneous, incident for which there was no provocation. The insulting and offensive comments made by the Player were wholly inappropriate.

31. The Panel had regard to the entry points for breaches of Law 9.12 (acts of verbal abuse) and of Law 9.27 (acts contrary to good sportsmanship). The Panel noted that the low-end entry point for acts of verbal abuse are a ban of 6 weeks, while the low end entry point for acts contrary to good sportsmanship (other) are a ban of 4 weeks. The Panel also had regard to the fact the Player had accepted the charge and had apologised to the Bristol player (as mitigating factors) and to the Player's disciplinary record as aggravating features. In relation to the latter, of particular importance were the incidents of verbal abuse (albeit that this is now of some age, given it was committed almost seven years ago) and the incident involving Alun Wyn Jones in 2020.

32. The Panel concluded that following the mechanistic approach under RFU Regulation 19, a ban of 6 weeks was warranted for this offence.
33. The Panel then stepped back to consider whether an immediate ban of 6 weeks was proportionate or whether it would be appropriate to suspend all or part of any sanction (pursuant to RFU Regulation 19.11.20).
34. The Panel took account of its significant rugby experience and acknowledged that regrettably, and to the Game's detriment, such attempts to put opponent players off using abusive jibes have long-been part of the Game. That is not to excuse or condone such behaviour. But, when viewed in this context, the Panel considered it was not appropriate to single this particular player out for this particular incident by imposing an unduly severe sanction.
35. As has already been stated repeatedly, but so as to leave no room for doubt, comments such as these are wholly inappropriate and should form no part of the modern game. This is especially so in the elite game where rugby players are role models; such behaviour sets a poor example for others. In this Panel's view, rugby players who make such comments to put opponent players off their game or otherwise, should expect to receive appropriate punishment that could include receiving an on-field red card.
36. Therefore, in all the circumstances of the case, the Panel concluded that an immediate sanction of 6 weeks would be disproportionate to the level of offending here. Instead, the Panel elected to exercise its discretion and use its judgement to suspend part of the 6-week ban. Without having any regard to the Player's forthcoming fixtures, the Panel concluded that an immediate ban of 2 weeks was proportionate and that the remaining 4 weeks should be suspended until the end of the 2023/24 season. The Player should be under no illusion; if he comes back before a rugby disciplinary panel for any similar such offence during this period, this Panel considers that the 4-week suspended ban should be activated and added to any future sanction. Given the Player's record, and the entry points for similar offences, any such sanction could be substantial.
37. In addition to, and distinct from the rationale which led the Panel to the playing ban, the Panel require the Player to give a presentation to a local club or school, and to a Premiership academy (both to be agreed in advance with the RFU) on the core values of the Game. The Premiership academy is to be at a club other than at Harlequins. The presentations should be completed by the end of February 2023 and should be recorded by video and sent to the RFU. Such educational measures can be of considerable benefit, particularly when delivered by senior participants of the Game.

SANCTION

38. Therefore, in conclusion, and for the reasons set out above, the Panel impose the following sanction:

- i. The Player is banned for a period of 6 weeks.
- ii. The first 2 weeks are to be imposed immediately; the remaining 4 weeks will be suspended until the end of the 2023/24 season.
- iii. Should the Player be found to have committed a similar offence to the one with which this case is concerned during this period, the Panel considers any future disciplinary panel should activate the 4-week suspended ban and add them to any sanction the future offence warrants.
- iv. The Player is to give two presentations; one to a local club or school; the other to a Premiership academy's staff and players (but which shall not be at Harlequins).

RIGHT OF APPEAL

39. There is the right of appeal against this decision. Any such appeal must be lodged with the RFU within 14 days of the date upon which this judgment is sent.

COSTS

40. The Player is required to pay the costs of the hearing in the sum of £500.

Gareth Graham

Chairman

31 December 2022