RFU DISCIPLINARY HEARING

Venue: Remote via Zoom

Date: 24 November 2020 & 26 November 2020

Independent Disciplinary Panel:

Philip Evans QC (Chairman); Mike Hamlin; Richard Whittam QC

The Players:

Alexander Lewington; Calum Clark; Christopher Robshaw; Fergus McFadden; Joel Kpoku; Jackson Wray; Juan Pablo Socino; Manu Vunipola; Richard Wigglesworth; Simon Kerrod; Sean Maitland; Thomas De Glanville; Timothy Swinson.

In attendance at the hearing:

For the RFU:

Ms Kate Gallafent QC (Counsel); David Barnes; Angus Hetherington

For the Players:

Mr Richard Liddell QC appeared for Simon Kerrod

Mr Sam Jones appeared for Thomas De Glanville

Mr Graeme McPherson QC appeared for Christopher Robshaw

Mr Paul Harris QC & Mr Michael Armitage (Counsel) appeared for: Alexander Lewington; Calum Clark; Joel Kpoku; Jackson Moore-Wray; Juan Pablo Socino; Manu Vunipola; Richard Wigglesworth; Sean Maitland and Timothy Swinson.

Mr Peter McKenna appeared for Fergus McFadden

Secretariat:

Rebecca Morgan, RFU Disciplinary Hearings Manager

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JUDGMENT

A. INTRODUCTORY MATTERS

1) The thirteen Players ("the Players") subject to these proceedings were each charged by the RFU in relation to incidents that gave rise to the cancellation of the Quilter cup match between the Barbarian FC and England, scheduled to be played on Sunday the 25 October 2020. The match had been rescheduled from its original date of 21 June 2020. The rescheduled date was intended to provide England with an opportunity to play a warm up game six days before they were due to play Italy in Rome in the (also rescheduled) fifth round decider of the Six Nations 2020.

2) Following charge the Players or their representatives appeared at a preliminary hearing on the 2 November 2020. At that hearing all parties urged the Panel to have the case dealt with as soon as reasonably practicable. Following the preliminary hearing and in line with the directed timetable, all of the Players (save for Fergus McFadden) notified their intention to accept all of the charges against them.

3) Mr McFadden had indicated he wished to make submissions challenging the jurisdiction of the RFU to bring the proceedings against him. The Panel considered helpful written submissions from both sides and heard oral submissions on Tuesday the 17 November 2020. The Panel concluded the RFU did have jurisdiction and a separate written judgment was provided in relation to that discrete issue. Having received that judgment Mr McFadden promptly indicated that he accepted the charges he faced and all 13 Players were then scheduled for a hearing to determine sanction on the 24 November 2020.

4) It has been necessary to conduct all hearings in this case via remote video hearing due to the on-going pandemic. Because of the unusually large number of Players charged in relation to one or more of the same incidents it has been necessary to consider with some care the procedure adopted for the final hearing. There were some matters of fact for the panel to resolve and each of the Players provided a statement dealing with their involvement in the offences and setting out their personal mitigation. The Panel received a number of character references and a variety of other evidence specific to each case all of which we have considered and taken into account. The nine Players represented by Mr Harris QC also provided a joint statement.

5) The material provided to the Panel and which we considered, was contained in a main bundle, a separate bundle for each of the thirteen Players and an additional material bundle. Some additional matters were also provided as the case proceeded.

6) Some matters of mitigation were very personal in nature and following agreement between all parties the Panel also agreed this material could be heard separately and in the absence of other Players and their representatives.

7) It was important throughout these proceedings, as will always be the case, that all of the Players charged were able to understand all of the evidence that the Panel would consider, including the evidence given by other Players that may affect them. All of the Players were given the opportunity to consider that evidence and to deal with it by asking questions or giving their own evidence about it, if they chose to do so. Six Players, Simon Kerrod, Thomas de Glanville, Timothy Swinson, Richard Wigglesworth,

Jackson Wray and Chris Robshaw were anticipated by the parties, to provide evidence about issues that might affect others. They gave evidence first in front of all Players and their representatives. This allowed everyone an opportunity to ask questions if they wished to. Later, some Players gave evidence separately following which the Panel, with the assistance of the parties, notified any other evidence that potentially affected others and invited submissions or further evidence should anyone wish to provide it.

8) The majority of the evidence and submissions was heard by the Panel between 9.15am and 9.30pm on the 24 November 2020. The passage of time meant the evidence and submissions relating to Mr McFadden and the submissions relating to Mr Harris's clients had to be adjourned until the evening of Thursday 26 November. Mr McFadden's case was scheduled between 7-8pm and the submissions regarding Mr Harris's clients to begin at 8pm. In advance of that hearing at 2.44pm Mr Armitage provided a further 'Short submissions' document and two supporting statements. At 3.41pm The RFU provided two judgments from previous rugby cases (***RFU v Lipman & Others 2009*** and ***RFU v Rohan Janse Van Rensburg; Sale Sharks and Matthew Ginvert 2020***) and a chronology document.

9) Those submissions were followed shortly after at 4:03pm by the following email from Counsel for the RFU.

> *"Mr Armitage asked for an indication of the particular paras to be referred to by the RFU and the point that they went to; the panel may also find it helpful to see my response to him, just in case they were tempted by a little pre-reading!*
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> *Sale Sharks / Van Rens: para 57 and 61 (application of appendix 2 of Reg 19 to off-field situations), para 63 (no suspension of period of suspension*

from play because of seriousness of offending including the telling of deliberate lies)

Lipman etc: para 67 (together with 68, 70 and 74) - relevance or otherwise of a player being at the end of his career; generally, no accommodation for club where three players suspended simultaneously"

10) When the Panel reconvened Mr Harris and Mr Armitage raised a matter with the Panel. They had foreshadowed this in an email sent at 5.49pm which read:

"We wish to object to the late introduction of these new authorities by the RFU. Having regard to the points identified by Ms Gallafent, we do not understand why these authorities could not have been served earlier than 15.41 today. Moreover, the service of the new authorities at this late stage has caused prejudice to the 9 players that Mr Harris and I represent because Mr Harris has not, and will not have, the opportunity to consider them in advance of the resumed hearing this evening, due to pre-existing commitments.

In the event that the Panel does consider it appropriate to permit the RFU to rely on these late authorities, then it will be necessary for me (rather than Mr Harris) to address them orally this evening (which may require 5-10 minutes of additional hearing time). Further, we reserve the right to respond to the new authorities in writing.

Similarly, Mr Harris has not, and will not have, the opportunity to consider the new "Chronology" document served by the RFU prior to this evening's hearing. To the extent that any responsive submissions on this new document are required this evening, they will again need to be made by me rather than Mr Harris, and we would again reserve the right to make any further submissions in writing in relation to the document."

11) Mr Armitage objected to the admission of the authorities before the Panel and in the event the Panel did consider the two authorities, he asked for an

adjournment of up to fourteen days to provide further submissions regarding them. In response the RFU pointed out that fourteen days was a very long time in the context of a case in which everyone had worked so hard to deal with the matter as expeditiously as possible. They also pointed out that such an adjournment would affect the other Players who were not represented by Mr Harris and Mr Armitage.

12) The Panel retired to discuss the matter and concluded there was no prejudice to the Players by the Panel considering the authorities. The Panel is not bound by the authorities, they are only guidance and the areas in which the RFU contested they assist were limited. The Players in question were represented by Queen's Counsel and junior Counsel who practise in Sports Law. They had been provided with the two cases, together with the explanation from the RFU of the passages relied on, more than 4 hours prior to the hearing. Mr Armitage appeared to have gained a good understanding of the cases and was able to advance submissions about them. Further time was offered by the Panel on the night and the Panel also allowed Mr Harris and Mr Armitage to submit any further authorities they wished to in response and, or, any further written submission by 4pm on Friday the 27 November 2020. As a result the Panel did receive and consider further submissions, reports regarding three other Rugby cases and a statement from the Director of Rugby at Saracens Mark McCall.

13) As stated at the hearing, the Panel had read all the material it had been provided with in advance of the hearings and the Panel read all of the supplementary material provided by the Parties.

14) With no disrespect intended to any of the 13 Players, the RFU or the advocates who appeared before us, it is impractical for the Panel to set out

each and every point advanced in the written and oral submissions. In reaching the conclusions set out below the Panel has read, watched and listened to a vast amount of evidence and has listened to and made its own assessment of the witnesses' evidence in order to reach its conclusions. We have considered all of the written and oral submissions that have been made.

15) Having set out the above the Panel feels this case has raised the need to remind all Clubs and Players of Regulation 19.1.6 which states that Disciplinary Panels are not a Court of Law:

> *"Disciplinary hearings shall be conducted in a fair and just manner and in accordance with the fundamental principles of natural justice, whilst recognising that neither a Disciplinary Panel nor an Appeal Panel is a court of law … .* ***Therefore, in the interests of achieving a just and fair result, procedural and technical considerations shall take second place to the overriding objective of being just and fair to the parties thus being consistent with a duty to the Game****."*
>
> [Emphasis added].

B. FACTS

16) Much of the evidence in this case is agreed. Some limited areas have however been the subject of challenge. Where we concluded matters might reasonably be thought to have an effect on the appropriate sanction we have set out our conclusions below. In relation to decisions we have made we have reminded ourselves that we must be satisfied of the matter on the balance of probabilities. If any area of dispute is not mentioned we did not consider the matter would have a meaningful effect on the sanction. We confirm any such areas have not been taken into account by us against the Player. To reach these factual findings we have considered all of the

evidence we heard which was placed before us. We have considered the appropriate sanction on the basis of our concluded facts below.

17) The 13 Players charged in these proceedings were each members of a 23-player squad selected to play for the Barbarians.

18) The squad was due to assemble on Monday 19 October 2020 at the team accommodation at the JW Marriott Grosvenor House Hotel, Park Lane, London. In advance of joining the team camp, players were provided with and required to read and understand the invitation letter from the Barbarian FC and Code of Conduct, and sign and return the Code of Conduct.

19) At the Hotel the players were provided with a variety of facilities including a dining room and social area with pool, table tennis and other gaming facilities. They were permitted to order and drink alcohol within the Barbarians environment at the hotel.

20) The Code of Conduct provided, in particular, as follows:

> *"PERIOD OF COVER*
>
> *Please note that this Code of Conduct will come into practice from when you start your travel right through to when you disperse from the team hotel. It will apply when individuals are in camp, travelling as individuals or with the team or at home when down time is permitted and players are out of camp.*
>
> *BREACHES*
>
> *In the event of a breach of any of the terms listed hereunder by an individual, the Union to which that person is affiliated will in the first*

instance deal with the breach. The onus will be on that Union to prove that action has been taken to sanction that individual. In the second instance SNRL could intervene and a further sanction be imposed if necessary.

CODE OF CONDUCT PROTOCOL

A. KEY CONDUCTS AT ALL TIMES

1. Comply with all current WHO and local government and/or health authority requirements and/or all 6 Nations guidance regarding COVID-19 when travelling.

…

4. Observe the relevant social distancing protocols and PPE requirements in accordance with the requirements set out in the venue and country you are in;

…

D. CONDUCT OUTSIDE TEAM CAMP AND WHILST TRAVELLING

It is important for Players and Team Members [to] have down-time when permitted during a busy competitive period. In addition to the Key Conduct all members (not only Players and Team Management) shall:

1. *Avoid mixing with members of the public (defined in this context as anyone outside of the team playing group and team management group and household members) as much as possible and be conscious of social distancing at all times, wear a mask or face covering and hand sanitise if entering public places such as supermarkets, cafes, shopping mall etc.*

   …

4. Avoid completely public places where social distancing and good hygiene cannot be practiced. Attending bars, public houses, night clubs and the like is prohibited at all times.
Please note that you will be unable to leave the hotel for any reason unless authorised by the COVID-19 Medical Lead and COVID-19 Manager."

21) Simon Kerrod and Thomas De Glanville came to the Barbarians' team accommodation having been released from the England camp. They were not sent the Barbarians' Code of Conduct but they were already subject to the England Code of Conduct which contained specific prohibitions, including:

> *" Avoid completely public places where social distancing and good hygiene cannot be practiced. Attending bars, public houses, night clubs and the like is prohibited at all times."*

Both accepted that was the case.

22) All of the charged players save for Mr Maitland (who was with the Scotland squad until Tuesday) arrived at the team accommodation on Monday 19 October 2020. Shortly after arrival they were addressed by Christopher Maidment (Honorary Treasurer and COVID-19 Manager of the Barbarians) and Vern Cotter (interim Head Coach of the Barbarians) on the importance of the fixture (as being integral to a successful Six Nations Tournament, and then Autumn Nations Cup tournament) and therefore the importance of all players adhering to COVID-19 compliance guidance.

23) The eight Saracens players and Mr Wigglesworth all completed a joint statement which included a paragraph confirming they each accept their

actions were a breach of the Code of Conduct and that the Code of Conduct made it clear they were prohibited from leaving the hotel unless authorised to do so by the Covid medical lead and the Covid Manager. Mr Robshaw and Mr McFadden accepted the same.

24) In the afternoon of the 19 October Mr Wigglesworth suggested to Rory Lawson, Committee Member of the Barbarians, that the owner of a restaurant nearby who had a contract with the Saracens players would be willing to arrange something for them exclusively. Mr Lawson confirmed to Mr Wigglesworth that anything outside of the hotel, other than training, would not be possible.

25) At 13.59 Bill Renshaw, a security consultant for the RFU who had been assigned to work with the Barbarians COVID-19 Manager to help enforce the COVID-19 protocols, sent a message via the Barbarians 2020 WhatsApp group (comprising all players and staff). The message stated that they could get some fresh air in Hyde Park opposite, but that they could not congregate in groups of more than three, they should not wear any Barbarians kit, they should maintain social distancing and no selfies should be taken or autographs given. The message also stated that there was a cafe on the corner of the Serpentine where they could buy takeaways or sit outside and order from their table. The message was clear that they were only to use this cafe. Everyone was required to notify, via the WhatsApp group, who was going out and when they arrived back. Each departure and return to the hotel was therefore to be recorded.

26) The following morning, Tuesday 20 October 2020, the players were reminded of the importance of guidelines around hygiene and social

distancing and their personal responsibilities by Mr Maidment at a squad meeting.

27) Mr Robshaw told the Panel that later the same day he, Mr Wray and Mr Wigglesworth, agreed to go out for a drink in the afternoon. He said, "*we knew this was not technically permitted under the protocol, so to avoid any confrontation we left the hotel via a fire exit*." The CCTV shows him exiting through the fire door with Mr Wray at 16:20 and a minute or so later the CCTV shows Mr Wigglesworth joining them. Mr Robshaw said they initially bought some takeaway drinks from the Footman pub in Mayfair and drank them outside. Later they moved into the pub where they were joined by Alex Lewington, Juan Pablo Socino, Mr McFadden and Mr Kerrod. Mr Kerrod told the Panel he had initially been out of the hotel on the phone to a family member. He then received an invitation to the pub from Mr Robshaw who was his friend and so he went.

28) In his witness statement provided for these proceedings Mr Kerrod admitted the offences and apologised for his actions. He accepted that before he came to the Barbarian camp he had signed the England Code of Conduct but said, "*although he did read the document he did not read it as well as he should have*." He said the same in relation to WhatsApp messages he was sent by the Barbarian's management team setting out what Players could and could not do. He accepts that during his time with the Barbarians he was subject to the England Code and that it specifically excluded him from attending any bars, pubs or night clubs. In his statement he said, he did not appreciate he was not permitted into the pub. He did however know that he should have notified Mr Renshaw when he left the hotel but did not do so. He left the hotel through the fire exit, he said, simply because it was more convenient. In questioning on behalf of the RFU Mr Kerrod

said, *"no I didn't think I could go to a public house."* In re-examination by his own barrister he sought to clarify that evidence saying he did not think there was a prohibition as long as he sat at a different table. The Panel is satisfied the reason Mr Kerrod left the hotel through the fire exit was because he knew he should have notified his departure and did not wish to do so. We accept he then engaged in some phone calls and then received an invitation to the pub. It was entirely his own decision to go and when he did he must have gained a pretty good idea that he should not have been doing so. He had been in the England camp, signed a document precluding him from attending pubs and had been in meetings at the Barbarian camp in which he was reminded of the restrictions. We accept that he did not read the documents as well as he should and therefore it was as a consequence of his own failings if he was not as aware of the restrictions as he should have been. His own failure to read documents he signed does not excuse his actions in any way.

29) The Players later returned to the hotel in two groups. First at 19.17 a group of three Players are recorded on CCTV arriving back and entering the hotel via the same fire exit. They were followed at 19.29 by the remaining four. The seven players had not sought, and had not been given, permission to leave the hotel for this purpose. The seven players did not, upon their return, make Mr Renshaw or any member of the Barbarians' staff aware that they had gone out and the trip out remained undiscovered until Thursday 22 October 2020.

30) The next day on Wednesday the 21 October 2020 there were further breaches of the Code of Conduct by all the charged Players other than Mr Kerrod. On the 21 October Mr Wray approached Anna Young, Media Manager for the Barbarians. He asked her about taking over the floor of a

restaurant that he knew well, "Sergio's" near Oxford Circus. Ms Young told Mr Wray *"a recce would be required before any approval could be considered."* After investigating the possibility, Ms Young informed Mr Wray shortly before 16.00 that an indoor restaurant was a *'no-go'*. In further messages she sent she continued to make it clear that the proposal of going to a restaurant was not approved. There was no ambiguity in the messages the Players received. There can also be no doubt that Mr Wray received the messages because he continued communicating in the same chain of messages with Ms Young until at least 16.52 that evening.

31) Shortly before receiving that message 12 players (all charged excluding Mr Kerrod) left the team accommodation. Mr Wigglesworth sent a message to Manu Vunipola inviting him to the bar. He was with Mr de Glanville and Joel Kpoku. The 12 Players all went to a bar in Mayfair named "Hush", then at around 18.00 to a pub in Mayfair named "The Running Horse", then on to "Sergio's" restaurant to dine. The Players had not sought, and had not been given, permission to leave the hotel for this purpose. On the contrary, at least Mr Wray was aware that they had been expressly refused permission to go to "Sergio's" (or any indoor) restaurant.

32) The Panel saw video footage of the group in the Running Horse pub. The Players were sat within a corner area of the Pub obviously as a group drinking together around a number of tables. During the evening there was some evidence of the group using facemasks and taking other such Covid precautions.

33) A few minutes before dinner was due to start at the hotel (19.00 – 21.00) at 18:23 Mr Maidment messaged all of the squad to remind them of the importance of following Covid protocols up to match day, and confirmed

they were trying to find other opportunities to get the squad outside in a secure manner whilst still enjoying themselves as a squad. Four of the players who were by that time in the Running Horse or Sergio's (Mr Wigglesworth, Mr Lewington and Mr De Glanville and Mr McFadden). The first three replied within a few minutes to say that they were getting room service; Mr McFadden also commented to Mr Maidment, and Mr Jackson replied but subsequently deleted his message.

34) After noticing that a number of players had not come to dinner Mr Renshaw compiled a list of the missing players (being the charged players apart from Mr Kerrod) and left the team area to knock on the bedroom doors of those players. He received no answer from any of them, following which he called the team captain, Mr Robshaw, at 21.19. Mr Robshaw answered the phone but said he could not talk and asked whether Mr Renshaw could call him back. Mr Robshaw did not answer the phone when Mr Renshaw attempted to do so. At 21.20 Mr Robshaw messaged Mr Renshaw asking whether he could call him later, to which Mr Renshaw replied that he needed to speak to him now. This was followed by a further message a few minutes later stating that at least 12 of the players were missing and he needed to know where they were. Mr Robshaw replied at 21.45 to say "*drinking in the suits, see you in the morning*" which he clarified meant (suite) 244.

35) In the meantime Mr Renshaw intercepted Mr Vunipola on his return to the hotel, who was visibly drunk. Shortly afterwards Sean Maitland returned, also visibly drunk. The other players returned to the hotel via the fire exit. All twelve players who had not been present at dinner were allocated rooms on a different floor to the rest of the squad to ensure that they did not come into contact with other members of the squad. All of them moved to the

different floor that evening save for Mr Swinson and Mr Kpoku who remained in their original rooms pending further investigation.

36) The following morning Mr Swinson and Mr Kpoku admitted that they had left the hotel, and they were also moved to the separate floor.

37) At around 9.30am on the Thursday morning Mr Renshaw spoke to Mr Robshaw, who told him that the players had left the hotel to eat out at McDonald's and had sat in Berkeley Square drinking takeaways from a nearby pub. Mr Robshaw declined to identify the players who had gone out but suggested that they would contact Mr Renshaw individually. None did.

38) Mr Maidment was also involved in communications with some of the Players. He sent the following message shortly after 10am, *"We need to know what time you went out, where you went, if anybody went with you, what time you got back. Thanks Chris."* In reply Mr Swinson messaged at 10.24am saying, he had got a coffee from District Coffee (a further breach and the subject of a further charge) and that *"on his way back to the hotel he had bumped into a couple of guys in garden square with some beers. Looking at Google this morning it was Berkeley square. I stayed for a couple in the park and I was back in the hotel just after 9 …"* When he gave evidence, Mr Swinson accepted this was not true. It was obviously a similar story to that given to Mr Renshaw by Mr Robshaw.

39) Mr Kpoku also replied to Mr Maidment's message. At 10.16am he messaged to say, *"Hi Chris, I went for a walk around, found a massive greenery in Berkeley park, where nearby they had a macdonalds at around 6 came back at around 9."* Again it was a similar story.

40) When Mr Kpoku gave his evidence he was asked what prompted the content of that WhatsApp message at 10.16am. He told the Panel he wrote what he did because he had earlier received a general message on the group WhatsApp saying that was the story to adopt. He confirmed that message was received by him prior to 10:16am. He could not recall who had put the message on the group chat. The group WhatsApp chat was formed between all of the players who had been out on the Wednesday evening. The full content of the group messaging has not been available either to the RFU or to the Panel as its contents have been deleted.

41) The Panel is satisfied that by around 9.30-10.30am on the morning of the 22 October an agreement had been reached between the Players who went out on the Wednesday night to lie about where they had been and what they had done, if asked. That plan was then reaffirmed amongst the group later in the day during a gathering of the Players which took place in or around Mr Robshaw's hotel room. The motive for the Players giving this story was multi-purpose, but at its heart was a hope of preventing the cancellation of the game. They clearly sought to protect others in the squad who had not been out, but it was also a vain attempt to maintain their own involvement in the match.

42) Each of the 13 players except for Mr Kerrod were then interviewed by the Head of Discipline for the RFU (David Barnes) and/or Legal Counsel in Discipline for the RFU (Angus Hetherington) on the afternoon of 22 October 2020. None of the players admitted to having been drinking inside at Hush or the Running Horse, or dining at Sergio's. Instead each advanced broadly the same story as that given by Mr Robshaw to Mr Renshaw earlier in the day and in the messages set out above. It was the giving of this story which

is the subject of the Rule 5.12 charge against 12 players for providing a false account.

43) In the joint statement of the Saracens Players and Mr Wigglesworth at paragraphs 13-19, they set out what they describe as factors which should be taken into account to understand why they acted as they did. They each say they did not realise that that the RFU was going to be interviewing them with a view to imposing disciplinary sanctions. They say it was only when they got into the first disciplinary interview that they were given a hand-out explaining the interview was part of an investigation that might lead to a formal disciplinary charge. Mr Harris set out extensive arguments in his written document dated 23 November regarding this issue and advanced more orally. We do not repeat them here but we have had all of them well in mind. It is predominantly the Players whom Mr Harris represents who raised complaints as part of their mitigation and by way of explanation for providing a false account.

44) Having considered all of the evidence on this issue we take the view that it should have been perfectly plain, as soon as it became known by the Barbarians' staff that the Players had or may have been out and breached the Code of Conduct that an investigation had begun. At that stage the investigation had the purpose of finding out what these players had done and its potential effect on the forthcoming game. That was plain to the Players from the phone calls and messages sent by various people on the Wednesday evening and Thursday morning. It was also, necessarily, a time sensitive investigation, with all those conducting it required to work as quickly as reasonably possible if an effective assessment of the prospects for maintaining the fixture was to happen. That it had become an investigation which now involved the RFU discipline department was perfectly plain

from the message sent by Mr Renshaw to all players at 12.28pm on Thursday afternoon. In the circumstances we do not find that factors such as, the sending of the message by WhatsApp rather than on formal headed paper, the use of the players first names only, the use of abbreviation to dept rather than the use of the word department or the fact the message did not originate from the discipline department detracts from its clear purpose, which was obviously to advise the Players that they were to be spoken to, by the RFU disciplinary department with the purpose of establishing the facts of the previous night. In that message the Players were specifically offered the opportunity of taking advice from the RPA or having other representation which it said, would be available to them. The message was followed up by exhibit DB1, an explanatory sheet prepared by the RFU and which began with the words, *"The RFU is investigating events that took place on the evening of 21 October … The investigation may lead to a charge brought against you … "*

45) Mr Renshaw was asked to copy this document and distribute it to all Players who were to be interviewed. We accept on the evidence that the Players may not have received that document long before their interview or even possibly when they arrived to be interviewed. We have however listened to a selection of interviews and read all of them. At the beginning of each, the interviewer confirmed that the Players had received and read the handout. It was explained what the interview was intending to discuss, namely breaches of disciplinary Rules and Regulations and again the Players were offered the option of having someone with them. They were also specifically reminded of Regulation 19.1.4 and the duty it created.

46) Mr Robshaw told the Panel the story they all gave may have been put in place as the Players waited in a group for the fire exit door to be opened, by

Mr Kerrod, when they returned from their outing on Wednesday evening. The Panel cannot say from the evidence which individual Player suggested the use of the story but we are satisfied, having heard their evidence that it was not Mr Vunipola, Mr Kpoku or Mr De Glanville. We are satisfied those three players, simply went along with a plan that older, more experienced Players had suggested. None of those three Players have suggested there was any direct pressure placed on them to go along with the story. They were of course free to refuse and to tell the truth. The Panel accepts however they may have felt some degree of indirect pressure. We understand the sentiment of one character witness who said that, like all youngsters they may have wanted to conform to team life and to be seen to be part of the more senior group. It is also likely they succumbed to an element of misplaced loyalty. We will set out the extent to which this, considered in combination with their age and inexperience, affects their overall sanction below.

47) Within minutes of the final interview being concluded, at 9.32pm Mr Robshaw emailed Mr Barnes a "*Statement by 12 Barbarian FC players.*" The introduction to this statement read as follows:

> *"1. First and foremost, we would like unequivocally to apologise to the Barbarians FC and the Rugby Football Union for our misguided and foolish actions on Wednesday evening. We bitterly regret our stupidity.*
>
> *2. Secondly, we would like unequivocally to apologise to the RFU legal officer and lawyer for offering misleading statements during our interviews on Thursday; our basic instinct, as rugby players, is to stick together and protect each other, but, in this instance, we now realise we should have told the entire truth.*

3. As a group, together, we would now like to set down the precise sequence of events."

48) The statement proceeded to set out the version of events in relation to the afternoon / evening of Wednesday 21 October 2020. It did not mention the outing, which had taken place on Tuesday evening.

49) On the same evening Mr Hetherington visited Berkeley Square, where he discovered that the players' stories could not be correct as Berkeley Square gardens would have shut at 6pm the previous day. He then visited several local pubs to ask whether any rugby players or a group of large males had been there or ordered take away the previous evening. One of the barmen told him that he had seen Mr Robshaw in the Footman on the evening of Tuesday 20 October 2020.

50) As a result of the email from Mr Robshaw, and the indication that some players may have left the hotel on the evening of Tuesday 20 October 2020, Mr Robshaw was re-interviewed using Zoom by Mr Barnes and Mr Hetherington at 11.00am on Friday the 23 October 2020. He confirmed that a number of players, including Mr Kerrod, had also been out on the evening of Tuesday 20 October 2020. At 11.24am Mr Renshaw was asked to isolate Mr Kerrod immediately, he being the only player who had left the hotel on Tuesday 20 October 2020 but who had not already been isolated and removed from the squad.

51) At 12.00 Mr Barnes attended a video call with senior members of the RFU executive, operational and medical teams to provide an update on his investigation. By that time it had been possible to source ten additional players for the Barbarians and it appeared that it was likely that a further

two could be sourced in to complete the squad such that the game on Sunday 25 October 2020 could have proceeded. Those players were all either en route or making arrangements to join the squad. In the light of the discovery that the seven players had been out on Tuesday 20 October 2020, six of whom had only been isolated late on the evening on Wednesday 21 October 2020 and one of whom (Mr Kerrod) only isolated on the morning of Friday 23 October 2020, the expert medical advice was that it was not possible to ensure that all players in the squad were COVID-19 free and therefore none of them could be considered for the match that Sunday. It was concluded that it was not possible to replace an entire match squad, and accordingly the decision was made to cancel the fixture.

52) Mr Kerrod was then interviewed at 1.10pm, he admitted going out on the Tuesday and the other twelve players re-interviewed on either Friday 23 October 2020 or Monday 26 October 2020. Those other twelve players admitted to having given a false account when previously interviewed.

53) On the afternoon of 23 October 2020 five of the players issued public apologies via their Twitter accounts. Mr Robshaw apologised for breaching the Barbarians' COVID-19 restrictions; Mr Wray, Mr Wigglesworth, Mr Kpoku and Mr McFadden all apologised for letting down the Barbarians.

54) The cancellation of the game has resulted in significant financial loss to the RFU. The game was underpinned by a number of contractual arrangements and commitments.

55) By way of example only, the England team spent a week longer than they otherwise would have in camp in preparation for the match. This incurred various costs. The television broadcasting fee was lost. In total it is

estimated that, dependent on the extent to which the RFU is able to mitigate the losses, the net loss to the RFU from the cancellation of the game was £[redacted].

56) In addition, individuals have lost out. These include casual staff who had expected to work on match day who have lost an aggregate of £15,000 and RFU staff who could lose a similar amount in day allowances. The Panel heard that collectively the Saracens Players and Mr Wigglesworth have undertaken to repay the amount lost by those casual workers and we have taken that undertaking into account in the sanctions we pass.

57) The England team lost the opportunity to play their warm up game prior to the 6 Nations tournament resuming.

58) The behaviour of the charged players has attracted extensive negative publicity in the national press and social media.

C. THE CHARGES

59) At the outset of the hearing, on the application of the RFU and without any objection, an amendment was made to two of the charges. Each Player, having admitted each charge that they faced, fell to be sanctioned. The charges as they related to the different Players are set out below.

60) Arising out of the facts set out above Players faced three central charges. The first of those involved events on the Tuesday evening the 20 October 2020 and related to attendance at a public house.

Statement of Offence

On 20 October 2020, breached RFU Rule 5.12 with conduct prejudicial to the interest of the Union and/or Game.

Particulars of Offence

On 20 October 2020, visited a public house together with at least six other players and thereby breached (i) agreed Covid protocols, which were in place to maintain a bio-secure-bubble at the Barbarians training camp, and/or (ii) the 'Rule of Six' established by the Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) Regulations 2020.

61) Mr Lewington, Mr Robshaw, Mr McFadden, Mr Wray, Mr Pablo Socino, Mr Wigglesworth and Mr Kerrod each faced and admitted this charge. This was the only charge Mr Kerrod faced. Each of those players accepted when they were interviewed that they had attended a public house, the Footman, on that afternoon / evening.

62) The second central charge dealt with events on the following evening the 21 October 2020 relating to visits on that evening to one or more separate bars and to a restaurant.

Statement of Offence

On 21 October 2020, breached RFU Rule 5.12 with conduct prejudicial to the interest of the Union and/or Game.

Particulars of Offence

On 21 October 2020, visiting one or more bars/restaurants in central London together with at least six other players and thereby breached agreed Covid protocols which were in place to maintain a bio-secure-bubble at the Barbarians training camp and/or (ii) the 'Rule of Six' established by the Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) Regulations 2020.

63) Mr Lewington, Mr Robshaw, Mr McFadden, Mr Wray, Mr Socino, Mr Wigglesworth, Mr Clark, Mr Maitland, Mr Swinson, Mr Kpoku, Mr Vunipola and Mr De Glanville each faced and accepted this charge.

64) The RFU set out further particulars of those two charges in its statement of case clearly identifying what the charges meant. Therefore, the conduct the Players have accepted was a clear breach of paragraph D4 of the Code of Conduct and a clear breach of the Coronavirus Regulations, in that:

- Each of the players who gathered on those evenings participated in a gathering of more than six persons;
- The gatherings were not reasonably necessary for work purposes; and
- The gatherings were not reasonably necessary for an elite sportsperson for a competition or training.
- The conduct was prejudicial to the interests of the RFU and/or the Game in particular in circumstances where such conduct:
- Attracted widespread adverse publicity in the current pandemic;
- Potentially put other members of the squad at risk of COVID-19; and /or
- Ultimately led to the cancellation of the England v Barbarians match.

65) The third central charge which all of the Players with the exception of Mr Kerrod were charged with and accepted, related to each of them having provided a false account to the RFU about what they had done on the evening of the 21 October when the matters were being investigated during Thursday the 22 October 2020.

Statement of Offence

On 22 October 2020, breached RFU Rule 5.12 with conduct prejudicial to the interest of the Union and/or Game, and/or breached RFU Regulation 2.4 by failing to act towards the RFU with the utmost good faith, and/or RFU Regulation 19.1.4 by failing to cooperate with an RFU Disciplinary Investigation.

Particulars of Offence

On 22 October 2020, you and eleven other players agreed to provide the RFU with a false account of your actions on 21 October 2020, and /or you did provide the RFU with such false account.

66) The Players have accepted that such conduct constitutes a failure to co-operate with an RFU Disciplinary Investigation and a failure to act towards the RFU with the utmost good faith. Such conduct also constitutes conduct prejudicial to the RFU and/or the Game.

67) There were additionally a number of charges for breaches of the Covid protocols brought against some of the Players.

68) Mr Kpoku, Mr Vunipola, Mr De Glanville accepted the following additional matter.

Statement of Offence

On 19 October 2020, breached RFU Rule 5.12 with conduct prejudicial to the interest of the Union and/or Game

Particulars of Offence

On 19 October 2020, visited a nearby shop without permission, and thereby breached agreed Covid protocols, which were in place to maintain a bio-secure-bubble at the Barbarians training.

69) On the 19 October 2020 the three players went to a Tesco store nearby to the team accommodation (Curzon Street, Mayfair) without permission. Each of them admitted that they had done so in their respective interviews. They admit the conduct was in breach of paragraph D4 of the Code of Conduct and was conduct prejudicial to the interest of the RFU and/or Game.

70) Mr Swinson accepted the following additional charge;

Statement of Offence

On 21 October 2020, breached RFU Rule 5.12 with conduct prejudicial to the interest of the Union and/or Game

Particulars of Offence

On 21 October 2020, visited a nearby coffee shop without permission, and thereby breached agreed Covid protocols, which were in place to maintain a bio-secure-bubble at the Barbarians training.

71) On the 21 October 2020 Mr Swinson visited a nearly coffee shop (District Coffee) without permission, which he admitted in his interview on 22 October 2020. He has accepted this charge and thus that such conduct was a breach of paragraph D4 of the Code of Conduct and that such conduct was prejudicial to the interest of the RFU and/or the Game.

72) Mr Wray and Mr Wigglesworth were also charged with the following two additional offences:

Statement of Offence

On 19 October 2020, breached RFU Rule 5.12 with conduct prejudicial to the interest of the Union and/or Game;

Particulars of Offence

On 19 October 2020, visited a nearby coffee shop without permission, and thereby breached agreed Covid protocols, which were in place to maintain a bio-secure-bubble at the Barbarians training.

And,

Statement of Offence

On 20 October 2020, breached RFU Rule 5.12 with conduct prejudicial to the interest of the Union and/or Game;

Particulars of Offence

On 20 October 2020, visited a nearby coffee shop without permission, and thereby breached agreed Covid protocols, which were in place to maintain a bio-secure-bubble at the Barbarians training

73) They have both accepted these charges and thus that such conduct was a breach of paragraph D4 of the Code of Conduct and that such conduct was prejudicial to the interest of the RFU and/or the Game.

D. SANCTION

74) The sanctions we have decided to impose are not intended to make an example of these Players. They are sanctions which take account of all the circumstances, and that we conclude are fair and proportionate to what

each Player did and their individual circumstances. The sanctions do, however, reflect the seriousness of the charges which include behaving in a way that ignored what the public at large and the Rugby community as a whole were complying with and (save for Mr Kerrod) deliberately compromising an investigation being carried out by the RFU as swiftly as the circumstances demanded. We have taken into account in the sanctions we impose that the RFU could not indicate whether any of the Players would be subject to civil proceedings in relation to any losses. They are sanctions about which the Panel was entirely unanimous save that one Panel member wanted to impose slightly more hours of rugby community work in each case.

75) The RFU rightly reminds the Panel that the act of 'lying to the regulator' is a serious one. Particularly so we think where, as here, the regulator was charged, not just with establishing whether or not any of these Players had breached Rules and Regulations but doing so whilst under pressure of time, because of the need to obtain information which might allow an informed decision as to whether or not the match should proceed.

76) Overall we have tried to strike a proper balance between the serious nature of what these Players did and its consequences, against our recognition that many of them have given an enormous amount to the game over the years, a number have very compelling personal mitigation and some are very young and just at the beginning of their playing careers. We recognise without hesitation that all of this group of Players have advanced many positive matters in mitigation.

77) The offences these Players have committed are all breaches of Rule 5.12 of the RFU Rules. Rule 5.12 allows the Panel to impose "*any … appropriate punishment for any such offence."* There is a broad discretion as to the type and range of sanction open to us.

78) RFU Regulation 19.11.7 states:

> *"Appropriate punishment" referred to in Rule 5.12 and Regulation 19.6.5… shall include, but shall not be limited to [emphasis added]:*
>
> *(a) for a person, a reprimand, a financial penalty or suspension from playing, coaching and / or administration.*

79) In relation to the various 'Covid Breach' offences the RFU draws our attention to the 'Return to Play Disciplinary Framework,' ["the Framework"] as indicative guidance to the appropriate starting points for these Players. This Framework was devised during these unusual circumstances and was put in place to deal with any breaches of the minimum operating standard introduced into club rugby when the game got back up and running. It was a Framework agreed upon by the Professional Game Board, which includes representatives from the Premiership; the Championship; the RPA, and the RFU.

80) All Players save for those represented by Mr Harris, accept that the Return to Play Disciplinary Framework provides at least indicative guidance to the Panel.

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.

88) The RFU submits that having made an assessment of the seriousness of the false account offences, charged under Rule 5.12, the Panel should look to Appendix 2 paragraph 9.27 for indicative entry points. They submit a

violation of the obligation on a Player not to 'do anything that is against the spirit of good sportsmanship including but not limited to: 'Other,' than those specified (such as hair pulling or spitting) applies here. This would have the result that a low-end entry point would be 4 weeks, a mid-range entry point would be 8 weeks and a top-end entry point 12 weeks.

89) That contention is contested particularly by Mr Harris on behalf of his nine clients. He set out his arguments in writing, including at paragraph 38-41 and argues that Appendix 2 is inapplicable to Rule 5.12 cases and that the sanction should simply be "…at the discretion of the relevant Disciplinary Panel." Mr Armitage added to those submissions orally when he criticised the approach of the Panel in ***RFU v Rohan Janse Van Rensburg; Sale Sharks and Matthew Ginvert 2020*** who did adopt the approach suggested by the RFU. We conclude the word 'Other' in the table does allow application to cases such as this. If however we are wrong about that, exercising our discretion, we take the view that the suggested starting points in Appendix 2 are sensible and appropriate for use in this case although we have adjusted them to take account of totality.

90) We are dealing here with multiple offences which arise during a three day period. We recognise the Players were in one camp, preparing for one game and it was that one game which was cancelled. We have reminded ourselves of the principle of totality of sanction and have had it firmly in mind to ensure we have dealt with all the offending behaviour in a just and proportionate manner.

91) There is no inflexible rule governing whether sanctions should be structured as concurrent or consecutive components. Consecutive sanctions will often be appropriate where offences arise out of unrelated

facts or incidents. An example of that would include attempts by a Player to alter the course of an investigation by lying about an incident in respect of another offence with which the Player has now been charged, or where the offences are unrelated because whilst they were committed simultaneously or close in time they are distinct and they create an aggravating element that requires separate recognition. We take the view that the acts of going out in breach of the Covid protocol on the 20 October and the 21 October could amount to separate offences for which consecutive sanctions could not form the proper subject of complaint. In this case however we have decided not to impose consecutive sanctions for those who committed a breach more than once but to arrive at an overall punishment which reflects all of the individuals' breaches.

92) We disagree with Mr McPherson QC's submission, that it would be wrong in principle to make the sanction for the false account matter consecutive to the sanction to either or to both of the Covid breach matters. The provision of a false account to a regulator, who is in the process of investigating the acts of the Player (for whatever purpose) is obviously an example of an act designed by the Players, regardless of motive, to divert the findings of the investigation away from the truth. It is perfectly proper to impose a consecutive sanction if in all the circumstances we conclude it right to do so.

93) Regulation 19.11.20 states: In Misconduct and Rule 5.12 cases, a Disciplinary Panel may suspend the effect of any sanction to be imposed. We have used that power in this case and we have done so to balance the overall effect of the sanctions and to keep them proportionate. It has also allowed us to properly reflect the totality principle. We stress that a suspended sanction is still very much part of the sanction and the Players each remain liable for

the period of the suspension. Whilst we cannot bind any future panel we do indicate that it is our expectation they should give weight to our observation that this was a finely balanced decision and that a relevant breach would be likely to lead to the activation of the suspended parts of the sanction.

94) We have felt able to suspend parts of the sanction for the Covid breaches because we decided to impose other types of sanction alongside a playing suspension and because, in each of the 13 individual Player's cases, they have been able to provide mitigation about the offence itself or about themselves and their personal circumstances or both, which have caused us to suspend part of the suspension. We take the view that the sanctions we impose as a result fit the overall offending.

Assessment of Seriousness

95) Having considered all of the offences involving the breach of Covid protocols, the visits to the pub on Tuesday and then to the bar, pub and restaurant on Wednesday are obviously the more serious offences. The gravity of the Players' actions in these offences is greater.

96) We have decided there is a clear demarcation in the seriousness of offending between those who went out on both nights and gave a false account, those who went out only on Wednesday night and gave a false account and Mr Kerrod who was the only player who only went out on Tuesday night and did not provide a false account.

97) On both of the nights each Player participated in a gathering of more than six persons. Those gatherings were not reasonably necessary for work purposes; and no one has argued they were. The Players' conduct was

clearly prejudicial to the interests of the RFU and/or the Game as it attracted widespread adverse publicity during the current pandemic and undermined the core values of the game. The outings potentially put other members of the squad at risk of COVID-19; and ultimately their collective actions led to the cancellation of the England v Barbarians match with all of the financial and other consequences that we have set out.

98) Of those two events the outing on the Wednesday evening was in itself more serious as it involved a visit to three precluded venues over a longer period. During the outing a number of Players became intoxicated making any mitigating compliance with Covid restrictions less likely.

99) We have also had to consider the effect of the Players' actions. The Framework sets out guidance in this regard. We recognise there is no evidence that any of the Players had Covid or were suspected of having Covid, and no evidence that any of them passed it on to anyone else. They did however create a risk of that happening and the cancellation of the game, the effect on the England team, the financial consequences for the RFU and for individuals as well as consequent prejudice to the game are all factors that cause us to conclude the collective effect of the Players actions on both nights was high.

100) The Panel additionally conclude there is a further appropriate demarcation in regard to our assessment of the seriousness of the individuals offending in this case. Three of the Players, Mr Kpoku, Mr Vunipola and Mr De Glanville are in rugby terms significantly younger than Players they went out with on the Wednesday evening. Unusually and because of the particular circumstances of this case we feel that is a significant factor that should be reflected both in our assessment of the

seriousness of their actions and as part of their overall mitigation. In that regard only we have deliberately moved a little away from Regulation 19 and its guidance.

101) The 13 Players therefore fall into four groups which we have used to establish the appropriate starting point for sanction.

102) Having regard to Regulation 19 once we identified our entry point/starting point we went on and considered Regulation 19.1.10 (a) – (c) and asked whether any aggravating feature listed there should be applied. We do not consider there to be any features of this case which amount to circumstances that require us to increase the starting point. Any factor which might have fallen into this category was already taken account of by us in establishing the seriousness of the offending and we have been careful throughout this process not to double count matters.

Mitigation

103) Regulation 19.11.11 next requires the Panel to identify all relevant off-field mitigating factors and determine if there are grounds for reducing the period of suspension. At (a)-(f) the Regulations lists six factors which might be included in that mitigation.

104) All of these Players have acknowledged their culpability at the first opportunity and each will receive credit for that. All of the Players have conducted themselves well during these proceedings. They have met the difficult timetable where that has been necessary and co-operated and assisted with the smooth running of the hearings. We also conclude that all of them are deeply remorseful for their actions. Each of them has expressed

what we consider to have been a sincere apology through the Panel and the Players have taken genuine steps to apologise to a broad range of people affected by their actions.

105) Ten of these Players have no recorded disciplinary record. Three Players have matters recorded for on field offences. Mr Clark has two matters recorded, one in 2012 which the Panel disregards due to its age, and one suspension in 2017 for an on-field strike. Mr McFadden was suspended in May 2019 for an act of foul play involving contact with the head and Mr Socino was suspended in 2017. These past offences have only limited relevance to the instant off-field matters but in those Players' cases they must serve to reduce the total effect of mitigation open to them, albeit to a limited extent.

106) The Panel particularly recognises that some of these Players have had long and distinguished domestic and international careers. By way of example Mr Robshaw is the most capped England Captain of the professional era. Mr Wigglesworth we understand is the most capped player in England rugby's highest league. Others have been recognised for their contribution to the game in many forms and by many individuals who have all spoken extremely highly of them. The Panel recognises many of these Players have given much to the game. We have taken that service to the sport into account.

107) The Panel has been provided with a separate bundle of material for each player. Each Player has provided positive evidence as to their character and many have provided us with evidence of very personal mitigation. We do not feel it is necessary to repeat that evidence here save

to assure each player that each piece of mitigation that each has provided has been taken into account by us.

108) We do however feel it is important to mention a matter of particular significance to this case and which had a bearing on the ultimate sanctions we have decided it appropriate to impose. The reaction of these Players following what has been a matter of great shame to them has been impressive. One of the sad consequences of their actions was that a minute's silence scheduled to take place at the beginning of the match in memory of Sergeant Matt Ratana could not take place. There has however been a collective reaction from these Players since the offences. Many of them have set about giving a great deal of their time and effort in an attempt to help the foundation that has been set up in Matt Ratana's name.

109) We also acknowledge the process adopted by the Saracens and the imposition by them of sanctions on its Players. We have had regard to their decisions and acknowledge the Clubs' actions have been positive and responsible within this process. Many of the Players have already undertaken a significant amount of rugby community work since these offences. That work can count towards that imposed by this Panel below.

110) We have also reminded ourselves of Regulation 19.11.12 which restricts the application of a greater than 50% reduction for mitigation in cases where the Panel are dealing with an act of foul play. We are not dealing with an act of foul play but we do feel in the circumstances of this case that 19.11.12 provides a sensible guide as to the appropriate upper level of reduction in sanction open to us.

The Covid Breaches

Group 1

111) The first group are the Players who went out both on the Tuesday and Wednesday evening and then provided a false account. Those Players are Alex Lewington, Christopher Robshaw, Fergus McFadden, Jackson Wray, Richard Wigglesworth and Juan Pablo Socino. We have concluded they went out knowing they were doing so in breach of the Covid protocols they were bound by. For the purposes of the framework their actions we conclude were intentional or deliberate. That is not to say that any of them intended to cause the cancellation of the game but that was part of the consequence of their collective actions. Although no actual harm from Covid was caused they did run that risk. Their actions ultimately resulted in the cancellation of the game and it also removed England's warm up to the 6 Nations. There was a high financial consequence both for the RFU and for individuals who lost the opportunity to work. The reputational damage to the game, although difficult to quantify precisely, was we are satisfied significant. Overall the consequences were high.

112) With totality in mind we intend to pass concurrent sanctions for both offences which overall reflect the aggregate of the offending. The appropriate starting point for each of the six Players is a suspension for a period of 10 weeks to run concurrently for each of the two central offences that took place on the Tuesday and Wednesday. We reduce the period of 10 weeks suspension to 5 weeks as a result of their timely acceptance of culpability and the Players' other mitigation. For the reasons already set out above we suspend 3 weeks of that sanction for one year from the date of this Judgement. That suspension is subject to two conditions;

a) There is no further off-field offending by the Players for the period of one year from the date of this Judgment. Any offence (within the jurisdiction of the RFU) which may be in breach, is to be heard by a Panel chaired if possible, by Philip Evans QC;

b) Alex Lewington, Christopher Robshaw, Jackson Wray and Richard Wigglesworth are to provide separate written evidence to prove to the satisfaction of the Chairman of this Panel that they have conducted 50 hours of unpaid rugby community work since these offences took place. It will be additional to any work they are contractually obliged to undertake and will be completed before the 19 October 2021. All evidence will be served on the RFU who will have the right to make representations. In the cases of Juan Pablo Socino and Fergus McFadden it will be 60 hours.

113) Additionally this group will pay a total fine of 4 weeks' wages which we reduce to 2 weeks as a result of their mitigation. This penalty will apply to each breach offence they face concurrently. Mr McFadden is no longer a professional rugby player and has not been for some months. He is in a period of transition into a new career and in all of the circumstances we do not think it would be appropriate to impose a financial penalty on him and we do not do so.

Group Two

114) This Group represents the older and more experienced Players who went out only on the Wednesday evening and then gave a false account. Those Players are Calum Clark, Sean Maitland and Timothy Swinson.

115) They too went out knowing they were doing so in breach of the Covid protocols they were bound by. For the purposes of the 'Framework' their actions were, we find, intentional or deliberate. Again, that is not necessarily to say that any of them intended to cause the cancellation of the game but that was part of the consequence of their actions. Although no actual harm from Covid was caused by what they did they did create a risk of that happening. We find their collective actions did have a high consequences and it also prevented England's warm up game for the 6 Nations. There was a high financial consequence both for the RFU and for individuals who lost the opportunity to work. The reputational damage to the game, although difficult to quantify precisely, was we are satisfied high.

116) The appropriate starting point for this offence is a suspension of 8 weeks. We reduce the period of 8 weeks' suspension to 4 weeks as a result of their timely acceptance of culpability and their other mitigation. For the reasons already set out above we suspend 3 weeks of that sanction subject to two conditions;

a) There is no further off-field offending by them for the period of one year from the date of this Judgment. Any offence (within the jurisdiction of the RFU) which may be in breach is to be heard by a Panel chaired if possible, by Philip Evans QC;

b) Sean Maitland and Timothy Swinson are to provide separate written evidence to prove to the satisfaction of the Chairman of this Panel that they have conducted 50 hours of unpaid rugby community work since these offences took place. It will be additional to any work they are contractually obliged to undertake and will be completed before the 19 October 2021. All evidence will be served on the RFU who will have

the right to make representations. In the case of Calum Clark it will be 60 hours.

117) Additionally this group should pay a total fine of 3 weeks wages which we reduce to 1.5 weeks as a result of their mitigation. This financial penalty will apply to each breach offence they face concurrently.

Group 3

118) This Group represents the younger Players Joel Kpoku, Manu Vunipola and Thomas de Glanville. For the reasons set out above these Players can be distinguished in terms of the seriousness of their offending because of their age and their position within the group of Players.

119) The appropriate starting point for these Players is one of 6 weeks. We reduce the period of 6 weeks suspension to 3 weeks as a result of their timely acceptance of culpability and other mitigation. For the reasons already set out above we suspend all 3 weeks of that sanction subject to two conditions;

a) There is no further off-field offending by them for the period of one year from the date of this Judgment. Any offence (within the jurisdiction of the RFU) which may be in breach is to be heard by a Panel chaired if possible by, Philip Evans QC;

b) Joel Kpoku, Manu Vunipola and Thomas de Glanville are to provide separate written evidence to prove to the satisfaction of the Chairman of this Panel that they have conducted 50 hours of unpaid rugby community work since these offences took place. It will be additional

to any work they are contractually obliged to undertake and will be completed before the 19 October 2021. All evidence will be served on the RFU who will have the right to make representations.

120) Additionally this group will pay a fine of 2 weeks wages which we reduce to 1 week as a result of their mitigation. This penalty will apply to each breach offence they face concurrently.

False Account offence

121) All of the Players in groups 1-3 have accepted the false account charge. For the reasons we have set out above we have concluded that providing a false account to the regulator is a serious offence. It must we think be met with a period of immediate suspension. We have already made considerable allowance for the ages and the roles of the Players within the sanctions for the breach offences. Although we have said there was some difference in roles in this offence we have reflected that in our assessment of the total effect of the sanction and do not see a justification in differentiating the sanction passed for this offence. Indeed it stands to reflect the seriousness with which the Panel views such behaviour. Accepting that the primary motive for lying may have been a misguided attempt to keep the game being played we feel that the appropriate starting point in each case for this offence is a 4 weeks suspension from playing which in each case we reduce to 2 weeks for the timely acceptance of culpability and the Players' other mitigation. We do not suspend that 2 week period in any case and it will be served consecutively to the suspensions for the central Covid breach offences. There will be no other additional penalty for this offence for any player.

Group 4

122) Simon Kerrod went out but only on the Tuesday evening; he did not provide a false account. We accept that he did not necessarily leave the hotel with the intention of going to the pub but when invited he went without question and when he did so he knew that he was outside of the hotel in breach of the Code of Conduct. We conclude that his leaving the hotel through the fire exit was a deliberate breach of the Code of Conduct. Although his culpability is less he has to share responsibility for the collective harm that the group caused by their actions. That harm was high. We conclude that his culpability sits between an intentional act and a reckless one. We have limited his share to a share of the harm caused by the events of Tuesday. Reducing his starting point slightly to take account of the suspended periods we have allowed in the cases of other Players the appropriate starting point for his actions is one of 4 weeks which we reduced to one of 2 weeks for his timely acceptance of culpability and his other mitigation.

123) Additionally Mr Kerrod will pay a fine of 2 weeks wages which we reduce to 1 week as a result of his mitigation.

Remaining Covid Breach Offences.

124) For all of Players who faced additional Covid breach charges we impose a 1 week suspension. This will be concurrent to the sanction imposed for the central Covid breach offences and concurrent to the False Account sanction. It will not therefore add to the length of immediate suspension.

Wages.

125) We have provided a list of amounts that the Panel considers to be the appropriate weekly wage for each Player based on the information available to us. For reasons of confidentiality that list will be supplied to the RFU and each Player and their representatives will be told separately by the RFU what that figure is. The Players will have 30 days from the date of the Judgment to settle the financial penalties or to make any further representations to the Chairman with regard to further time to pay.

Staggering the Suspensions for Saracens

126) Mr Harris and Mr Armitage addressed the Panel both orally and in their helpful, detailed and joint written submissions regarding the effect of immediate suspension will have on Saracens and in turn their eight clients who all play for the club. They submitted, inter alia at (paragraph 94) that:

> *"if the Panel is minded to impose additional playing bans on the Saracens Players, and not to suspend the effect of any such additional playing bans, it is submitted that imposing such bans simultaneously on multiple Saracens Players would be disproportionate for the further reason that it would seriously prejudice the Club's chances or re-promotion to the Premiership next season, which would in turn have potentially various further financial and other consequences for the Players. For that reason, insofar as the Panel does consider it appropriate to impose further non-suspended match bans on any of the 8 Saracens Players, it is submitted that the club should be permitted to stagger those bans in a way so as to ensure that the relevant Players are not all unable to play for the Club at one and the same time; "*

127) This point was reaffirmed by Mr Golding, the Chairman of Saracens, when he gave oral evidence before the Panel. The issue was also the subject

of oral discussion between the Panel, Miss Gallafent QC for the RFU and Mr Harris QC when the Panel were hearing final submissions. The submission made on behalf of Saracens is superficially attractive, not least because of the potential impact on Saracens, which to a certain extent is an innocent third party in this disciplinary process. Saracens' eight Players were due to play for the Barbarians and not Saracens. However, after careful consideration the Panel are unable to accede to this submission and reject it. The Regulations do not permit the Panel to apply Regulation 19.11.16 in the manner suggested by Mr Harris. The Panel have no discretion:

Regulation 19.11.16 Decisions on sanctions and suspensions imposed under these Regulations "shall"- (emphasis added)

(b) not allow the suspended person to avoid the full consequences of their actions by, for example, playing in matches prior to the commencement of their suspension, or playing in matches during a break in the suspension and/or serving their suspension during a period of inconsequential pre-season and/or so called friendly matches; and

(e) be effective immediately (subject to 19.11.17(b)

Regulation 19.11.17 provides:

"when imposing suspensions a Disciplinary Panel "shall" comply with the requirements set out in Regulation 19.11.16 above. In doing so a Disciplinary Panel:

(b) may defer the commencement of a suspension provided that the Player/person is not scheduled to play (and will not be permitted to play) or have any match day involvement prior to the commencement of the suspension;"

128) The application of sub-clause (b) above may be appropriate where a player is injured and therefore not fit to play. The provision does not permit a panel to stagger suspensions for players, notwithstanding the impact or potential serious impact (as in this case) on a club for whom the players play. The Panel whilst acknowledging the potential serious impact upon the Saracens Club, have no discretion to accede to this request in its application of Regulation 19.11.16, even where sanction is at large. The Panel can suspend (not defer) a sanction under Regulation 19.11.20. Therefore, the submission is rejected.

Effect of the Sanction

Saracens Players

129) The eight Players from Saracens will serve varying periods of suspension. Their sanction will start when the Championship season begins in 2021. Sean Maitland has missed one game for Scotland as a result of this incident and that game will count towards his sanction. Following release of this Judgment Saracens are to confirm the following:

a) The date on which the Championship Season is confirmed to start and provide a full copy of their fixture schedule

b) Details of any pre-season fixtures that the Club have played/will play including the name of the opposition. Confirmation of whether the match was/is to be played in accordance with the full Laws and Regulations (i.e. 2 x 40 minute halves, no rolling subs etc) and whether the relevant Player was eligible for selection for such fixture i.e. he was not injured.

130) Upon receipt of such information and any other evidence Saracens wish to provide to assist with an assessment as to meaningful sanctions the Panel will confirm the final dates of sanction. For the avoidance of doubt, the Players are suspended with immediate effect from the date this judgment is sent.

Richard Wigglesworth

In respect of Mr Wigglesworth, his fixture schedule (assuming Leicester's games all go ahead) is as follows:

11/12 v Brive (EPCR)

19/12 v Bayonne (EPCR)

26/12 v Newcastle Falcons (Premiership)

03/01 v Bath Rugby (Premiership

His dates of suspension would be as follows:

Suspended from: Monday 7 December 2020 – 4 January 2021. He will be free to play again on Tuesday 5 January 2021.

Thomas De Glanville and Simon Kerrod

These Players are suspended for two weeks each and will miss the following games:

Thomas De Glanville

12/12/20 v Scarlets (EPCR)

The Panel will consider further the evidence received in respect of the Players selection for England and anything else Bath Rugby wish to provide and confirm the final dates of sanction direct to Bath Rugby.

Simon Kerrod

13/12/20 v Munster (EPCR)

20/12/20 v Racing Metro (EPCR)

In both cases, the dates of suspension are as follows:

Suspended from: Monday 7 December – Monday 21 December. They will both be free to play again on Tuesday 22 December

Christopher Robshaw and Fergus McFadden

131) These Players' suspension will take effect from the start of the respective seasons in the USA and Ireland. The Players are to notify the season start date together with the fixtures they will miss via Rebecca Morgan when they are known. If either consider there are other meaningful fixtures which should be taken into account the burden is on them to provide evidence which the Panel will consider.

132) In all cases, the onus would be on the Player to advise the Panel (via Rebecca Morgan) if any of the fixtures set out above change or are cancelled/postponed.

Costs and Appeal

133) The fixed costs to be paid for this hearing are as follows:

a) Saracens £500, Harlequins £500, Bath £500.
b) Given they have no current involvement with a professional club Mr McFadden and Robshaw will pay £125 each.

134) The Players have a right to appeal as per RFU Regulation 19.12. Such appeal is to be filed in writing within 14 days of the date on which the Judgment is sent.

Philip Evans QC - Chairman

8 December 2020.

Appendix 1

Player	Sanction	Fine	Community Work	Comment
Group 1				
Alex Lewington	**'Covid Breaches'** Suspension of 5 weeks (3 weeks are suspended) 2 weeks immediate suspension **'False Account'** 2 weeks consecutive Total 4 = week immediate suspension	2 weeks	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	
Christopher Robshaw	**'Covid Breaches'** Suspension of 5 weeks (3 weeks are suspended) 2 weeks immediate suspension **'False Account'** 2 weeks consecutive Total = 4 week immediate suspension	2 weeks	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	
Fergus McFadden	**'Covid Breaches'** Suspension of 5 weeks (3 weeks are suspended) 2 weeks immediate suspension **'False Account'** 2 weeks consecutive Total = 4 week immediate suspension	Nil	60 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	
Richard Wigglesworth	**'Covid Breaches'** Suspension of 5 weeks (3 weeks are suspended) 2 weeks immediate suspension **Additional 'Covid Breaches' x 2**	2 weeks	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	

	Suspension of 1 week concurrent for each additional offence **<u>'False Account'</u>** 2 weeks consecutive Total = 4 week immediate suspension			
Jackson Wray	**<u>'Covid Breaches'</u>** Suspension of 5 weeks (3 weeks are suspended) 2 weeks immediate suspension **<u>Additional 'Covid Breaches' x 2</u>** Suspension of 1 week concurrent for each additional offence **<u>'False Account'</u>** 2 weeks consecutive Total = 4 week immediate suspension	2 weeks	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	
Juan Pablo Socino	**<u>'Covid Breaches'</u>** Suspension of 5 weeks (3 weeks are suspended) 2 weeks immediate suspension **<u>'False Account'</u>** 2 weeks consecutive Total 4 weeks immediate suspension	2 weeks	60 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	
Group 2	Sanction	Fine		Comment
Calum Clark	**<u>'Covid Breaches'</u>** Suspension of 4 weeks (3 weeks are suspended) 1 week immediate suspension **<u>'False Account'</u>**	1.5 weeks	60 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	

	2 weeks consecutive Total = 3 weeks immediate suspension			
Sean Maitland	**‘Covid Breaches’** Suspension of 4 weeks (3 weeks are suspended) 1 week immediate suspension **‘False Account’** 2 weeks consecutive Total = 3 weeks immediate suspension	1.5 weeks	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	The Panel determines the Scotland game missed by SM (as confirmed by Gregor Townsend) will count towards suspension.
Timothy Swinson	**‘Covid Breaches’** Suspension of 4 weeks (3 weeks are suspended) 1 week immediate suspension **Additional ‘Covid Breaches’** Suspension of 1 week concurrent for the additional offence **‘False Account’** 2 weeks consecutive Total = 3 weeks immediate suspension	1.5 weeks	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	
Group 3				
Joel Kpoku	**‘Covid Breaches’** Suspension of 3 weeks suspended - no immediate suspension **Additional ‘Covid Breaches’** Suspension of 1 week concurrent to the ‘False Account’ matter for the additional offence **‘False Account’**	1 week	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	

	2 weeks consecutive Total = 2 weeks immediate suspension			
Manu Vunipola	**'Covid Breaches'** Suspension of 3 weeks suspended - no immediate suspension **Additional 'Covid Breaches'** Suspension of 1 week concurrent to the 'False Account' matter for the offence **'False Account'** 2 weeks consecutive Total = 2 weeks immediate suspension	1 week	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	
Thomas De Glanville	**"Covid Breaches'** Suspension of 3 weeks suspended - no immediate suspension **Additional 'Covid Breaches'** Suspension of 1 week concurrent to the 'False Account' matter for the additional offence **'False Account'** 2 weeks consecutive Total = 2 weeks immediate suspension	1 week	50 hours additional to any contractually obliged work already undertaken. To be completed by 19 October 21	The Panel will consider further the evidence received in respect of the Players selection for England and anything else Bath Rugby wish to provide and confirm the final dates of sanction direct to Bath Rugby.
Group 4				
Simon Kerrod	**'Covid Breach'** Immediate Suspension of 2 weeks.	1 week		