

# RFU SHORT JUDGMENT FORM



Match	Gloucester Rugby	Vs	Harlequins
Club's Level	1	Competition	Gallagher Premiership
Date of Match	06 December 2020	Match Venue	Gloucester Rugby

Particulars of Offence			
Player's Surname	Esterhuizen	Date of Birth	30.03.1994
Forename(s)	Adriaan	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Harlequins	RFU ID No.	2586696
Type of Offence	Striking with elbow		
Law 9 Offence	9.12		
Sanction	4 week ban		

Hearing Details			
Hearing Date	08 December 2020	Hearing venue	Video link
Chairmen/SJO	Daniel White	Panel Member 1	Mitch Read
Panel Member 2	Matthew Weaver	Panel Secretary	Rebecca Morgan
Appearance Player	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Appearance Club	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Player's Representative(s):	Other attendees:
Graeme Bowerbank, Head of Rugby Operations at Harlequins	David Barnes, RFU Head of Discipline Angus Hetherington, RFU Legal Counsel (Discipline)  James Bailey (Observing) Scott Mackechnie (Observing)

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

Charge sheet  
Referee's report  
Injury report - Eoin Power - Gloucester, Head of Medical  
Character reference - Andy Sanger MBE  
Sean Everitt - Head Coach, Durban Sharks  
Trevor Barnes, Team Manager, Durban Sharks  
Submissions from Mr Bowerbank

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

In the 44th minute I stopped the game whilst Harlequins were in possession as I caught a glimpse of Gloucester 10 close to play with a potential serious head injury. After blowing the whistle I observed blood coming from the nose of Gloucester 10 and he informed me that he had been subject to an incident of foul play on the floor. Whilst he was being treated ( & time being off) I asked the TMO to see if he could see any foul play on the footage.

On the initial angles there was no foul play to see as the incident on the screen wasn't being played for long enough. My instinct was telling me that we had missed something here, at that point I slowed things down to allow a formal TMO review so that the TMO could find the correct camera angle to show us what happened. After finding the correct angle the TMO informed me that Harlequins 12 had elbowed the Gloucester 10 in the face. As a result of this action I sent off Harlequins 12.

Gloucester 10 went off for a HIA immediately and didn't return to play any further part in the match.

Post match there was no dialogue with Harlequins 12 or any other member of the Harlequins staff regarding the incident.

The Panel reviewed the footage, heard from Mr Esterhuizen ("the player") and read the character references.

## Summary of Player's Evidence

The player indicated that he completed a tackle and ended up on top of Lloyd Evans (the "injured player"). As he tried to get up and off he was endeavouring to get back into position faster than his opponent. He was looking towards the ongoing play and not towards the injured player who was beneath him on the ground. At that stage he made the reckless act of swinging his left arm backwards and downwards in an attempt to get up. At first he indicated that he accidentally struck the injured player, but when this was clarified accepted that this was a reckless act as he should have known that the injured player's head was in the region of his elbow. He immediately knew that he had struck the injured player, hence moving his arms to his sides.

The player stated he did not intend to hit the injured player or injure him as plainly happened. He had just wanted to get back into the game as soon as possible. He accepted that his elbow had come into contact with the injured player's face and had caused the bleeding nose.

The player confirmed he was an experienced player with 134 top flight caps, 8 caps for South Africa and two for the Barbarians. His references spoke highly of his conduct on and off the field.

He was taken through his previous disciplinary hearings and the panel were made aware that he had received a 6 week ban for a dangerous "lifting tackle" in April 2017 and a 4 week ban for another dangerous tackle in June 2015 whilst playing in South Africa.

## Findings of Fact

The panel spent a considerable period of time reviewing the various camera angles and the submissions made on behalf of the player. We concluded on a balance of probabilities that the actions were reckless and not deliberate. The reason for this was because we noted that the injured player's head rose up and towards the elbow as it came down, the action generally fitted with someone rotating to get up whilst concurrently elbowing backwards.

### Decision

Breach admitted  Proven  Not Proven  Other Disposal (please state below)

## SANCTIONING PROCESS



### Assessment of Seriousness

Assessment of intent - Ref 19.11.8

PLEASE TICK APPROPRIATE BOX

19.11.8(a) Intentional/deliberate

19.11.8(b) Reckless

Reasons for finding as to intent:

The motion backwards and downwards coincided with the injured player reaching up and trying to get up to his feet. The consequence was that an ill gauged momentary action, which ran the risk of making contact with the injured player's head, did make such contact.

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

Any elbowing action to the face is serious especially noting that the injured player failed his HIA and had to be removed from the field of play and will now have to go through the graduated return to play process.

Nature of actions - Reg 19.11.8(d)

Any strike to the head is extremely serious. This reckless act caused a significant injury.

Existence of provocation - Reg 19.11.8(e)

N/A

Whether player retaliated - Reg 19.11.8(f)

N/A

Self-defence - Reg 19.11.8(g)

N/A

Effect on victim - Reg 19.11.8(h)

The injured player sustained a bleeding nose and concussion.

Effect on match - Reg 19.11.8(i)

Gloucester had to play without their first choice 10 following this incident which occurred in the 44th minute of play.

Vulnerability of victim - Reg 19.11.8(j)

The injured player was vulnerable, not least noting he was underneath Mr Esterhuizen and unable to properly defend himself from this strike.

Level of participation/premeditation - Reg 19.11.8(k)

N/A

Conduct completed/attempted - Reg 19.11.8(l)

Completed

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

Blank

Assessment of Seriousness Continued

Entry point

<u>Low-end</u>	<u>Weeks</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Top-end*</u>	<u>Weeks</u>
<input type="checkbox"/>		<input checked="" type="checkbox"/>	6	<input type="checkbox"/>	

\*If Top End, the JO or Panel should identify, if appropriate, an entry point between the Top End and the maximum sanction and provide the reasons for selecting this entry point, below.

In making this assessment, the JO/committee should be consider RFU Regulation 19

Reasons for selecting entry point:

Forceful blow to the head with the elbow. Minimum entry point is MR and the panel did not feel, given the assessment that this was reckless that it commanded a higher entry point in the circumstances.

Additional Relevant Off-Field Aggravating Factors - Reg 19.11.10

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

The player has two previous disciplinary matters, both for foul play (dangerous tackles). Although not recent they are relevant.

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

N/A

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

N/A

Number of additional weeks: 0

#### Relevant Off-Field Mitgating Factors

Acknowledgement of guilt and timing - Reg 19.11.11(a)

The player accepted the charge and indicated he would do so in advance of the hearing.

Player's disciplinary record/good character - Reg 19.11.11(b)

Two relevant previous, but of some age - 2017 and 2015.

Youth and inexperience of player - Reg 19.11.11(c)

The player is a highly experienced, international rugby player.

Conduct prior to and at hearing - Reg 19.11.11(d)

Exemplary

Remorse and timing of Remorse - Reg 19.11.11(e)

The player showed genuine remorse, whilst also expressing his anger at his own behaviour. He apologised to the injured player on the day after the game and this was well received. He explained he didn't want his family to think ill of him as a result of these actions.

Other off-field mitigation - Reg 19.11.11(f)

N/A

Number of weeks deducted: 2

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

Credit for plea, remorse and relatively few disciplinary matters recorded in recent years for a man who has played a lot of rugby.

Games for meaningful sanctions:

The Player will miss the following matches

V Munster, Sunday 13th December  
V Racing 92, Sunday 20th December  
V Bristol, Saturday 26th December  
V Worcester, Friday 1st January 2021

Sanction

**NOTE:** PLAYER ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING

Total sanction	4 weeks	Sending off sufficient	
Sanction commences	8 December 2020		
Sanctions concludes	4 January 2021		
Free to play	5 January 2021		
Final date to lodge appeal	10 December 2020		
Costs (please refer to Reg 19, Appendix 3 for full cost details)	£500		

Signature (JO or Chairman)	Daniel White	Date	8 December 2020
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**NOTE:** YOU HAVE THE RIGHT OF APPEAL AGAINST THIS DECISION AS SET OUT IN REGULATION 19.12 OF THE DISCIPLINARY REGULATIONS. YOUR ATTENTION IS SPECIFICALLY DRAWN TO THE TIME LIMIT AND DIRECTIONS/REQUIREMENTS RELATING TO AN APPEAL SET OUT IN REGULATION 19.12.9