



# **RFU SHORT JUDGMENT FORM**

## **RFU REGULATION 19**

Match	Castres Olympique	Sale Sharks	
Club level	1	Competition	Pre-Season Friendly
Date of match	17 March 2018	Match venue	Stade Edmund de Villiers

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### **PARTICULARS OF OFFENCE**

Player's surname	Ashton	Date of birth	20 March 1987
Forename(s)	Christopher	RFU ID number	706013
Club name	Sale Sharks	Plea	Admitted <input type="checkbox"/> Not admitted <input checked="" type="checkbox"/>
Offence	9.18 – A Player must not lift an opponent off the ground and drop or drive that Player so that their head and/or upper body make contact with the ground	SELECT: Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other <input type="checkbox"/>	

### **HEARING DETAILS**

Hearing date	23/08/2018	Hearing venue	Twickenham
Chairman	Richard Whittam QC	Secretary	Rebecca Morgan
Panel member 1	Rebecca Essex	Panel member 2	Mitchell Read
Decision	Proven <input checked="" type="checkbox"/> Not proven <input type="checkbox"/> Other disposal (please state) <input type="checkbox"/> <a href="#">Click to enter other disposal.</a>		

### **ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/DVD FOOTAGE**

#### **PRESENT:**

In addition to the Panel and Secretary, present were:

- Chris Ashton [the Player]
- Steve Diamond [Director of Rugby, Sale Sharks]
- Richard Liddell [Counsel representing the Player]
- Stuart Tenant [RFU, Legal Counsel, Discipline]
- David Barnes [RFU, Head of Discipline]
- Verity Williams [RFU, observer, by consent of the parties]

#### **MATERIAL AVAILABLE:**

Material Available in advance of the hearing:

Hearing Bundle v2, comprising:

- Charge Sheet, Foul Play contrary to Law 9.18
- Video recording
- Referee's report and email correspondence
- Outgoing Tour Form
- Email correspondence including confirmation from Castres Olympique that the Other Player involved had not suffered any injury and from Sale Sharks that the Player denied the charge

Further video recordings we played at the hearing, presented on behalf of the Player:

- A contemporaneous YouTube recording of the incident
- World Rugby video recordings illustrative of play, offences and their categorisation

The essential elements of the Referee's report were:

"This game has been played in an electric atmosphere between both teams and I had to manage many times some scuffles. I gave already 2 yellow cards, one for each team, and some warnings to keep all the players focused on the play and the work that a warm-up game could provide to the team.

In the 46th minute, after blowing my whistle by a penalty kick against Sale for holding on, a scuffle appeared between 25 [note wearing No 9] Castres KOCKOTT Rory and 15 Sale ASHTON Chris. During this scuffle KOCKOTT attempted to get the ball held in the hands by ASHTON.

Finally KOCKOTT threw the ball in ASHTON face. ASHTON caught KOCKOTT like spear tackle, lift him from the ground, drove him to the ground and released him.

KOCKOTT landed on the head without injury. KOCKOTT has been send off for "nervous [agitation/tension/excitability?] play" and ASHTON for foul play without the ball and after the game was stopped".

The Referee had been asked by the Referee to clarify whether the Red Card was for Foul Play contrary to Law 9.18 or 9.14, to which he replied, "The act of Chris Ashton is closer to 9.18 but it was during a scuffle".

#### THE HEARING:

All parties introduced themselves. It was confirmed that there was no objection to the constitution of the Panel and that there was no objection to the presence of the observer.

The Panel was satisfied that it had jurisdiction to hear the case by virtue of the outgoing tour form completed by Sale Sharks dated 16 July 2018 which confirmed in paragraph 10 (b) that the Club agreed that the RFU shall have the power to take disciplinary action in relation to the players and other personnel in respect of all matches involving it on 17 August 2018 regardless of whether the match was played in England or another Union. No point was taken that in error Sale Sharks had described on that form the opposition as being Montpellier and not Castres Olympique as clearly it referred to the match to be played at the Stade Edmond de Villiers on 17 August.

At the outset the Panel confirmed that it had read all the material and viewed the video footage that had been provided in advance many times. Clarification was sought as to what the issues were that the Panel was going to have to determine.

Counsel for the player identified two issues:

- The Red Card was wrongly awarded and that any Foul Play only warranted a Yellow Card, and in the alternative
- Any Foul Play more appropriately was met by Law 9.11 [Players must not do anything that is reckless or dangerous to others].

The Panel made it clear from the outset that neither provocation nor self-defence amount to a defence to Foul Play, but are relevant to sanction.

The Panel sought to avoid any over technical interpretation of the RFU Regulations and the Laws of the Game, and made it clear that whether it had jurisdiction to find the Player in breach of a different Law, its initial function was to decide whether it was satisfied that the Foul Play alleged in the Charge Sheet was made out.

The Charge was read to the Player and he denied it.

The Panel was shown the video recording provided in advance of the hearing and then the YouTube video provided on behalf of the Player.

Some of the essential parts of the Player's account were:

He was on the floor with the ball. He was holding on. He felt a pressure on head and a hand on his face.

He lifted his head up as quickly as he could.

He was holding the Other Player's leg, because he thought he had a hand in his face.

The Player said he did not intend to hurt the other Player.

The Other Player had his hand across his face, which was being squeezed. That was a deliberate act.

The Player said he released the ball on the floor

He accepted that he put his hand to back of his head immediately after he had lifted the Other Player and released him.

The video recording was shown to him with specific reference to the apparent action of the Other Player and the contact being made by the Other Player with the back of the Player's head. The Player stated that it was no part of his case that the Other Player was doing anything to the back of my head.

He reacted to what happening to happening. He did so because the Other Player had his hand across his face.

He said he had held the Other Player's leg because he wanted to identify who was grabbing his face.

After the event twice he asked the Other Player about his hand on the Player's face.

The Other Player laughed at him and the Other Player offered his hand the Player did not shake it because he had put his hand across the Player's face.

The Player said what he did was wrong in wanting the Other Player to go to the floor. He accepted that he reacted badly to what he said the Other Player had done to him.

He said the Other Player knew what he has done, and continued by saying that what the Other Player had done did not deserve his reaction.

He said he put his hand to his face as he retreated. It was sore – he had told Strauss [Josh Strauss, Sale Sharks] what happened.

He spoke to the referee. The Player said that after he had been sent off the Referee said to him "I have had enough I am going home".

Of the actions at the end of the YouTube video he said he was trying to raise the impact with the Referee.

He did not understand why the Referee had said that the Other Player had thrown the ball into his face.

The World Rugby Videos were played, and submissions made as to the nature of the play and Foul Play shown.

The Panel raised a number of questions arising out of them, including

- The dynamics of open play

- The involvement of any other players
- The relevance of the action being after the whistle had been blown

After an adjournment the submission on behalf of the Player that the Foul Play only warranted a yellow card was withdrawn. The only submission that remained for the Panel to consider was the whether the more appropriate Law as 9.11 of 9.18. Further, it was expressly clarified on behalf of the Player that the Player was not relying on any submission that he acted in self-defence.

#### FINDING OF THE PANEL WITH REGARD TO FOUL PLAY:

This match was played under the misnomer of a pre-season friendly. It was a match that Romain Poite, an experienced World Rugby Panel Referee, described as being played in an electric atmosphere. He had to manage many scuffles. He had shown a yellow card to a player from each team and had issued warnings.

In the 46 minute the Referee blew for a penalty against Sale Sharks for the Player not releasing the ball. After the whistle had been blown a mêlée ensued with the player retaining the ball and Castres Olympique No 9, Rory Kockott, [the Other Player] trying to wrestle the ball from the player's grasp.

The referee saw the Other Player throw the ball into the Player's Face. On review of the video footage, the Other Player appeared to make contact using his left arm/elbow with the back of the head/upper neck area of the Player. The Panel concluded that the Player took hold of the leg of the Other Player and lifted that leg to head height with speed. The Player then rotated his left arm and shoulder to fling the Other Player. It was a deliberate and intentional act to lift the Other Player and it was an intentional act to fling him. To do so was at the very least reckless as to how the Other Player would land. The Other Player landed on his arm, shoulder then his head, which came into contact with the ground. The Player did not physically drive the Other Player into the ground.

The Player immediately put his hand to the back of his head, to the location where moments earlier the Other Player's arm and/or elbow had been. The action of the Player was clearly a reaction to something that had happened. Whether what had happened to the Player was exaggerated in the hearing because of the difficult position the Player found himself in before the Disciplinary Panel is unclear. It was an instant reaction to what appeared to be contact by the Other Player with the back of the Player's head. In addition the Referee dismissed the Other Player for throwing the ball into the Player's face. On balance the Panel did not accept that there had been intentional contact by the Other Player with the face of the Player to the extent that the Player thought there was an attempt to gouge him. As the Panel already has observed, the Player's immediate reaction was to grasp the back of his head.

The Panel was satisfied that this was a petulant and potentially dangerous reaction to provocative action by the Other Player. It was deliberate, albeit the panel was not satisfied that it was carried out with the intention that the Other Player necessarily would land on his head, it was clearly reckless as to whether the act would have that consequence.

The Panel were shown a number of World Rugby recordings that illustrate examples of no foul play, yellow card and red card behaviour and in addition the Panel was shown video footage of a yellow card given to a New Zealand player in the Rugby World Cup [RWC] Final 2015. Those videos were familiar to the Panel. Each case has to be considered on its own merits. All the examples involved the action in play, not after the whistle had been blown. The footage on the 2015 RWC final is a good example of the dynamics of rugby - a player did lift the leg of an opponent, the referee noted that another player from the same team came in on top of the Victim Player and may well have added to the rotation. In any event the Victim Player landed on his shoulder and his head did not hit the floor. That example is far removed from the action of the Player here.

We have set out our short summary of what is shown on the video recording.

The overriding objective of RFU Regulation 19 is to maintain and promote fair play and to protect the health and welfare of players.

Here, where the Player had been ordered off, the function of the Panel is to consider the circumstances of the case and to determine its factual findings and what further sanction, if any, should be imposed on the player.

Lifting a player off the ground and dropping or driving that player so that their head and/or upper body makes contact with the ground is foul play unless it was purely accidental. The offences listed in World Rugby Law 9 do not require mens rea [the mental element of a crime of offending behaviour]. Law 9 creates offences of strict liability. The offence is committed if the prohibited act occurs. The RFU's disciplinary regime reflects World Rugby Regulation 17. It exists to penalise Player's whose Foul Play is other than purely accidental and one of its most important principles is to prevent the risk of injury to other players in a dynamic and physical sport.

This was not an accident. It was Foul Play that falls squarely within the Foul Play envisaged by 9.18. In those circumstances the Panel was satisfied that was the appropriate charge and that charge was proved.

It was Foul Play after the whistle had gone and the Panel had not doubt that this was Foul Play that warranted a red card.

PLEASE TICK APPROPRIATE BOX

Intentional/deliberate 19.11.8(a) Reckless 19.11.8(b) 

Gravity of player's actions 19.11.8(c)	Nature of actions 19.11.8(d)
As set out in our findings of fact, it was a deliberate and intentional act to lift the other player and it was an intentional act to fling him. To do so was at the very least reckless as to how that player would land.	As set out in our findings of fact, the Other Player landed on his upper body first then the head came into contact with the ground. The Player did not physically drive the Other Player into the ground.
Existence of provocation 19.11.8(e)	Whether player retaliated 19.11.8(f)
The Player disavowed any contact by the Other Player with the back of the Player's head or that the Other Player had thrown the ball into his face. As is set out in our findings of fact, on balance the Panel did not accept that there had been intentional contact by the Other Player with the face of the Player to the extent that he thought there was an attempt to gouge him. However, the action of the Player was clearly a reaction to something that had happened.	The Player retaliated [see 19.11.8(e). [Retaliation is an act of Foul Play, see Law 9.21]
Self-defence 19.11.8(g)	Effect on victim 19.11.8(h)
Self-defence had no relevance, the submissions on behalf of the Player made it clear that the Player did not rely on self-defence.	The Other Player's Club confirmed that he had not suffered any injury. The reason he did not continue playing is that he too was shown a red card.
Effect on match 19.11.8(i)	Vulnerability of victim 19.11.8(j)
None	The whistle had gone.
Level of participation/premeditation 19.11.8(k)	Conduct completed/attempted 19.11.8(l)
None	Completed
Other features of player's conduct 19.11.8(m)	
None	

Entry point	Top end* Click weeks	Mid-range Click weeks	Low end 6 weeks
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\*If top end, the Panel should identify an entry point between the top end and the maximum sanction (19.11.9) - see Appendix 2

In making the above assessment, the Panel should consider the RFU guidance (Note 2) set out in Appendix 5 to Regulation 19. Significant weight should be given to RFU regulation 19.11.8(a), 19.11.8(h) and 19.11.8(i).

Reasons for entry point:

The Panel considered Annex 2 to RFU Regulation 19 and the Note: Any act of Foul Play which results in contact with the head shall result in at least a mid-range sanction.

The Panel raised with the RFU the issue of the applicability of that note to offences that of themselves involve a contact with the head [9.12 eyes. 9.18 where the facts reveal contact with the head]. In addition the Panel noted that the sanction for those offences at the low entry point was the same as the sanction for other offences at a mid-entry point. In this case the RFU had no submissions to make on the view of the Panel that it was not obliged to apply the Note and apply the mid-range entry point.

The Panel concluded that as it had found that the facts of the Foul Play involved the Other Player's head coming into contact with the ground, the low entry point was appropriate given the other factors taken into account in the assessment of seriousness.

## ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS (REGULATION 19.11.10)

Player's status as an offender of the Laws of the game 19.11.10(a)

The Player has a number of disciplinary findings against him. Some are old and some more recent. The Panel decided that on this occasion it only would take it account matters from 2016.

On 20 January 2016, with regard to Foul Play on 16 January in the European Champions Cup, the Player had received a 13 week ban for contact with the eyes [12 weeks with 1 week as a deterrent].

On 20 September 2016, for Foul Play on 17 September in the Premiership, the Player had received a ban for 13 weeks for acts contrary to good sportsmanship [biting] [12 weeks, 1 week for his record of offending].

Need for deterrent 19.11.10(b)

The Panel carefully considered whether there was a need for a deterrent sanction. As the facts of the offence included the assessment that the Foul Play was after the whistle had been blown and that fortunately this type of offending ordinarily is committed during play in a dynamic situation there was no need for a deterrent sanction.

Any other off-field aggravating factors 19.11.10(c)

None

Number of additional weeks:  weeks

Acknowledgement of guilt 19.11.11(a)	Player's disciplinary record/good character 19.11.11(b)
The Panel had been concerned that the Player fully understood that he was contesting the allegation of Foul Play alleged. After the Panel stated that it was satisfied that the Foul Play as alleged in the charge had been proved specifically asked whether the Player had contested the charge because of his fear of the consequences and the obvious impact on his career. It was made clear that has not been the reason for contesting the matter.	The Player has a poor record, see above.
Youth & inexperience of player 19.11.11(c)	Conduct prior to and at hearing 19.11.11(d)
The player is an experienced professional rugby player with International experience.	The player conducted himself as is expected of all rugby players, and in particular experienced professional rugby players. The Panel were not satisfied by his explanation for his reason for acting as he did.
Remorse & timing of remorse 19.11.11(e)	Other off-field mitigation 19.11.11(f)
Limited remorse was expressed, more for having offended rather than towards to the Other Player or the Referee.	None

Number of weeks deducted:  week

NOTE: SUBJECT TO REGULATION 19.11.13, A DISCIPLINARY PANEL CANNOT APPLY A GREATER REDUCTION THAN 50% OF THE RELEVANT ENTRY POINT SUSPENSION

## SANCTION

Banned from	21/08/2018	Banned to	08/10/2018
Ban split from	<a href="#">Click here to enter a date.</a>	Ban split to	<a href="#">Click here to enter a date.</a>
Free to play	09/10/2018		

Total sanction	7 weeks	Sending off sufficient <input type="checkbox"/>
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NOTE: UNDER RFU REGULATION 19.5.2, PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING

Costs	£ 500	Final date for appeal:	29/08/2018
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Signature (Chairman)	Richard Whittam QC	Date	27/08/2018
Signature (Secretary)	Rebecca Morgan	Date entered to GMS	23/08/2018

Additional information:- The Club made submissions before the Panel as to the games in which the Player would participate and were told the following would be considered meaningful within the period of suspension:-

24.08 v Sale FC (Pre-Season), 01.09 v Harlequins, 09.09 v Worcester, 15.09 v Worcester, 22.09 v Exeter Chiefs, 22.09 v Wasps, 30.09 v Leicester Tigers, 06.10 v Newcastle Falcons

Should there be any changes to the above fixtures then the matter is to be referred back to the Panel.

Addendum:

At the hearing on 23 August 2018, after the Panel had concluded that the Player had committed an act of Foul Play that warranted a Red Card, the Panel considered what sanction was appropriate for that Foul Play.

It is for the Player or club to furnish the Panel with an accurate list of the Club's competitive matches relevant to the suspension [Regulation 19.11.22]. A Panel should be confident it can rely on the information provided to it.

The Club stated that it had a pre-season friendly match against Sale FC on 24 August [the day following the hearing]. The Panel enquired as to the importance of the match in the build-up the first week of the Premiership season. The Panel sought, and was given, confirmation that the Player was selected to play and, save for any suspension, would play in that match. The Panel was satisfied on balance that the fixture as described to it was a meaningful fixture. It noted that the foul play itself had taken place in a pre-season friendly match, albeit that match was against a senior professional French club and this friendly was to be against a National League 1 side.

Somewhat surprisingly that fixture did not take place. The Club referred the matter back to the RFU Disciplinary Hearings Manager, who referred it back to the Panel to consider the period of suspension to ensure that it is meaningful [Regulation 19.11.24].

It is important that any sanction is meaningful to the Player [Memorandum from the RFU Head of Judiciary 1 August 2018 (the Memo) and Regulation 19.11.17]. The burden of satisfying the Panel that a match is meaningful rests with the club and the Player and not the Panel.

The Club is well aware of the Memo.

The Club submitted that a meaningful fixture was played at the Carrington Training Ground on 27 August 2018, 'Sale Sharks Probables v Possibles'. No detail was provided as to when the fixture had been arranged. It was not a fixture that featured on the list submitted to the Panel on 23 August. No detail was provided as to any of the arrangements for the match such as the names of the match officials, the team sheets, any match report or the result. No explanation was provided as to why this was different from any other training activity particularly in the run up to the start of the Premiership season.

The Panel has determined on the information provided to it that this was not a meaningful fixture.

In any event, if the Panel was wrong in coming to that conclusion, the Panel notes that it took place in the same week as the Premiership match against Harlequins, which was played on 1 September 2018. In those circumstances it would not have been a fixture that would have been taken into account.

It follows that the period of suspension will be extended by one week so that the Player will miss 7 meaningful weeks. The following matches are considered to be meaningful within the period of the suspension:

01.09 v Harlequins

09.09 v Worcester

15.09 v Exeter Chiefs

22.09 v Wasps

30.09 v Leicester Tigers

06.10 v Newcastle Falcons

12.10 v Perpignan