

CRFU 2021 DISCIPLINARY DECISION



Match	Fidelity Cayman Storm v Advance Fire & Plumbing Buccaneers		
Player's Union	Cayman RFU	Competition	Alex Alexander Cup
Date of match	13 February 2021	Match venue	South Sound Pitch
Rules to apply	Regulation 17 World Rugby and CRFU Procedures and Powers of Disciplinary Committees		

PARTICULARS OF OFFENCE			
Player's surname	de Banks	Date of birth	11 December 1991
Forename(s)	Christian		
Referee Name	Dave Sherwin	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	Breach of Law 9.12 of the Laws of the Game (Physical Abuse – Striking with Head).	SELECT:	Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other <input type="checkbox"/>
			If "Other" selected, please specify:

EXECUTIVE SUMMARY	
Summary of Decision	<p>The Player approached the victim at speed from behind and had run approximately 15 metres to engage him. Moments before the impact, the victim turned his head and shoulders towards the Player and the Player inclined his head downward and his forehead forward. The Player's forehead made contact with the left side of the victim's face. Simultaneous contact occurred between the Player's chest and the victim's left shoulder. As a result of the Player's approach speed and corresponding momentum, the overall force of the impact was significant and the victim was knocked to the ground. The force of the head-to-head contact was moderate, not minimal.</p> <p>The victim was shocked by the incident and initially unsure as to the extent of the injuries he might have sustained. In the event, fortunately, no injuries were sustained.</p> <p>The Player admitted, at the hearing, that the Red Card Test was met but contested the factual basis of the allegation. He gave evidence that he intended to "<i>get up in the face</i>" of the victim and "<i>maybe touch but not clash</i>" heads. He submitted that the contact was accidental and was caused by the victim turning into his path and</p>

	<p>stopping.</p> <p>The Committee did not accept the Player’s evidence and found that he intentionally headbutted the victim.</p> <p>The Player’s offending behaviour carried with it a high degree of risk and the victim was in vulnerable position. Fortunately, no injuries were sustained.</p> <p>In light of the nature of the offending, as set out in greater detail below, the Committee was unable to accept the Player’s submission that this was a low-range offence and considered that the mid-range starting point of 10 weeks was the appropriate entry point.</p> <p>There were no aggravating features that warranted any additional weeks suspension.</p> <p>The Player’s good disciplinary record was a mitigating factor that merited a substantial reduction. However, the Player is not entitled to the maximum reduction in light of his late and limited admission and failure to come to terms with the seriousness of his offending. The appropriate reduction for mitigating factors was 3 weeks.</p> <p>To assist the Player to understand the decision, and to assist players and their representatives generally with their understanding of the understanding of the disciplinary process, the Committee has provided the following detailed and comprehensive reasons for its decision.</p>
<p>Summary of Sanction</p>	<p>Seven weeks commencing on 13 February 2021.</p> <p>The Player will be suspended for the following matches:</p> <ul style="list-style-type: none"> • Saturday 27 February 2021 (Buccaneers v Pigs) • Saturday 13 March 2021 (Iguanas v Buccaneers) • Saturday 27 March 2021 (Vase Semi Finals - Buccaneers v Pigs) • Saturday 10 April 2021 (Vase Final – Buccaneers v Storm) <p>Having due regard to guidance set out in <i>In re Appeal of Kepu</i>, Autumn Internationals 2017, Jan 17, 2018 at paragraphs 35 – 50 and Regulation 17.21.3(e), if the Player registers with a team to play in the annual autumn sevens series, he will be suspended from participating until he has completed his suspension. Each day/weekend of that series shall, for the purposes of serving this sanction, count as one week.</p> <p>If the Player does not register and participate the annual autumn sevens series, or annual autumn sevens series does not take place as planned, the Player’s suspension will be continue to be served during the 2021-2022 season.</p> <p>If either the Player or CRFU require clarification in relation to the application of this sanction, either may revert to the Committee for further guidance by emailing the Disciplinary Liaison Officer ("DLO"), Rhian Minty (rhianminty@gmail.com).</p>

DISCIPLINARY PROCEEDINGS	
Decision Date	28 March 2021
Chairman	Matthew Dors
Other Members of Disciplinary Committee	James Austin-Smith Christopher Kennedy
Player Representative	Peter Sherwood

List of documents/materials provided to Player in advance of decision	<ul style="list-style-type: none"> • The Match Referee's Report • The Assistant Referee's Report • The Player's own post-match statement • Statement of Justin May • Statement of Rhian Minty • Video footage of the incident. - https://youtu.be/wDIZy2aYfXE • A copy of or link to Regulation 17 (Discipline – Foul Play) • A copy of or link to Appendix 1 to Regulation 17 (World Rugby Sanctions for Foul Play) • A copy of the CRFU Procedures and Powers of Disciplinary Committees
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BACKGROUND TO THE INCIDENT

1. The Foul Play that is the subject of these disciplinary proceedings formed part of an unfortunate and unnecessary series of escalating acts of Foul Play.
2. The incident occurred in the 30th minute of the second half of a match played between Fidelity Cayman Storm v Advance Fire & Plumbing Buccaneers on Saturday, 13 February 2021 at the South Sound Pitch.
3. The incident began when the Referee awarded a penalty against the Storm following a period of 'advantage'. After the whistle was blown, and whilst the Referee was returning to the 'mark', a Storm player, Alex Manfield (**Manfield**), threw the ball away. Manfield subsequently received a yellow card for this act of Foul Play, which was described by the Referee in his yellow card Report as "*cynical*".
4. When the Buccaneers' scrum half, Dave Stringer (**Stringer**), set off to retrieve the ball, he was 'tackled' to the floor by another Storm player. Stringer returned to his feet and set off again to retrieve the ball. Another Storm Player, Justin May (**May**), then ran after Stringer and shoved him forcefully in the back with both hands knocking Stringer to the Floor.
5. In response, Christian de Banks (**de Banks** or the **Player**), a Buccaneer, ran approximately 15 yards and headbutted May, knocking him to the ground. It is this act of Foul Play by de Banks that is the subject of these disciplinary proceedings.
6. As de Banks walked away from the incident, he was approached by a number of Storm players. A number of other Buccaneers players joined them and a scuffle ensued. In the course of that scuffle, Christian Victory (**Victory**), punched de Banks in the head twice.
7. Both de Banks and Victory were Ordered Off by the Referee resulting in an automatic referral to the Disciplinary Committee (**Committee**). This decision is concerned solely with the actions of de Banks. The actions of Victory have been the subject of separate disciplinary proceedings.

WRITTEN EVIDENCE AND OTHER DOCUMENTARY MATERIALS

8. The Referee, Dave Sherwin, issued the Player with a red card for a breach of Laws 9.11 and 9.12 of the Laws of the Game.

"9.11 Players must not do anything that is reckless or dangerous to others.

9.12 A player must not physically or verbally abuse anyone. Physical abuse includes, but is not limited to, biting, punching, contact with the eye or eye area, striking with any part of the arm (including stiff-arm tackles), shoulder, head or knee(s), stamping, trampling, tripping or kicking."

9. The Referee, stated in his report that:

"I awarded a penalty to Buccs for a high tackle and the ball was thrown away by a Storm player. This appeared to provoke a fracas during which the Player ran 5-10 metres and made contact – head to head and in a clearly reckless manner – with Justin May with sufficient force to knock Justin to the ground. After subsequent events (including retaliation by Storm – see separate report) I used a red card. The Player behaved well when departing the field."

10. The Assistant Referee, Tim Coak, stated in his report that:

"After the Referee had blown for a penalty on the far side of the pitch, I saw the Storm scrum half walking in my direction close to the posts. The Buccaneers No.5 [de Banks] ran over behind the scrum half and headbutted the scrum half on the back of the head, knocking him over. This occurred about 25 metres away from me in clear sight."

11. The Player's own match day statement was as follows:

"David Stringer went to get the ball after a penalty had been given. In doing so he was randomly tackled off the ball and was understandably a little annoyed with this but walked away, As he was walking away Justin then really aggressively shoved Dave Stringer in the back. Because of this I ran up to Justin to get "up in his face" to tell him how "out of order" he was but he stopped moving away and my momentum made us clash heads. To be clear I did mean to get In his face but did not mean for us to clash heads. I would like to note the clash was not hard. Immediately after this, there was melee. I was punched several times and surrounded by Storm players but I did not retaliate and tried to get away. I was immediately very sorry for confronting Justin, I should have left it for the referee to deal with. After everything calmed down Justin and I Shoke (sic.) hands and hugged and appologised (sic.) to each other. I also appologised (sic.) to the referee after the game."

12. The Player provided the following statement from Dave Stringer dated 15 February 2021:

"As far as I recall we were in possession and attacking close to the Storm posts, the referee was playing a penalty advantage from an earlier infringement close to the touch line. I believe we lost possession of the ball, the referee blew his whistle and indicated we had a penalty. The referee ran towards the touchline to award us a penalty. I tried to get the ball to take a quick penalty and was thrown to the ground by a storm player. Another storm player then threw the ball away. I was running to the mark where the penalty was and was shoved (in my back) to the ground. I believe it was Justin May that shoved me."

13. The Player provided the following statement from Mark Soto provided the following written statement

"I was sitting on the bench next to where Jovan sits behind the post, a little over 10 yards from where this all happened. I saw Dave Stringer walking away with the ball and had his back turned. Justin May was about 5 yards behind him with more than 3 and less than 7 other storm players standing behind him. Justin May then ran at Dave Stringer who still had his back turned and shoved him to the ground with considerable force. At which point Christian Debanks ran over, as Dave stringer was still on the ground, and clashed heads with Justin May. Would certainly not call it a head butt. At which point I believe Justin May, being the intelligent player that he is, realized he was naughty, took advantage of the situation and milked it like he was playing for Barcelona."

14. At the request of the Committee, May provided a short statement on 16 February 2021 in the following terms:

"I was in the process of retreating to the line to defend after a penalty had been blown up against us. I heard a noise coming from behind me and turned my head around, when doing that a Bucs players head made contact with mine near my cheek. No injuries were sustained. Once the dust had settled the player approached to apologise and said it wasn't intentional. I accepted the apology we hugged and had some beers after the game."

15. In his Hearing Form submitted to the Committee on 16 February 2021, the Player responded "No" to the question: "Does the Player accept that the act(s) of Foul Play which is the subject of the disciplinary hearing warranted the Player being Ordered Off?"

16. At the request of the Committee, Rhian Minty provided a short statement on 18 February 2021. The circumstances that gave rise to the Committee's request for a statement from Rhian Minty are explained in the following exchange of emails and the requested statement is contained in the final email. The entire email exchange was provided to the Player's representative on 19 February 2021.

From: [Chairman]
Sent: Thursday, 18 February 2021 1:19 PM
To: [Rhian Minty]
Subject: RE: Red Card Reports

Rhian,
As a matter of some urgency, please can you obtain for us the Video of the aftermath of the incident. In particular, we are interested to see how Justin May responds following the impact. **In that regard, at 00:52 of the video, you can see in a couple of frames that someone is seen approaching or standing over Justin. You can see a right arm/shoulder of someone wearing a shirt that appears to be orange and purple. We would like to identify that person and may ask them to provide a statement.** [emphasis added]
Kind regards
Matt

From: [Rhian Minty]
Date: 18 February 2021 at 6:25:06 PM GMT-5
To: [Chairman]
Subject: Fwd: Red Card - Request for Further Video

Good Evening All
Please see below the link to the full game and relevant timings below, kindly provided by Jovan.
The person in the red shirt, who went to check on Justin May, is me. [emphasis added]

Rhian

----- Forwarded message -----

From: [Director of Rugby]
Date: Thu, Feb 18, 2021, 18:11
Subject: Re: Red Card - Request for Further Video
To: [Rhian Minty]

Hi Rhian,
Please see below
<https://youtu.be/gPi9LxqZKk4>
47:51 – Ruck where penalty is given
48:05 – Justin May pushes David Stringer
48:10- Justin May Incident with Christian De Banks
49:43- Justin May Gets Up
Regards
Jovan

From: [Chairman]
Sent: Thu, Feb 18, 2021, 19:51
To: [Rhian Minty]
Subject: Re: Red Card - Request for Further Video

Rhian
Many thanks for that. **Since you are the person attending to Justin immediately after the incident. Can you please provide us with written statement detailing what you observed.** [emphasis added] I note from the full video link below that the incident occurred at 48.11 and that Justin gets back to his feet at 49.45.
Many thanks
Matt

From: [Rhian Minty]
Sent: Thursday, 18 February 2021 9:24 PM
To: [Chairman]
Subject: Re: Red Card - Request for Further Video

Good evening all,
Please see below my written statement, as requested:

I did not witness the incident(s) that led to the issuing of red and yellow cards in the Buccaneers v Storm game on February 13th 2021. At that time, I had left the field to enter the clubhouse, in order to get ice packs for an injured Buccaneers player that was resting in the tented area. This area is located behind the goal posts, under the score boards. As I returned to the field, there was a lot of commotion taking place at the top end of the field, but I did not know what this was a result of. I saw Justin May laying on the floor at the end of the field near to the goal posts. I do not know how long he had been laying there. I approached Justin, he had his eyes closed and was holding the side of his head/face. I knelt beside him, and I placed my hand on his chest and asked if he was ok. He jolted at my touch, and seemed confused. I asked him again if he was ok, and he attempted to sit up twice, but appeared dizzy. I asked Justin if he would like ice, which he took from me and he pressed the bag against the side of his head/face. I said that I was concerned that he may be concussed, but he assured me he was fine. He did, however, remain on the floor for a few more

moments. Despite my concerns, Justin got to his feet and rejoined his team. After this, I returned to the tented area, and was made aware that several players had been ordered off the pitch by the referee, David Sherwin.

Please do let me know if this suffices, or if I can provide anything further.

Kind regards

Rhian

17. On 22 February 2021, the day before the hearing, the Player's Representative provided the Committee with copies of:

- The disciplinary decision dated 22 January 2009 in relation to Thomas James, who was shown a red card in a Heineken Cup match for striking to the head with the head (*In re James*). A link to the video was also provided: <https://youtu.be/9rJrZdhtJQ4>. From the video, it is apparent that: a) the players were facing each other and the victim shoved James in the chest twice; b) as both players approached each other, James dropped his head to make contact between his forehead and the victim's nose; c) the level of force was modest; d) the victim overreacted to the incident. The disciplinary committee's decision records their views that: "[James] stepped towards the Gloucester number 2 inclined his head downwards and his forehead forwards. This caused the [James'] head to strike the head of Gloucester number 2. The Gloucester number 2 immediately fell to the ground holding his head. It did not appear to the Committee that the extent of the response of the Gloucester number 2 to the blow was proportionate to the relatively modest force of the blow which had been struck by the head of [James]". The disciplinary committee assessed that a low-end entry point of 4 weeks was appropriate under the relevant prevailing regulations and applied a 50% reduction for mitigation to bring the period of suspension down to 2 weeks.
- A news release dated 28 May 2018 in relation to Folau Fainga'a, who was shown a red card in a Super Rugby Cup match for striking to the head with the head (*In re Fainga'a*). A link to the video was also provided: <https://youtu.be/vGQUI8ooGpY>. From the video, it is apparent that: a) the players were standing face to face; b) because Fainga'a was the shorter player, when he dropped his head forward into contact, his forehead made contact with the victim's nose; c) the level of force was minimal; d) there was no reaction from the victim and no injury. The Foul Play Review Committee assessed that a low-end entry point of 4 weeks was appropriate under the relevant prevailing regulations and applied a 50% reduction for mitigation. Further, the committee determined that "2 weeks was a wholly disproportionate sanction for an offence that only related to comparatively minor contact" and the sanction was further reduced by an extra week, to a suspension of just 1 week.

18. The Player's Representative's covering email stated that:

"The low-end entry point for striking with the head at the time of both of these decisions was four weeks, whereas it is now six weeks. So the length of sanction in absolute terms is not directly comparable, but we say the decisions are still useful as examples of the approach to determining the entry point and assessment of seriousness etc."

19. By email on 23 February 2021, just over 4 hours before the hearing, the Committee provided the Player's Representative with the copies of the following decisions, which were selected on the basis that they were the five most recent decisions available on the RFU Website from the 2019-2020 season:

- The RFU Short Judgment Form decision dated 16 October 2019 in relation to Joshua Ibuanokpe, who was

cited for striking with the head to the head (*In re Ibuanokpe*). Ibuanokpe made head-to-head contact when entering a ruck. He gave evidence that he did not intend to make head-to-head contact and was not aware that he had done so until after the match and on reviewing the match footage on the Monday after the game. The Panel accepted Ibuanokpe's explanation of the incident which was that he was keen to try and destabilise the ruck and made a number of efforts to do so. In doing so, his enthusiasm caused him to enter the ruck head-first and make direct contact with an opponent's head. The contact was not deliberate but was reckless. The Panel selected the mid-range entry point of 10 weeks on the basis that: *"The contact was to CR's head and, as such, the mandatory minimum entry point is mid-range. There were no features present which would merit a top-end entry point."* The Panel determined that *"The Player was honest and straightforward and conducted himself impeccably at the hearing. Saracens were also entirely straightforward and helpful in their representations on his behalf."* The Panel applied a 50% reduction for mitigation bringing the suspension down to 5 weeks.

- The RFU Disciplinary Panel decision dated 2 November 2019 in relation to Sean Stapleton, who was shown a red card for striking with the head to the head (*In re Stapleton*). The Panel's description of the video evidence was that the victim "squared up" to Stapleton and that *"As they squared up [Stapleton] made a movement with his head towards and into the head of [the victim], who immediately pulled his head away"*. The victim then retaliated by throwing a punch at the head of Stapleton and both players were ordered off. The Referee made it clear that, on a scale of low, medium and high, it was a low impact headbutt, which was accepted by the Panel. Stapleton did not accept that he had headbutted the victim. He accepted that their heads had come together, but with no force. He did not accept that he had brought his head back and then advanced in an aggressive manner. In accepting there was a coming together or heads he did not accept that it was a strike as such. At paragraph 26, the Panel stated: *"As has been said before any contact by head to head made in circumstances where there is no rugby reason for it is always likely to cross the red card threshold. This is because the head is vulnerable and players should not lean forward into the heads of other players when they have a disagreement."* Having regard Regulation 19 – Discipline (Appendix 2), which provided that *"any act of foul play which results in contact with the head and/or neck shall result in at least a mid-range sanction"*, the Panel selected the mid-range entry point of 10 weeks. The Player contested the matter and so was not entitled to the maximum reduction by way of mitigation. The Panel reduced the sanction to a suspension of 6 weeks.
- The RFU Short Judgment Form decision dated 22 November 2019 in relation to Harry Jackson, who was shown a red card for striking with the head to the head (*In re Jackson*). Jackson gave evidence that he reacted to being *"held down and shoved"* by pulling the victim towards him forcefully. He said: *"I honestly didn't intended (sic.) to head butt him but as soon as our heads connected I knew I was going to get sent off..."* The Panel found that: *"Whilst there was head to head contact initiated by the Player after some grabbing and shoving, it was not a deliberate headbutt and it was not particularly forceful, there being no need for any medical attention."* The Panel concluded that Jackson did not intend to headbutt his victim but the act of pulling the victim towards him was reckless. The Panel selected the mid-range entry point of 10 weeks on the basis that: *"Given the head to head contact, the mandatory mid-range minimum entry point applies. There was nothing to cause the Panel to consider that this merited a top-end entry point."* Jackson immediately admitted culpability and accepted the charge at the earliest occasion. The Panel applied a 50% reduction for mitigation bringing the suspension down to 5 weeks.
- The RFU Short Judgment Form decision dated 2 December 2019 in relation to George Martin, who was shown a red card for striking with the head to the head (*re Martin*). The decision, which is light on detail, records that the Referee reported that he saw Martin *"make contact with a headbutt to the head of the [victim], which caused immediate verbal reaction from those around, though fortunately no further foul play"*. There was no injury and no medical treatment was required. In his written statement Martin stated:

"I am writing in relation to my sending off for head butting in the match between Leicester Lions and Sutton and Epsom on the 9th November. I really don't know what came over me it was one of my first games for a men's team and I reacted in a way that I've never done before, I am really ashamed of my behaviour. I apologized to my opponent and the referee immediately after the game and was glad to learn that I had not seriously hurt my opponent. This violence is extremely uncharacteristic of me, I have been playing rugby since I was 5 and have never done anything like this in those 13 years. I know what I did was wrong. I let myself down and my team and I will make sure it doesn't happen again." to the prevailing RFU Regulation 19, which provided that "any act of foul play which results in contact with the head and/or neck shall result in at least a mid-range sanction", the Panel assessed that this was a mid-range entry point, which at that time was 10 weeks. The Panel applied a 50% reduction for mitigation bringing the suspension down to 5 weeks.

- The RFU Short Judgment Form decision dated 6 April 2020 in relation to Jack Boland, who was cited for striking with the head to the head (*In re Boland*). Boland headbutted the victim in the face whilst the victim was trying to separate Boland and the victim's teammate. Boland gave evidence that he was trying to pull the victim's teammate towards him to "rub his eyebrow with his head". He described himself as "jumping up and down like an idiot". He accepted he behaved stupidly and that there was no excuse for it. He stated that he had not intended to cause any injury and he had not intended to make contact with the head of victim at any stage. The summary of Boland's evidence also records that: "When questioned by the panel members as to what degree of control he felt he had during this incident Mr Boland replied, "Not enough. I was jumping around like a boxer. If I had been in control then it wouldn't have been reckless (which he accepted it had been). Despite this, he went on to say that his actions were not violent or an aggressive loss of control." Mr Boland accepted that the victim would not have seen the blow coming and could not have protected himself. The Panel found that: "Contrary to his account we found that this was an intentional and deliberate act in heading butting (sic.) [the victim] to the jaw. We find that Mr Boland undoubtedly knew that [the victim's] head was vulnerable and exposed and, in anger, took the opportunity to strike him with his head." The victim sustained potentially life changing injuries, namely a broken jaw (which required emergency surgery, the insertion of screws, wires and a metal plate), nerve damage to the chin area, loss of feeling to the bottom lip and jaw and potential root canal damage. The Panel selected a top-end entry point of 36 weeks, which was reduced by 14 weeks on account of mitigating factors resulting in a suspension of 22 weeks.

20. The covering email from the Chairman to the Player's Representative enclosing the above decisions stated as follows:

"Thank you for sending us the 2 decisions that you intend to refer to. Please see attached 5 RFU decisions from the 2019-2020 season that the DC has also reviewed.

Please also see below the video links to the recent [incidents involving] Peter O'Mahoney and Zander Ferguson, both of which were for striking to the head with the arm or shoulder as opposed to striking with the head. As I am sure you are aware, the entry point for both was 6 weeks (mandatory mid-range for those offences) and they received 3 and 4 week suspensions respectively.

POM

<https://www.youtube.com/watch?v=CreJDCJWnJs>

ZF

https://www.youtube.com/watch?v=00VUhTM_T2I

We are providing them so that you have the opportunity to consider them and make any submissions that you consider appropriate. "

DECISION

21. The Charge Sheet charged the Player with breaches of Laws 9.11 and 9.12 of the Laws of the Game, which reflected the Referee's report.

"9.11 Players must not do anything that is reckless or dangerous to others.

9.12 A player must not physically or verbally abuse anyone. Physical abuse includes, but is not limited to, biting, punching, contact with the eye or eye area, striking with any part of the arm (including stiff-arm tackles), shoulder, head or knee(s), stamping, trampling, tripping or kicking "

22. The specified Particulars of Breach were as follows:

"It is alleged that the Player headbutted an opposing team player, Justin May, with sufficient force to knock him to the ground."

23. At the start of the Hearing, the Committee confirmed that all of the written statements detailed above had been read and considered in advance of the hearing but that the Player and his representative should feel free to refer to them during the Hearing as appropriate.

24. When the Committee confirmed that the Player's Hearing Form stated that the Player did not accept that he has committed an act of Foul Play that warranted him being ordered off (**Red Card Test**), the Player's Representative sought to clarify the position. He explained that the "*short answer*" was that the Player did not intend to "*contest the red card at this hearing*". He went on to explain that the Player is "*not an idiot*" and he "*wasn't surprised that he got a red card*", but his position was that the contact was accidental and he had intended to ask the Committee to determine whether the red card test was met in light of what he said his intentions were. The Player's Representative then explained that he had since had a further opportunity to speak with the Player and explained, by reference to one of the decisions provided before the hearing (presumably, *Re Stapleton* at para.26 referred to above), that any time there is head-to-head contact for a non-rugby reason it is likely that the Red Card Test will be met.

25. The Player's Representative then explained that the other reason that the Player intended to contest allegation was that the Particulars of Breach as set out in the Charge Sheet were not accepted by the Player.

26. The Player's Representative then said: "*I think we can we cut through this by saying he is not here trying to say that there is no way he should have got a red card.*"

27. The Player then addressed the Committee directly and referenced his conversation with his Representative about "*what the rules say about heads even touching*". He went on to say: "*If that is the rule, then I accept that, but my intention in my mind, no way is that a red, but if that's the letter of the law, yes our heads were touching*".

28. The Chairman then asked the Player directly whether he now accepted that he had committed an act of Foul Play that warranted him being ordered off and the Player confirmed that he did.

29. The Committee considers that this was sensible concession for the Player to make, albeit that it was not made at the earliest opportunity.

30. For reasons that are addressed later in this decision, the Committee also considers it important to note the limited basis upon the Player accepted that the Red Card Test was met. The admission appeared to be based solely on the undoubtedly correct advice of the Player's Representative that any contact by head-to-head made in circumstances where there is no rugby reason for it is always likely to cross the red card threshold. The Player did not accept that he headbutted May and his admission, and the explanation for it, made little reference to the actual circumstances of the offence.

31. In light of the Player's admission that he breached Law 9.12 and that the Red Card Test was met, the primary issue for the hearing was the issue the appropriate sanction to be applied in the circumstances. However, in light of the limited nature of the Player's admission, it was necessary for the Committee to determine the factual circumstances surrounding the breach, including the issue of whether the act of Foul Play was intentional.
32. Further, in light of the Player's admission, the Committee considers that it is not appropriate to consider the breach of Law 9.11 as a separate offence or an offence requiring separate sanction. A breach of Law 9.12 in these circumstances and will also amount to a breach of Law 9.11. However, the Committee considers that the correct approach, in these circumstances, is to take into account the extent to which the act of Foul Play was "reckless or dangerous" as required when considering the appropriate sanction for breach of Law 9.12.
33. The video footage was played several times at the start of the Hearing. The video footage is from a single camera positioned in line with the halfway line approximately 45 metres from the incident. The footage is of good quality and was available to be viewed at both normal speed and in slow motion.
34. The Committee considers that the following can be observed on the video footage (<https://youtu.be/wDIzy2aYFxE>):
- May shoved Stringer forcefully in the back knocking him to the floor and then jogged away.
 - When May pushes Stringer, the Player is approximately 7 or 8 metres away from them.
 - Immediately after May pushes Stringer, the Player begins to run at speed towards May who is jogging away from him.
 - Because of the difference in speed, de Banks has covered approximately 15 metres the time he reaches May.
 - de Banks is approaching May from behind and he would not be visible to May.
 - Moments (less than a second) before the impact, May turns his head and shoulders to the left to look towards de Banks who is approaching him from behind.
 - There is no discernible reduction in de Banks speed prior to the impact.
 - May might have slowed slightly as he turned his head and shoulders but he did not stop.
 - De Banks (playing in number 5) is noticeably taller and bigger than May (a scrum half)
 - At the moment of impact:
 - de Banks has inclined his head downwards and his forehead forwards;
 - de Banks' forehead makes contact with the left side of May's head in the vicinity of his cheek bone;
 - May's shoulders are turned so that they appear to be generally aligned with de Banks' direction of travel with the result that de Banks' chest makes contact with May's left shoulder simultaneously with the head-to head contact; and
 - De Banks' arms are down and not used in any way to control the impact.
 - The force of the impact was significant, due in part the difference in speed of the two players, and May is knocked to the floor by the impact.
 - It is not possible to determine how much of the force of the impact was transferred through the head-to-head contact and how much was transferred through the chest-to-shoulder contact.
 - May immediately grabs the left side of his head with his left hand.
 - With May on the floor holding his head, de Banks turns and walks away before being surrounded by other players.
 - There is nothing visible in de Banks' actions or body language immediately after impact that suggests any concern for May's well-being or gives any indication that the impact as described above was unintentional or a surprise outcome.
 - May remains on the floor for approximately 1min. 30 secs. before returning to his feet.
35. After the video footage was shown, and the sanction process was explained to the Player and his representative. Thereafter, Player's Representative was invited to make any submissions that he wished to make.
36. Player's Representative accepted that the video footage "*doesn't look good*" but he said there were a few things he wanted to say about it. The first submission was that the Player's written statement (see paragraph 11 above), when compared to the video footage, was "*remarkably accurate*" considering that it was prepared before the

video footage was available and his statement *"has it all absolutely spot on"*. The Player's Representative sought to contrast this with the statements from the Referee and Assistant Referee, which he submitted were less accurate. The Player's Representative did not explain how, if this submission were accepted, it would assist the Player's case, but the Committee presumes it was a point on credibility.

37. In any event, the Committee considers that the submission was not well founded. The Player's written statement deals with the alleged headbutt in a single sentence as follows: *"I ran up to Justin to get "up in his face" to tell him how "out of order" he was but he stopped moving away and my momentum made us clash heads."* Paragraph 22 describes what the Committee considers can be observed on the video footage and the Committee does not consider the Player's description to be *"remarkably accurate"*.
38. The Player's Representative's criticism of the Referee's report (see paragraph 9 above) was that it did not mention Stringer getting tackled to the ground and then May pushing Stringer. The Committee does not consider these to be important details relating to the act of Foul Play by the Player such that it was necessary to include them in a short statement. The Committee considers that the Referee's summary description of the acts of Foul Play that occurred between the ball being thrown away and the headbutt (as detailed in paragraph 4 above) as a *"fracas"* to be adequate in the circumstances.
39. The Player's Representative's criticism of the Assistant Referee's report (see paragraph 10 above) was that it was *"even less accurate"* because, in addition to not detailing the events that took place prior to the headbutt, the Assistant Referee states that Player headbutted the back of May's head. Regarding the failure to detail the events leading up to the headbutt, again, the Committee considers that these were not important details. Regarding the area of contact on May's head, May only turned his head moments before the impact. It is not surprising that the Assistant Referee did not observe this in real time. In any event, nothing turns on it in circumstances where the video footage shows the incident so clearly.
40. The second submission in relation to the video was that as soon as there was contact, the Player recoiled backwards. One of the Committee members, Mr Austin-Smith, interjected immediately and said *"I am not sure I agree with that, if you look at the scoreboard in the background and the point of contact and look where they end up"*. The Player attempted to clarify the submission and said that the second he felt the contact, he stopped and did not follow through. The other Committee member, Mr Kennedy, followed up: *"That looks like the contact stops because Justin falls"*. The Player's Representative, very sensibly, moved on from the point, which the Committee considers was not a good one for the reasons stated at the time.
41. The Player's Representative then highlighted the contact between the Player's chest and May's shoulder. He submitted that *"if he has shoved him over at all, it is with the force of his body not the force of butting him to the ground, he's a much bigger guy charging at him"*.
42. It was further submitted that the video footage was somewhat misleading in that it did not clearly show that May and the Player *"not parallel to each other"* and were not on the *"same plane"*. It was submitted that this was an important point that helped explain how the contact occurred and it was suggested that the contact occurred because May turned towards the Player and into his path.
43. The Player gave further evidence, consistent with his written statement, that he absolutely did not intend to headbutt May. Both the Player and his representative repeated the phrase *"get up in his face"* that was used in the Player's written statement to describe what he intended. When asked to explain what he meant by that phrase, the Player said that he wanted to let May know that his actions were not acceptable and that he intended for their heads to *"maybe touch but not clash"* and to *"swear but not aggressively so"*.
44. May attended the hearing at the Committee's request. It was explained to May, and to the Player and his representative, that May had been asked to attend because: a) his own statement was very short, particularly in relation to the effect of the impact on him; b) the video footage, to use the Player's Representative's words, *"doesn't look good"*; c) May remained on the ground for 1 min. 30 secs. after the impact; d) Mark Soto's statement, submitted on behalf of the player, stated that May *"took advantage of the situation and milked it like he was playing for Barcelona"*; and e) Rhian Minty's statement stated that: *"his eyes closed and was holding the side of his head/face. I knelt beside him, and I placed my hand on his chest and asked if he was ok. He jolted at*

my touch, and seemed confused. I asked him again if he was ok, and he attempted to sit up twice, but appeared dizzy."

45. May was asked to explain, in his own words, and having regard to the statements of Mark Soto and Rhian Minty, how he felt about the impact. He explained that: a) he was "*shocked*" by the contact and by the area of the contact; and b) he went to the ground and held his face because he didn't really know if there was blood or "*how bad it was*". He recalled Rhian Minty expressing her concern that he had a head injury and might be concussed and telling her that he was "*fine*". He said that Rhian Minty had encouraged him to stay down but he had assured her that he was fine.
46. The Player's Representative expressed his gratitude to May for his statement and evidence and for confirming his that he was "shocked" as a result of the impact. He acknowledged that both players had apologised to each other after the match and shaken hands.
47. The Committee found May to be an honest and straightforward witness. He did not appear to the Committee to overstate his evidence and, if anything, appeared somewhat 'sheepish' and keen to downplay an incident that was undoubtedly triggered by his own inappropriate actions. To his credit, at the conclusion of the Hearing, May fully acknowledged his contribution to the incident and apologised for his actions.
48. For the reasons set out in paragraph 58 below, with the exception of the conclusion expressed at the end of paragraph 56, paragraphs 49 to 61 below are not strictly relevant to this decision, but they are included for the reasons explained in paragraphs 58 to 61.
49. After May gave his evidence, the Player's Representative said that he wanted to say something about Rhian Minty's statement. He went to say that "*she didn't see the incident*", which the Committee notes was expressly stated in the first words of her statement, and that "*she is not medically qualified*"¹. He said: "*I was a little bit surprised, and she was asked to put in her statement, so what was the thinking behind her being asked to put in a statement?*" and suggested that there were numerous other people on the touchline who could have been asked to put in a statement.
50. This was a surprising question to ask of the Committee in circumstances where the Player's Representative was provided with the full exchange of emails set out in paragraph 16 above 4 days before the Hearing. Nevertheless, the Committee went through the thought process that is self-evident from the email exchange again and further explained that, given: a) the potential seriousness of the incident as shown in the video; b) that May remained on the ground for 1 min. 30 secs. after the impact; c) Mark Soto's statement that May "*took advantage of the situation and milked it like he was playing for Barcelona*"; and d) May's simple statement that he suffered no injury; the Committee considered it appropriate to request a statement from the person seen kneeling over May whilst he was on the ground.
51. Having received this explanation, the Player's Representative continued: "*The reason I'm asking is because I'm... there has been some... obviously fractious exchanges between members of the Buccs. and the Disciplinary Committee and I'm coming in and I'm trying to... start a new sheet and there's people who think that the Disciplinary Committee has got it in for the Buccs. What I see is... the perception is, and I'm not suggesting this, the perception is that you took evidence, took statements from the Referees, took statements from the players, took statements from Justin and it doesn't look like it's being made a serious enough offence so [you've] got to find some one who is actually a disciplinary office... disciplinary liaison officer to put in evidence to bolster the seriousness of it. That's what it looks like. "*
52. Because it was not entirely clear from the way in which the submission was expressed, the Committee asked directly: "*Is that what you are suggesting has happened?*" to which the Player's Representative replied: "*I'm not suggesting I'm... there's a perception of it.*"
53. The Committee explained that this "perception" could not be further from the truth and that the Committee does not care who appears in front of it or which team they play for. The members of the Committee, having

¹ The Committee was informed by Rhian Minty after the hearing she has in fact received some medical or first aid training.

retired from playing in Cayman for many years, give up their time for the good of CRFU: the Player committed an act of Foul Play and received a red card and so that is how everyone came to be in this position.

54. To his credit, the Player recognised very quickly that the submission that was ostensibly being made on his behalf was not relevant to or helpful for his case and he encouraged his representative to get back to the issues that were relevant to his case. Nevertheless, the Player's Representative went on to refer to an appeal recently filed by the Buccaneers against a previous decision of the Committee and expressed his view that *"it was not a good look"*.
55. The Committee explained to the Player's Representative that, if he considered that Rhian Minty's statement was inaccurate, the Committee would allow him to ask questions of her and/or make submissions related to the Player's case, and that would be a better use of his time than suggesting that the Buccaneers are *"hacked off"* with the Committee. It was explained to him that if he wanted to put it to Ms Minty that she was mistaken then he should do so, but he couldn't make the submission that her evidence was designed to bolster the evidence against the Player unless he was willing to take the point head on.
56. In response, the Player's Representative repeated his earlier points that *"she didn't see the incident"*, which as the Committee has already noted was expressly stated in the first words of her statement, and that *"she is not medically qualified"*. He also added that *"if she thought he was concussed, then she shouldn't have let him play on"*. The Committee does not consider that it was Ms Minty's responsibility to determine whether or not the player should play on in the circumstances and does not consider that the points made by the Player's Representative have any relevance to the weight to be attached to Ms Minty's Statement, which the Committee fully accepts as an accurate account of what she witnessed.
57. At the conclusion of the hearing, the Player's Representative apologised for raising the issues he had raised in relation the statement of Rhian Minty. He explained that he was not making any allegation against the Committee or Ms Minty and that his submissions *"came out wrong"*. He said that he should not have raised these issues in the Hearing. The Committee accepted his apology.
58. Notwithstanding the Player's Representative's apology, and the Committee's acceptance of that apology, the Committee considered it appropriate to address the issues raised in the detail provided in the preceding paragraphs for a number of reasons. Firstly, the Committee wishes to make it clear that the fact that the issues were raised has had no bearing whatsoever on the Committee's decision in relation to this matter.
59. Secondly, it is assumed that this decision will come to the attention of the Buccaneers players and management and, if the Player's Representative is correct that there is a perception amongst some of the Buccaneers that the members of the Committee have *"got it in"* for the Buccaneers then the Committee wishes to make it perfectly clear that this perception is wrong.
60. Thirdly, to suggest that any member of the Committee, or indeed any other volunteer, who gives up their time for the good of CRFU and its players is motivated by some personal agenda or bias against a person or team is a very serious matter. The core values of Rugby: teamwork, respect, enjoyment, discipline, and sportsmanship, are what makes the game of Rugby special for those that enjoy the environment and culture they create. It is inconsistent with those values for any person or player to suggest or perpetuate the idea that any volunteer is acting other than in accordance with those values without cogent evidence to support such a suggestion. Such suggestions or ideas have the potential to cause significant damage to CRFU and the game of Rugby if they are propagated and those who do understand the values of Rugby should do all that they can to quash them at the earliest opportunity.
61. Finally, the preamble to Regulation 18 provides that: *"Adherence to the Laws of the Game, Regulations Relating to the Game, the spirit of fair play and the integrity of the Game remains fundamental to the proper administration and preservation of the Game in the modern era. Accordingly, a general obligation arises on all stakeholders to uphold the integrity of the Game and address Misconduct matters within their jurisdictions to ensure that discipline, control, honesty and mutual respect which are fundamental to the integrity of the Game are preserved."* And, pursuant to Regulation 18.4: *"Whilst it is not possible to provide a definitive and exhaustive list of the types of conduct, behaviour, statements or practices that may amount to Misconduct under these*

Regulations, by way of illustration, each of the following types of conduct, behaviour, statements or practices however or wheresoever undertaken are examples of and constitute Misconduct:... (f) comments and/or conduct in connection with current and/or anticipated disciplinary proceedings and/or Match officiating (or any aspect thereof), which may be prejudicial to or adversely impact such proceedings and/or which are prejudicial to the interests of the Game and/or any Person and/or any disciplinary personnel (including Disciplinary Tribunals and Citing Commissioners)". Accordingly, any person or player who engages in conduct of the sort described in Regulation 18.4(f) is likely to face disciplinary proceedings for misconduct.

62. Returning to the Player's evidence and the submissions made on his behalf, it is regrettable that, throughout the Hearing, the Player never seemed to come to terms with the seriousness of his actions that can clearly be observed in the video footage (as described above at paragraph 34). The Player's persistent refusal to accept that the head-to-head contact shown in the video footage is a clear and obvious headbutt, and his repeated attempts to try and explain away or minimise his actions as the accidental consequence of May turning into his path, undermined his credibility.
63. The Committee does not accept the Player's explanation for the contact that occurred or his evidence in relation to his intentions. The Committee finds that, on the balance of probabilities, the Player deliberately and intentionally headbutted May and that his forehead impacted the side of May's head, in the vicinity of his cheek bone, with some force. The Committee considers that the video footage clearly shows that, moments before the impact, the Player inclined his head downwards and his forehead forwards. In circumstances where the Player was approaching May from behind at considerable speed with his arms down, the only plausible explanation for that movement of the Player's head is that, at that moment, the Player's intention was to ensure forceful contact between his forehead and May's head.
64. The Committee does not accept that this was an accidental clash of heads that was caused by a combination of May slowing and turning into the path of the Player and the Player's momentum or that Player intended for their heads to "*maybe touch but not clash*". If the Player had not intended the contact that occurred he would not have dropped his head forwards. On the contrary, the Committee considers it likely that, given the simultaneous contact between the Player's chest and May's shoulder, if the Player had not dropped his head forwards, or if he had moved his head backwards, the head-to-head contact might well have been avoided.
65. The Player's evidence that his intention was to "*get up in his face*" is simply not credible. It may be that was his intention when he initially set off in pursuit of May, but the Committee finds that it was not his intention immediately prior to the impact. The Committee appreciates what that sort of situation that the Player is attempting to describe looks like looks like and it is seen from time to time on a Rugby pitch. It usually occurs between two players who are standing facing each other or "*squaring up*" to each other and on occasion, one player might lose his discipline and drop his head to initiate head-to-head contact, as occurred in *In re Fainqa'a*, *In re James* and *In re Stapleton*. Even when such a loss of control occurs, the Player who initiates the contact has some ability to control the force of the contact. Because the distance between the Players is limited and Players are stationary or near moving slowly, the force with which the Player drops his head forwards is likely to be the primary determining factor when it comes to the force of the impact. Further, the player who does not initiate the contact is likely to have some opportunity to see the contact coming and make some effort to avoid it moving his head back away from the contact. But that was not the situation in this case. The Player ran some 15 metres and approached May at speed from behind.
66. In order to "*get up in the face*" of May the Player would need May to turn and face him, or the Player would need to get into a position to approach May face-to-face. If the Player's intentions were what he says they were then one might expect to see him reducing speed significantly as he approached May and adjusting his approach so as to create a face-to-face situation. However, there is no discernible reduction in the Player's speed or adjustment to his approach prior to the impact. One might also expect to see the Player use his arms to control the impact or move his head in an attempt avoid the contact, but there is no discernible attempt to do so. If the head-to-head contact was not intended, one might also expect the Player to have immediately reacted to it by remaining at the scene and expressing some concern for May who was on the floor holding his head. Instead, the Player simply turns and walks away from the scene. Taken as whole, and having regard to these considerations, the actions of the Player as shown in the video create the impression that the Player intended to headbutt May from behind with considerable force and that he turned and walked away having achieved his intentions.

67. The Committee does not accept that May turning moments before the impact, and perhaps slowing slightly as he did so, to have been the cause of the head-to-head contact. However, the Committee considers that it was very fortunate that May turned when he did. The Committee considers that, given the Player's clear intention to headbutt May, if May had not turned when he did, the Committee considers it likely that the contact would have occurred between the Player's forehead and the back of May's head and that the force of the head-to-head impact would have been much greater. As a result of May turning his head and shoulders, the Player's chest came into contact with May's left shoulder at the same time that there was head-to-head contact between them. The Committee finds that this significantly reduced the force of the head-to-head contact and the force that was applied by the Player's chest to May's shoulder contributed significantly to the overall impact which knocked May to the ground. The Committee considers that it was extremely fortunate for all concerned that May turned his head and shoulders when he did otherwise there was a real possibility of serious injury.

68. Beyond what is said in the preceding paragraph, it is difficult for the Committee to accurately assess the how the overall force of the impact was applied as between the head-to-head contact and the chest to shoulder contact. However, the Committee does not accept the Player's description of the head-to-head impact as minimal. For the reasons explained above, the Committee finds the evidence of May to be more persuasive than that of the Player. The Committee accepts May's evidence that he was shocked by the impact and that he immediately put his hands to his face at a time when he was not sure if there would be blood or "*how bad it was*". There would no reason for the Player to immediately think that there might be blood or to be unsure as to how bad the injuries to his face might be if the force applied to his face was only minimal. Having regard to the totality of the evidence, and on the balance of probabilities, the Committee finds that overall force of the impact was severe and that the force applied through the head-to-head contact was moderate, not minimal.

69. Having made the factual findings detailed above, and in light of the Player's admission, it is necessary for the Committee to consider what further sanction, if any, should be imposed. The Committee considers that it is appropriate to impose further sanction.

70. When imposing sanctions, the Committee must apply World Rugby's sanctions for Foul Play set out in Appendix 1 (save where Appendix 3 applies) and do so in accordance with Regulations 17.17 to 17.21. The Committee is required to undertake an assessment of the seriousness of the Player's conduct that constitutes the offending and categorise that conduct as being at the low end, mid-range or top-end of the scale of seriousness in order to identify the appropriate entry point for consideration of a particular incident(s) of Foul Play where such incident(s) is expressly covered in Appendix 1 (Reg. 17.18.1).

71. Appendix 1 prescribes the following entry points for a breach of Law 9.12 involving striking with the head:

Low end: 6 weeks Mid-range: 10 weeks Top end: 16+ weeks Max: 52 weeks

72. Appendix 1 also contains the following note: "*Any act of foul play which results in contact with the head and/or the neck shall result in at least a mid-range sanction.*" However, the footnote to that note makes it clear the note does not apply to the following Laws whose low-end entry points already take into account head contact being a potential feature or consequence of such breach reaching the red-card threshold: 9.11, 9.12 (biting, contact with eye(s)/eye area, striking with head and tripping), 9.18 and 9.27 (hair pulling) (**Appendix 1 Footnote**).

73. The features that the Committee considers to be relevant to the assessment of seriousness are as follows:

- Assessment of Intent – R 17.18.1(a)-(b)

As explained above, the Committee has found that the Player intended to headbutt May.

- Gravity and Nature of the Player's actions – R 17.18.1(c)-(d)

The gravity and nature of the Player's actions were serious. Any headbutt is serious, but the Player's actions in this case were particularly serious because of the high level of risk and danger associated with a headbutt

delivered by a Player moving at high speed towards his victim from behind. The Player was a much bigger man moving at speed and with significant momentum. He made no discernible attempt to slow himself before impact and, with his arms down, he had no way to control the very high impact force that he would deliver to the head of his victim. It was fortunate for all concerned that the Player turned just in time for the chest-to-shoulder contact to substantially reduce the force of the head-to-head contact, which the Committee has found to have been moderate as a result.

- Existence of provocation – R 17.18.1(e)

The Committee does not regard the act of Foul Play by May against Stringer as provocation that would lower the assessment of seriousness in this case.

- Whether player retaliated – R 17.18.1(f)

The Player was retaliating in response to May pushing Stringer. Retaliating is, of itself, a breach of Law 9.21 of the Laws of the Game.

- Self-defence – R 17.18.1(g)

Not Applicable.

- Effect on victim – R 17.18.1(h)

May described himself as "*shocked*" following the impact. He immediately put his hand to head and was unsure as to the extent of his injury, if any. Shortly thereafter he confirmed to Rhian Minty that he was "*fine*". He has subsequently confirmed that no injuries were sustained.

- Effect on match – R 17.18.1(i)

With both the Player and Victory being ordered off following the incident, and May playing on, there was no relevant discernible effect on the match.

- Vulnerability of victim – R 17.18.1(j)

May was vulnerable because he was jogging away from the Player who was approaching at speed from behind. May could not have seen the Player approaching and could not take any action to defend himself. May turned his head at the last minute when he heard the Player approaching but had no time to take any defensive action.

- Level of participation/premeditation – R 17.18.1(k)

The Player was the sole participant in the relevant act of Foul Play. The Player ran approximately 15 metres in order to put himself in a position to commit the act of Foul Play and the Committee has found that he had formed the intention to headbutt May before the impact occurred. The Committee considers, on the balance of probabilities, that the Player intended to assault May from the point at which he set off in pursuit of him.

- Conduct completed/attempted – R 17.18.1(l)

The conduct was completed.

- Other features of player's conduct – R 17.18.1(m)

None.

74. The Committee has also considered the cases referred to in paragraphs 17, 19 and 20 as part of its seriousness assessment. "*Strictly speaking there is no doctrine of stare decisis in rugby.*" (*In re Appeal of Kepu*, Autumn

Internationals 2017, Jan 17, 2018 at p. 15 and *In re Appeal of Federatia Romana de Rugby & Federacion Espanola de Rugby*, World Cup Qualifiers 2018, at p. 51), and matters should be considered from the viewpoint of “a common-sense rugby person” (*In re Appeal of Kepu*, supra, at p. 14). Further, such cases are illustrative only and “Each case is different. The individual circumstances of each player coming before a [Judicial Officer] need to be examined having regard to the factors that are required to be taken into consideration...” (*In re Appeal of Vaiomanu*, IRB Pacific Rugby Cup, March 21, 2014, at p. 15).

75. As a general point, included here to assist those who appear before the Committee in the future, if a player or player's representative undertakes research to identify previous disciplinary decisions that might be of assistance to the disciplinary committee and the player in course of any disciplinary proceedings, it would be helpful if all relevant decisions that are identified in the course of their research are provided to the Committee, rather than a 'cherry-picked' selection of the cases that are selected on the basis that they offer the best support for the player's case. Whilst the natural inclination to adopt the latter approach is entirely understandable, it is not particularly helpful to the Committee and, in some circumstances, to the player. The current disciplinary procedures in Cayman do not provide for a representative of CRFU to present a disciplinary case on its behalf. Therefore, the Committee will generally undertake such research as it considers appropriate in the circumstances before any hearing. Accordingly, it is not realistic for a player or player's representative to expect that the Committee will only consider a 'cherry-picked' selection of cases without conducting its own research to identify other decisions that might be relevant or provide an alternative perspective.
76. From a practical perspective, it would assist the Committee greatly, and reduce the time involved with dealing with disciplinary proceedings, if players and their representatives who are undertaking research in any event could provide the Committee with all relevant decisions identified during the course of their research and, if possible, briefly explain the scope of the research undertaken in the covering email. It is also likely to be of considerable assistance to players and their representatives to identify and consider decisions that are not necessarily helpful to their case. Of course, having provided all relevant decisions, the player or player's representative can explain which of the decisions provided they consider to be most relevant and why.
77. It is also important for the Committee, and any player and or player's representative appearing before the Committee for that matter, to bear in mind, when looking to previous disciplinary decisions for guidance, that:
 - No two cases are the same and every decision will be fact specific.
 - It is unusual for a disciplinary decisions to provide as a high level of much detail in relation to either the circumstances of the case or the reasoning behind the decision. In this regard this decision is highly unusual.
 - If available, good quality video footage of an incident of Foul Play is often the best evidence available to a disciplinary committee or panel, but the video footage on an incident described in a disciplinary decision is often not readily available.
 - The disciplinary regulations and/or that manner in which they are applied can evolve over time. For this reason, older disciplinary decisions may be of reduced relevance to current disciplinary proceedings. In this case, this was expressly acknowledged by the Player's Representative in his email referred to above at paragraph 18.
78. One area where the Laws and Regulations, and the manner in which they are applied, has changed materially in recent years is in relation to contact with the head. The reasons for these changes have been well publicised. The changes in recent years have included the increase in entry points for sanction for striking with the head and the introduction of corresponding Appendix 1 Footnote, which makes it clear that the mandatory mid- range starting point for foul play resulting in contact with the head does not apply to sanctions for striking with the head, which already have a higher starting point to reflect the fact that the offence is, by its nature, likely to involve contact with the head.
79. This general change in focus has also been reflected and implemented through various directives and decision making frameworks designed to assist Referees to take a more robust and consistent approach to Foul Play involving head contact. The change of approach is also reflected in more recent disciplinary decisions. The recent disciplinary decisions in relation Peter O-Mahoney and Zander Ferguson from this years Six Nation Competition, referred to above at paragraph 20, are good examples. The reason why both of these decisions were considered controversial by some is that, in all likelihood, they would not have resulted in such suspensions only a few years

ago.

80. The Committee is cognisant of the core principles specified in Regulation 17.3 and the Principle of Universality and must have regard to the current modern attitude towards head contact when exercising its discretion and performing its functions.
81. The Player's Representative submitted that the appropriate entry point, having considered the features prescribed by regulation 17.18.1 is the low-end entry point of 6 weeks. This submission was premised, at least in part, on the Committee accepting the Player's evidence that the head-to-head contact was not intentional, which, for the reasons explained above, the Committee does not accept.
82. In support of the submission that a low-end entry point was appropriate in this case, the Player's Representative argued that the seriousness of the Foul Play in this case was similar or comparable to the Foul Play in the cases of *In re Fainga'a* and *In re James*, both of which were assessed as low-end. For the reasons explained in paragraphs 65 and 73 above, the Committee does not agree that the Foul Play in this case was similar in terms of seriousness or comparable to the Foul Play in *In re Fainga'a* and *In re James*.
83. The Player's Representative submitted that the cases of *In re Ibulanokpe*, *In re Stapleton*, *In re Jackson* and *In re Martin*, are of limited assistance in terms of identifying the features of an offence of striking with the head that would justify a mid-range entry point because, although they were all cases in which a mid-range entry point was selected, the primary for that assessment in each case was the mandatory requirement for a mid-range entry point in circumstances where Foul Play resulted in contact with the head. Presumably, at the time of these decisions, there was no equivalent of the Appendix 1 Footnote in the prevailing RFU Regulations. The Committee accepts this submission.
84. However, the Committee considers it appropriate to briefly address the impact of the Appendix 1 Footnote more generally on the seriousness assessment for offences involving striking with the head. The Committee considers that the purpose of introducing Appendix 1 Footnote was to remove the obvious potential unfairness and inconsistency that would result from the increased entry points for striking with the head to the head when compared to the entry points for striking with the arm or shoulder to the head. The potential injustice that would result in the absence of the Appendix 1 Footnote can be explained by reference to *In re Ibulanokpe* and against the recent decisions in relation to Peter O'Mahoney and Zander Ferguson referred to in paragraph 20 above. A misjudged attempt to clear out a ruck might well result in the offending player making contact with the opposing player's head with his arm, shoulder or his head. Head-to-head contact in such a situation is not necessarily any more serious or anymore likely to injure the opponent than arm-to-head or shoulder-to-head contact. However, without Appendix 1 Footnote, two minor incidents that are identical in all respects, save for the point of contact on the offending player, would result in materially different sanctions. If the point of contact with the opposing player's head was the offender's arm or shoulder, the entry point would be six weeks, as in cases of O'Mahoney and Ferguson. However, if the point of contact with the opposing player's head was the offender's head, the entry point would be 10 weeks if Appendix 1 Footnote did not exist. Appendix 1 Footnote allows disciplinary officers and committees to avoid this potential injustice and gives them greater discretion to select the appropriate entry point without any mandatory minimum limitations.
85. *In re Stapleton* is also clearly not comparable to the instance case given the very serious injuries that were suffered by the victim, which were the most significant feature that resulted in the selected top-end entry point.
86. Accordingly, for all of these reasons, none of the disciplinary decisions referred to in paragraphs 19 and 19 above offer any real assistance to the Committee in relation to the seriousness assessment. The Committee must conduct their seriousness assessment as experienced common-sense Rugby people having regard to the features specified in Regulation 17.18.1.
87. If good quality video footage of an incident of Foul Play is available, it is one of the most valuable pieces of evidence to assist the Committee with its seriousness assessment. Experienced common-sense Rugby people are often able to get a good sense of the seriousness of the offender's conduct just from the video. Indeed, the initial stages of World Rugby's Judicial Officer training require those undertaking the training to assess the seriousness of a number of different incidents of Foul Play based solely on the video footage provided. The pre-training quiz

is available free online at <https://officiating.worldrugby.org/?module=7§ion=59> and the Committee encourages all players and player's representatives to try the quiz to help them better understand the disciplinary process.

88. The Committee also considers it a useful exercise when undertaking a seriousness assessment to consider:

- What is the least serious way in which the specific offence might be committed that would justify the minimum entry point (but would still satisfy the Red Card Test and warrant the imposition of a further sanction)?
- What is the most serious way in which the specific offence might be committed that might justify the maximum entry point?
- Having established those 'perimeters', where does the offending behaviour that is being considered fall by reference to that scale?

89. This exercise cannot be approached as if Committee has is free to select any entry point along the linear scale between the minimum and maximum. The low-end and mid-range entry points are thresholds and it is only between the top-end entry point and maximum that the Committee is able to select the entry point anywhere in that range.

90. The Committee invited the Player's Representative to participate in this exercise at the Hearing. He made a number of submissions and provided responses to various questions posed by the Committee, all of which have been considered by the Committee.

91. The Committee considers that one of the most obvious and least serious ways in which the offence of striking with the head, which might justify the minimum entry point of 6 weeks, would be a misjudged attempt at an otherwise legal clear out at a ruck that results in minimal head-to-head contact with an opposing player that causes no injury. At the other end of the spectrum, a deliberate headbutt with a high level of force to a vulnerable opponent that causes serious and life changing injuries, is likely to justify an entry point approaching the maximum of 52 weeks

92. Having regard to the video footage and the features detailed in paragraph 73 above, and particularly that: this was an intentional headbutt, by a player approaching a vulnerable victim at speed from behind, with high degree of risk and danger; but also having regard to the moderate level of force and lack of any injury, the Committee considers that the mid-range starting point of 10 weeks is appropriate.

93. Regulation 17.19.1 provides that:

“Having identified the applicable entry point for consideration of a particular incident, the Disciplinary Committees or Judicial Officers shall identify any relevant off-field aggravating factors and determine what additional period of suspension, if any, above the applicable entry point for the offence should apply to the case in question. Aggravating factors include:

- (a) the Player’s status generally as an offender of the Laws of the Game;^[4]*
- (b) the need for a deterrent to combat a pattern of offending in the Game where the teams participating in the Match or Tournament have been put on notice that such a need exists; and*
- (c) any other off-field aggravating factor(s) that the Disciplinary Committee or Judicial Officer considers relevant and appropriate (including poor conduct prior to or at the hearing).”*

94. Footnote 4 provides as follows:

“The Player’s disciplinary record in all competitions and (as appropriate) in other sports during his or her playing career from the age of 18 shall be considered by a Disciplinary Committee or Judicial Officer. In any case in which the Disciplinary Committee or Judicial Officer establishes that the Player has previously been found by a Disciplinary Committee and/or Judicial Officer to have committed any act of Foul Play and/or Misconduct then the Disciplinary Committee or Judicial Officer in imposing any sanction on the Player may take account of such offending as an aggravating factor in determining the appropriate sanction.”

95. The Player confirmed that he has a good disciplinary record and has received no previous yellow cards or red cards or been the subject of any other disciplinary proceedings either since he arrived in Cayman approximately a year or before when he played in England. Further, the Committee does not think there is a need for deterrence that justifies an increase from the selected entry point in the circumstances of this case and there are no other off-field aggravating factors. Accordingly, no additional weeks will be added to the starting point of 10 weeks.

96. In accordance with Regulation 17.20.1, the Committee has identified and considered the following off-field mitigating factors with a view to determining if there are any grounds for reducing the period of suspension:

- Acknowledgement of culpability and timing – R 17.20.1(a)

The Player did not admit the offence at the earliest opportunity when completing his Hearing Form. As explained above at paragraphs 24 to 28, he made a limited admission at the start of the Hearing. However, as referred to above at paragraph 62, throughout the Hearing, the Player never seemed to come to terms with the seriousness of his actions. By way of example, at one stage, it was suggested that his actions could be described as " *a clumsy mistimed bit of silly bravado* ". In light of the video footage, it was unrealistic to expect the Committee to accept such a description. The Player's persistent refusal to accept that the head-to-head contact shown in the video footage is a clear and obvious headbutt, and his repeated attempts to try and explain away or minimise his actions as the accidental consequence of May turning into his path, demonstrated a failure to properly acknowledge his culpability.

- Player's disciplinary record/good character – R 17.20.1(b)

As identified above at paragraph 95, the Player has a good disciplinary record with no record of previous yellow cards, red cards or other disciplinary proceedings.

- Youth and inexperience of player – R 17.20.1(c)

The Player is an experienced senior player.

- Conduct prior to and at hearing – R 17.20.1(d)

The Player was polite and courteous throughout the hearing, however, his determination to stick to his account that the contact was the accidental consequence of May turning into his path created the impression that he was not being a straightforward witness. As a result, of his approach, some of the evidence that he gave and the submissions that were made were simply not credible. By way of example, at one stage, he was unwilling to accept that he had very little control over the force of the impact.

- Remorse and conduct to victim – R 17.20.1(e)

The Player apologised to May after the match and May accepted the apology. However, consistent with his general approach, that Player did not appear to the Committee to acknowledge the high level of potential risk that his actions posed to May or to demonstrate a level of understanding of the seriousness of his actions that the Committee would normally associate with genuine remorse.

- Other off-field mitigation – R 17.21.1(f)

The Player's Representative suggested that the Player's lack of response or further retaliation to being punched by Victory was a mitigating factor. Whilst the Committee commends the Player for not retaliating at that stage, the Committee does not consider this to be a relevant mitigating factor that merits any reduction for his own Foul Play that was itself an act of retaliation in response to May pushing Stringer.

97. Regulation 17.20.2 provides that:

"Subject to Regulations 17.20.3 and 17.21.1, for acts of Foul Play the Disciplinary Committee or Judicial Officer

cannot apply a greater reduction than 50% of the relevant entry point suspension (prior to any increase for aggravating factors). In assessing the percentage reduction applicable for mitigating factors, the Disciplinary Committee or Judicial Officer shall start at 0% reduction and apply the amount, if any, to be allowed as mitigation up to the maximum 50% reduction."

98. The Committee considers that, notwithstanding the Player's good disciplinary record, he should not receive the maximum reduction of 50% or 5 weeks from the entry point in circumstances where he made a limited admission at the start of the Hearing and has failed to come to terms with gravity and seriousness of his offending and he has failed to properly acknowledge his culpability. In all the circumstances, the Committee considers that the appropriate reduction is two thirds or 66% of the maximum reduction available, which is 3 weeks.

SANCTION

NOTE: PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 17.12.5(f)

Total sanction	7 weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	13 February 2021	
Sanction concludes	TBC (see explanation below)	

Matches/tournaments included in sanction	<p>Seven weeks commencing on 13 February 2021.</p> <p>The Player will be suspended for the following matches:</p> <ul style="list-style-type: none"> Saturday 27 February 2021 (Buccaneers v Pigs) Saturday 13 March 2021 (Iguanas v Buccaneers) Saturday 27 March 2021 (Vase Semi Finals - Buccaneers v Pigs) Saturday 10 April 2021 (Vase Final – Buccaneers v Storm) <p>Having due regard to guidance set out in <i>In re Appeal of Kepu</i>, Autumn Internationals 2017, Jan 17, 2018 at paragraphs 35 – 50 and Regulation 17.21.3(e), if the Player registers with a team to play in the annual autumn sevens series, he will be suspended from participating until he has completed his suspension. Each day/weekend of that series shall, for the purposes of serving this sanction, count as one week.</p> <p>If the Player does not register and participate the annual autumn sevens series, or annual autumn sevens series does not take place as planned, the Player’s suspension will be continue to be served during the 2021-2022 season.</p> <p>If either the Player or CRFU require clarification in relation to the application of this sanction, either may revert to the Committee for further guidance by emailing the Disciplinary Liaison Officer ("DLO"), Rhian Minty (rhianminty@gmail.com).</p>
Costs	None

Chairman	Matthew Dors	Date	28 March 2021
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Appeal

THE PLAYER AND/OR THE PLAYER'S HOME UNION/RUGBY BODY (AS APPROPRIATE) MAY APPEAL THIS DECISION. ANY PARTY WISHING TO APPEAL THIS DECISION MUST FILE A NOTICE OF APPEAL WITHIN 48 HOURS FROM NOTIFICATION OF THIS DECISION. (Regulation 17.24)

Any Notice of Appeal should be sent by email to rhianminty@gmail.com.

In accordance with Regulation 17.24.5, a deposit of CI\$250 must be paid to CRFU within 3 days of filing the Notice of Appeal. In the event of the required deposit not being paid within the required timeframe, the appeal shall be deemed to be abandoned. The deposit shall be refundable in the event that the appeal is successful.