

## DISCIPLINARY DECISION



Match	England vs Ireland		
Player's Union	England	Competition	U20 Championship
Date of match	4 June 2019	Match venue	Crai Club Santa Fe
Rules to apply	Terms of Participation and Regulation 17 World Rugby Handbook		

### PARTICULARS OF OFFENCE

Player's surname	Barbeary	Date of birth	5 October 2000
Forename(s)	Alfie		
Referee Name	Damon Murphy	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	Law 9.18	SELECT:    Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other <input type="checkbox"/> If "Other" selected, please specify:	
Summary of Sanction	5 weeks (4 games of U20 Championship and Premiership Cup on 21 September 2019)		

### HEARING DETAILS

Hearing date	6 June 2019	Hearing venue	Tournament Office Ros Tower Hotel
Chairman/JO	Jose Luis Rolandi		
Other Members of Disciplinary Committee	Frank Hadden (ex Scotland coach) Val Toma (ex Romanian referee)		
Appearance Player	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	Appearance Union	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Player's Representative(s)	Stuart Tennant (legal representative) Steve Bates (coach) David Barnes (RFU Disciplinary Manager)	Disciplinary Officer and/or other attendees	Ben Rutherford (DDO)
List of documents/materials provided to Player in advance of hearing	Referees Report, Footage, Medical Report, Statement from John Hodnett (Ireland player)		

### PRELIMINARY PROCEDURE

In his response to the standing directions, the Player accepted he had committed an act of foul play that warranted the issue of a Red Card. The most relevant elements of his response are as follows:

*"3. The Player accepts the referee's report is a true and accurate account of the red card incident. The Player will be accepting that the act of foul play contrary to World Rugby Law 9.18 meets the red card test and, with reference to the World Rugby Regulations, invites the Disciplinary Committee to consider the following points when determining sanction:*

*World Rugby Regulation 17.19.2 - Assessment of seriousness of the Foul Play*

*The Player's position... is that the offending should be categorised as being at the lower end of the scale of seriousness for Law 9.18 (6 weeks) with reference to the following factors in World Rugby Regulation 17.19.2:*

- (a) the offending was not intentional or deliberate;*
- (b) the Player accepts that the offending was reckless;*
- (c) in relation to the gravity of the Player's action, see (h) below in relation to the injuries suffered by the victim player;*
- (h) John Hodnett of Ireland suffered no injuries as a result of the incident. He played on and is available for selection for Ireland's next match; and*
- (i) The red card for the Player had a material impact as, at the time, the match was very close and England subsequently went on to lose the match.*

*The Player also asks the Disciplinary Committee to review the following very similar low-end World Rugby Law 9.18 cases:*

- Chris Ashton (Sale Sharks), RFU Disciplinary Panel decision, 23 August 2018...*
- Cameron Holenstein (Old Elthamians), RFU Disciplinary Panel decision, 3 January 2019...*

*...*

*World Rugby Regulation 17.19.5 – Mitigating Factors*

*The Player submits that the following mitigating factors are present with reference to World Rugby Regulation 17.19.5:*

- (a) The Player has accepted the charge at the earliest possible opportunity;*
- (b) The Player has no previous disciplinary offences and is of good character (as evidenced in the attached character reference);*
- (c) The Player is the youngest member of the England U20s squad;*
- (d) The Player's conduct prior to the hearing has been excellent; and*
- (e) The Player has confirmed that he had a hand-shake post-match with Josh Hodnett of Ireland where he apologised for the incident and he has subsequently followed up to apologise again by email.*

*The Player, therefore, submits that he should be awarded full credit (50% discount from the 6 week entry point) for the mitigating factors presented above. We understand that the Disciplinary Committee will be determining sanction in matches rather than weeks and, therefore, the Player invites the Disciplinary Committee to determine that there should be a sanction of 3 matches to apply to the following games:*

- England U20 v Italy U20 – 8 June 2019*
- England U20 v Australia U20 – 12 June 2019*
- TBA – a future fixture at World Rugby U20 Championship..."*

<b>SUMMARY OF ESSENTIAL ELEMENTS OF REFEREE'S REPORT, FOOTAGE AND OPPOSITION STATEMENT</b>
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The Referee's report makes a reference to Law 9.18 and states: "*#16 England lifted player past horizontal landing dangerously*".

The footage shows the Player was in a guarding position at a ruck about 8 metres from England's goal line with his body bent over the tackled E5's body, on his feet and propped on his hands. I7 places his left hand and grasps the Player's jersey at the middle upper back level and then he gets up, first on his right knee and then, after placing his right hand on the Player's upper back area, resumes his feet. While getting up, the referee can be heard announcing "Ball is out!". The Player then grasps I7 with his right hand around the lower part of his left thigh. I7 pushes the Player's body down with his right hand and attempts to step over him but, while moving his right leg over the Player's head, the Player steps forward with his right foot and begins to get up, such that I7's right leg remains stuck over the Player's neck. The Player continues to get up and lifts I7's body from the ground on his right shoulder while grasping with his left hand I7's calf just above the ankle. The Player makes another step forward with his left foot and stands to nearly full height, raising his arms and turning I7's body upside down before releasing the grip. I7 falls coming into contact with the ground with his right shoulder/cervical area first and then fully landing on his back and contacting the ground with his head. A scuffle develops between both teams which is stopped through the intervention of the match officials and I7 is seen to receive on field medical attention.

The statement of John Hodnett (I7) was as follows: *"I went to put ruck pressure on then I felt a player underneath me so I tried stepping back but he had my leg grabbed and he proceeded to lift me in the air on his shoulders and he dumped me upside-down onto my neck/shoulders. The team doctor then came onto the pitch and he checked me for injuries and I was fit to continue."*

#### **ESSENTIAL ELEMENTS OF OTHER EVIDENCE (e.g. medical reports)**

Dr Stuart O'Flanagan (Ireland U20 Team Doctor) stated: *"... It was quickly apparent that the green player was alert and appropriately responsive. He had no neck or upper limb pain but was experiencing cramp in his Left calf. Upon systematically clearing his C-Spine I was happy that he was fit to continue playing in the game. On medical review this morning [5 June 2019], the player has no residual issues and is fit to continue playing and training in the tournament."*

The Committee also received a copy of an email of apology from the player to Ireland 7 dated 5 June 2019 at 7.23pm and a character reference letter from Jon Pendlebury, Academy Manager, Wasps Academy.

#### **SUMMARY OF PLAYER'S EVIDENCE**

In his evidence the Player stated that he had no intention to lift I7 but to grab and drive him backwards. He said he was not aware that I7's right leg was over his head. Mr. Bates added that the Player is very strong and powerful and it was very easy for him to lift I7 from the ground without noticing the danger. On behalf of the Player, Mr. Stuart Tennant stressed the points stated in the response to the standing directions:

- that the Player fully accepts that he committed an act of foul play that warranted the issue of a Red Card;
- that the Player invites the Committee to assess the act of foul play as being at the lower end of the scale of seriousness for Law 9.18 (6 weeks) mainly on the following three grounds:
  1. it was a reckless act of foul play;

- 2. there was no injury;
- 3. similarities with Ashton and Holenstein cases.
- the player had just entered the field of play and his sending off in a moment where the match was very close had a material impact as England went on to lose the match.

**FINDINGS OF FACT**

The Committee retired to consider in private all evidence and reminded themselves that the applicable standard of proof is the balance of probabilities.

The Committee, came to the following conclusions:  
 At the moment when the Player grasped I7 with his right hand around the lower part of his left thigh the initial ruck had ended. Whether the Player heard the referee’s call or not is of little importance as players should be aware of the context of the game and act accordingly. As such, the Player was illegally impeding I7 to take part in the game when he was entitled to move forward towards the ball.

The Committee found very hard to believe that the Player was not aware that I7’s right leg was over his head and that he wanted only to drive I7 backwards, as the footage clearly shows that the Player lifted I7’s body forcefully to nearly his full height while grasping I7’s right leg above the ankle before dropping him.

It is more likely that the Player felt I7’s leg over his head/neck and wanted to get rid of his opponent. In doing so he lifted I7 forcefully, tipped and dropped him from a height. This act was in the committee’s view a dangerously grave action with a potential of a life-changing injury.

There was no discernible attempt to help I7 safely to the ground nor at least a minimal effort to reduce the risk (such as to maintain the grasp on I7s legs) and no apparent care at that moment for I7’s safety and welfare.

However, the Committee accepted that the Player did not have the intention to make I7 land on his head/neck but was reckless to the consequence of his intention to fling/throw away/get rid of his opponent. In any case, the recklessness of this act was extreme.

The fact that I7 did not land on his head/neck with his entire body weight above him it was a matter of fortune.

**DECISION**

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/>	Not proven <input type="checkbox"/>	Other disposal (please state) <input type="checkbox"/>
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## SANCTIONING PROCESS

### ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 17.19.2(a)-(b) (or equivalent Tournament rule)
Intentional/deliberate <input type="checkbox"/> Reckless <input checked="" type="checkbox"/>
State Reasons
The Committee accepted that the Player did not intend make I7 to land on his head/neck but this was the reckless consequence of his intention to fling his opponent. It was an extremely reckless act of foul play.
Gravity of player's actions – R 17.19.2(c) (or equivalent Tournament rule)
Lifting I7, tipping him upside down and dropping him to fall from that height to the ground was in the Committee's view a dangerously grave action.
Nature of actions – R 17.19.2(d) (or equivalent Tournament rule)
Lifting an opponent and dropping him from a height.
Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule)
Not applicable.
Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule)
Not applicable.
Self-defence – R 17.19.2(g) (or equivalent Tournament rule)
Not applicable.
Effect on victim – R 17.19.2(h) (or equivalent Tournament rule)
Fortunately, no effect on the victim.
Effect on match – R 17.19.2(i) (or equivalent Tournament rule)
In addition to the impact on the player's own team, a scuffle broke out between players from both sides which is never desirable.
Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule)
I7 was upside-down and thus vulnerable.
Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule)
Full participation but no premeditation.
Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule)
Conduct completed.
Other features of player's conduct – R 17.19.2(m) (or equivalent Tournament rule)
Not applicable.

The Committee also noted that Mr. Ben Rutherford had clarified on behalf of World Rugby that the note at the beginning of Appendix 1 of World Rugby Regulation 17 (Any act of foul play which results in contact with the head shall result in at least a mid-range sanction) is directed at acts of foul play involving contact between one player and another player's head (and further that the sanctions for Law 9.18 already take into account the likelihood of contact between a lifted player's head and the ground). Accordingly, the Committee was not mandated to apply a Mid-Range entry point.

The Committee also notes that it carefully analyzed the Ashton and Holenstein cases and concluded that to the extent previous cases are relevant at all, there are important differences between those cases and the present. Even though both cases related to reckless acts of foul play under Law 9.18 with no injuries inflicted, the Committee noted that:

- In the Ashton case, 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."*
- In the Holenstein case, the Panel found that: *"The opposition player was lowered to the ground."*

*This was affected by the intervention of a Blackheath player. The opponent landed, on the ground, on his back."*

Based on its findings set out above, the Committee concluded that the Mid Range level of seriousness was the correct and appropriate entry point. In the unfortunate case of an injury to I7 a Top End entry point would have become very likely.

Entry point					
Top end*	Weeks	Mid-range	Weeks	Low-end	Weeks
<input type="checkbox"/>		<input checked="" type="checkbox"/>	10	<input type="checkbox"/>	

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

In making this assessment, the JO/Committee should consider World Rugby Regulations 17.19.2(a), 17.19.2(h), and 17.19.2(i) or the equivalent provisions within the Tournament Rules referred to above.

Reasons for selecting Entry Point above Top End

**ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS**

Player's status as an offender of the Laws of the Game – R 17.19.4(a) (or equivalent Tournament rule)	Not applicable.
Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule)	Not applicable.
Any other off-field aggravating factors – R 17.19.4(c) (or equivalent Tournament rule)	Not applicable.

Number of additional weeks:

**RELEVANT OFF-FIELD MITIGATING FACTORS**

Acknowledgement of guilt and timing – R 17.19.5(a) (or equivalent Tournament rule)	Player's disciplinary record/good character – R 17.19.5(b) (or equivalent Tournament rule)
Yes – acknowledged in writing early in the process.	Good record. Good character as proved by the letter from Mr. Jon Pendlebury.
Youth and inexperience of player – R 17.19.5(c) (or equivalent Tournament rule)	Conduct prior to and at hearing – R 17.19.5(d) (or equivalent Tournament rule)
He is a young player (apparently the youngest in the tournament).	Excellent.
Remorse and timing of remorse – R 17.19.5(e) (or equivalent Tournament rule)	Other off-field mitigation – R 17.19.5(f) (or equivalent Tournament rule)

The player demonstrated remorse during the hearing, through shaking hands with and apologizing to his opponent on the field and through sending him an e-mail message.	Not applicable.
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Number of weeks deducted:

Summary of reason for number of weeks deducted:  
Guilty plea, Youth of the Player, Clean Disciplinary record, Good Character, Apology and Conduct.

**SANCTION**

**NOTE:** PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 17.14.5(f) (or equivalent Tournament rule)

Total sanction	4 matches in this U20 Championship and the player's first domestic match in the 2019/2020 season which is understood to be a Premiership Cup match for Wasps on 21 September 2019 (the player may provide information of other earlier fixtures once they are announced for consideration by the panel). The decision is final as at this date subject to the foregoing.	Sending off sufficient <input type="checkbox"/>
Sanction commences	5 June 2019	
Sanction concludes	22 September 2019 (subject to the foregoing)	
Matches/tournaments included in sanction	4 x U20s Championship 1 x Premiership Cup	

Costs	Not applicable
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Signature (JO or Chairman)	<i>Jose ReSandi</i>	Date	<b>7 June 2019</b>
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**NOTE:** YOU HAVE **48 HOURS** (15s)/**24 HOURS** (7s) FROM NOTIFICATION OF THE DECISION OF THE CHAIRMAN/JO TO LODGE AN APPEAL WITH THE TOURNAMENT DIRECTOR – R 17.22.2(a) (or equivalent Tournament rule) (see Page 6)