



NOTTINGHAMSHIRE, LINCOLNSHIRE & DERBYSHIRE
RUGBY FOOTBALL UNION

DISCIPLINARY DECISION

Professionalism • Transparency • Fairness • Integrity • Consistency

IN THE MATTER OF A CITING BROUGHT BY GRIMSBY RUFC

JUDGMENT OF THE PANEL

Venue: Derby Conference Centre, Derby

Date: Thursday 31st January, 2019

Player: Andrius Kazlauskas ('the Player')

Club: Mellish RFC ('Mellish')

Match: Mellish RFC 1st XV v Grimsby RUFC 1st XV

Match Date: Saturday 15th December, 2018

Panel: Matthew O'Grady, Chairman
Andrew Stout
Malcolm Yates

Secretary: John Downham, NLD Disciplinary Secretary

Attending: Glen Norman (on behalf of Grimsby RUFC)
Matt Bright (on behalf of the Player)
Bob Knowles (on behalf of the Player)
The Player (by FaceTime)

Observing: Timothy Bembridge
Adrian Senn

Preliminary Issues

1. The Chairman directed pursuant to Reg 19.5.13 that the hearing be recorded. All witnesses were advised prior to their evidence that the recording was taking place. There were no objections to the composition of the Panel.
2. Shortly before the hearing commenced the Panel was informed that the Player was not in attendance. In the circumstances we invited submissions from Mr. Norman and Mr. Bright. Mr. Bright informed the Panel that at very short notice the Player had unavoidable child care commitments. He proposed the Player be present by telephone. Mr. Norman was understandably uncomfortable with proceeding by the Player simply attending by telephone. It was established that that the Player was able to be present by FaceTime link. All were content to proceed on that basis. The Player was present during the whole proceedings by this link.

Charge and Plea

3. On 28th December 2018 Mr. Andrew Picking, on behalf of Grimsby RUFC, filed a citing complaint against the Player. The citing report states as follows:

“Both players had already been red carded for an incident on the pitch. As the Grimsby player Baden Kerr was walking alongside the pitch towards the changing rooms, the Mellish 19 who was walking diagonally away from Baden, then suddenly turned and ran straight at Baden from 10-15 yards away and punched Baden in the side of the head. As Baden was stumbling to the ground the 19 then kicked Baden in the head. This then caused all of the Grimsby team to rush over to the incident to try and protect Baden, followed by all of the Mellish team. The referee calmed matters down and offered to call the game. Both teams in the spirit of rugby agreed to continue the game. The Mellish staff sent the 19 to the changing rooms and advised Baden wait until he had gone. Their player was sent home and told not to come in the club house after the game.”

4. On 23rd January 2019 the NLD RFU settled a hearing notice particularising the following alleged offences:

“On December 15th Andrius Kazlauskas punched and kicked the Grimsby player Baden Kerr in the face as they left the pitch after being red carded by the referee 18 minutes in the second half of the league game between Mellish 1st XV and Grimsby 1st XV.”

5. The Player admitted the citing that he had punched Mr. Baden Kerr on at least two occasions after being sent off. He denied kicking Mr. Kerr in the head or at all.

The Approach

6. The Panel reminded itself and those present that as Grimsby RUFC brings this citing, it must prove the allegations it makes are true. The Player has to prove nothing. The standard of proof is the simple balance of probabilities. That is to say, is it more likely than not that the alleged fact happened. If the Panel considers that neither event is as likely as the other, then the standard is not met, the burden is not discharged and the alleged fact is treated as having not happened.

The Evidence

7. The Panel heard oral evidence from four witnesses called by Grimsby RUFC, each of whom also provided written statements. Additionally, we read written statements prepared by Mr. Brad Treacher, Mr. Chris Moore and Mr. Luke Chaplin, but we did not hear oral evidence from them.
8. In addition to the Player, we heard oral evidence and read written statements of two witnesses called on his behalf. We read the written statements, but did not hear oral evidence, of Mr. Andy Fretwell and Mr. Bill Austin.
9. In total, over several hours (concluding at approximately 00:00hrs), we heard the oral evidence of seven witnesses and read the written statements of five other witnesses who were not called. It follows that this judgment cannot hope to reproduce (and is not intended to reproduce) all the evidence given, but the Panel took account of all the evidence heard and read in reaching the conclusions it has.
10. In all its particulars the actions alleged of the Player are serious. There is no video or audio evidence of the alleged events. This case turns on the assessment we make of the relative reliability and credibility of the witnesses whom we have had the advantage of hearing.

Grimsby RUFC's Case

Badan Kerr

11. Mr. Kerr is aged 18 years ago. Mr. Kerr gave his evidence calmly and maturely. He is not a large man in size or height. Even through the limitations of FaceTime we were able to judge that he is significantly smaller in stature than the Player. He was one player involved in an on-field altercation in which he landed punches to the Player's head. That offence resulted in the Referee showing him a red card and sending him off. On 12th January 2019, Mr. Kerr pleaded guilty to the offence for which he was sent off and a three week suspension was imposed on him.
12. Mr. Kerr told us that he had been sent off about 10m from one goal line. After being sent off he walked diagonally across the pitch to the club house side of the pitch where his team mates were stood. He saw the Player walk in the diagonally opposite direction to the other side of the pitch (away from the clubhouse and where the changing rooms were). Mr. Kerr told us that as he was walking towards the touchline he heard someone shout his name. It was only later in the day that he said he learned that the person who called for him was Mr. Colin Matthews. Based on where Mr. Matthews demonstrated on a satellite image he was stood, Mr. Matthews was about 25m from Mr. Kerr. Mr. Kerr said that he turned to answer the voice and as he did he was struck directly in the head. Mr. Kerr did not state within his written statement whereabouts he was struck. In his oral evidence he was clear that he was struck to the left side around his eye socket.
13. We were told by Mr. Kerr that the force of the blows knocked him down to at least one knee. When asked in his oral evidence to confirm the position the blow left him, Mr. Kerr was adamant he was put to a knee. He developed this by adding that he had one hand on the floor to push himself off the ground. That was the position he was in when he said he was kicked. Mr. Kerr said he looked up and as he did he saw the Player's

boot coming towards him. It connected forcefully and, as Mr. Kerr set out in writing, the connection was with the left eye and cheek area.

14. It surprised the Panel that no photographs had been submitted as part of the citing complaint. When asked about the omission of such evidence, Mr. Norman submitted that it was not thought to be relevant. That was curious given the seriousness of the alleged event and the force it was suggested had been used by the Player in kicking Mr. Kerr. Helpfully, Mr. Kerr advised the Panel that he had a photograph on his mobile telephone. We invited submissions from the parties as to whether we should consider the photograph. There were no objections and a pragmatic approach was taken given the informal nature of the proceedings. The photograph was an image saved on Snapchat. It was purported to have been taken at 9:30pm on 15th December 2018, being the relevant date. There was an obvious linear abrasion over one of Mr. Kerr's eyes. It was suggested to him by the Panel that it was his right eye, but he firmly resisted that suggestion. Mr. Kerr told us that the photograph was a mirror image and the injury was over his left eye. Of note, there was no evidence of any injury of any kind on the right-hand side of Mr. Kerr's face or to his right eye. To his credit, Mr. Kerr did not seek to blame the kick for the injury, he said he did not know whether the injury was caused by the punches or the kick.
15. Mr. Kerr said he suffered blurred vision as a result of the incident and believed he was experiencing symptoms of concussion. He had to take a week off work. Mr. Kerr did not seek medical attention because he did not think he needed it and because his mother is a trainee nurse. The injury over the eye lasted about 10 days. He returned to training on the evening of Thursday 3rd January although, due to the concussive symptoms he was still feeling that evening, we were told by him that he took no part in *any* contact training. Quite how this 18 year old player then found himself playing in a full game on the afternoon of Saturday 5th January (i.e. less than 48 hours after that training session when he could not fully participate because he was symptomatic) beggars belief. That is not a matter for enquiry today, but Grimsby RUFC is on notice that there is likely to be an enquiry in due course. Mr. Kerr was not suffering any effects of the incident as at the hearing. We were not provided with any medical evidence as to Mr. Kerr's injuries.

Colin Matthews

16. Mr. Matthews is described as being a Grimsby RUFC coaching assistant. At the time the red cards were issued, Mr. Matthews entered the field of play to provide assistance to one of his players who was on the floor. We were told by Mr. Matthews that he saw both players walking in diagonally opposite directions to each other. He continued watching them as they walked away, he said. The direction of travel that Mr. Matthew's drew and which Mr. Kerr drew are not close to being similar.
17. Mr. Matthews saw the Player suddenly veer from the direction he was walking in and "charge" towards Mr. Kerr. Mr. Matthews was asked by the Panel whether he said anything to the Player and he said he did not. He was asked whether he said anything to Mr. Kerr and he was clear that he did not say anything to him either. That is consistent with his written statement being silent on the suggestion that he called Mr. Kerr's name. Mr. Matthews did not hear anyone else say anything to the Player nor do or gesticulate anything to the Player to make him suddenly turn. When asked in terms by the Panel whether he called Mr. Kerr's name, he said that he did. That did not sit comfortably with his earlier evidence that he said nothing to Mr. Kerr nor with his written evidence, which was silent on the point.

18. From where he was, about 25m away, Mr. Kerr suggested that he could make out Mr. Kerr slightly turning and glimpsing the Player as the Player moved towards him. Mr. Matthews said he saw the punch. There was force behind it and it was definitely not a slap. He did not have a clear enough view to say precisely where the punches landed. Mr. Matthews told the Panel that Mr. Kerr did not fall with the punches. He saw a clear kick. We were told there was some real weight behind the kick. Due to other players moving in, Mr. Matthews could not say what position Mr. Kerr was in after the kick. In the time afterwards, Mr. Matthews did not see any injuries other than bruising to Mr. Kerr's left eye. There was no chance this was a case of Mr. Kerr slipping and hitting the Player or the Player slipping and catch Mr. Kerr. It was a clear kick with a swing backwards (as opposed to a side on karate type kick).

Emily Colbrook

19. Miss Colbrook attended the match to support the Grimsby 1st XV. She could have been a helpful witness, who was detached from the intensity of the situation the players all found themselves in. We are sorry to have to conclude that Miss. Colbrook was an unsatisfactory witness. The opening line to Miss. Colbrook's written statement sets the scene, "Spectator stood where [the] incident occurred." That left little room for ambiguity. When asked by the Panel to indicate on the satellite image where she was stood at the time of the incident she told us that she was not stood at the side of the pitch, but was in her car, sat in the passenger seat, in the car park. The car was facing into the field around the 22m line. She was there because it was raining heavily. The car doors were shut. She said the windscreen wipers were on and moving fast the rain was so heavy. Under cross-examination by Mr. Bright she accepted that the heaters were on to prevent the car steaming, but that the ignition was not on. She was not listening to music at the time. Miss. Colbrook did not get out of the car during the incident at any point.
20. Miss. Colbrook asserted within her written statement that, "Throughout [the] match [the] Mellish player was aggressive towards Grimsby players." We were left unconvinced how that assertion could be made so confidently when: 1) the Player only joined the game at the start of the second half and 2) Miss. Colbrook's view of the second half was limited to what she could immediately observe from her sedentary position in the car, looking over the dash, rain pouring and windscreen wipers on.
21. We read that Miss. Colbrook saw both players red carded and that Mr. Kerr walked to the touchline. After that, the Player ran across the pitch to where Mr. Kerr was walking. Miss. Colbrook did not say whether she saw Mr. Kerr begin to turn to look backwards and it would have been inconsistent with her observation that Mr. Kerr was "caught unawares" and punched in the back of the head if she had. Miss. Colbrook's observations are inconsistent with Mr. Kerr's assertions that he began to turn towards the Player and that the Player struck him in the eye.
22. Miss. Colbrook asserted in writing that the Player swung his leg back and kicked Mr. Kerr in the face with strong force. Miss. Colbrook then departed from her written statement and asserted, entirely unprompted, that not only had she seen the kick, but she heard it and saw the impact on Mr. Kerr's head. It was so forceful, she told us, that not only did she see Mr. Kerr's head "fly backwards," she heard the connection of boot and head *from inside her car*, which she described as being like the sound of a boot kicking a rugby ball. Heard it, she said, even with the rain being heavy, the wipers being on and the heater being on. Miss. Colbrook accepted that the facts that she heard the kick and

was able to describe it as being like the sound of a rugby ball being kicked *and* that she saw Mr. Kerr's head fly back were important facts. There was no satisfactory explanation provided as to why those important facts had been omitted from her written statement. We do not accept that Miss. Colbrook heard a kick. A picture emerged during Miss. Colbrook's evidence of her offering evidence against the Player, which simply could not be correct (for example, he was not on the field throughout the game) and which was inclined to embellishment rather than accuracy (for example hearing the kick whilst in a car with the doors shut, rain pouring, windscreen wipers on and heater on). It was with regret that the Panel was driven to rejecting her evidence as being neither reliable nor credible.

23. In her oral evidence, when tested by the Panel, Miss. Colbrook said that the kick was to the right side of Mr. Kerr's head. Her certainty of that fact varied from, "Pretty confident," to "100%" and, "Must have been to the right temple." That evidence does not sit comfortably with Mr. Kerr's account. Miss. Colbrook and Mr. Kerr then departed further when Miss. Colbrook said that the kick was delivered whilst Mr. Kerr was upright. She did not say he was on his knee or with a hand on the ground.
24. We were told that Mr. Kerr went back to Miss. Colbrook's home. Mr. Kerr had a swollen left eye and a cut on his left eyelid. He was shaken. He did not eat or drink that night, which was described as being unusual.

Lewis Rothenburg

25. Mr. Rothenburg played for Grimsby RUFC on Saturday 15th December, 2019 in the second row. Sadly, Mr. Rothenburg cut an unimpressive figure during his evidence. At one point when a member of this Panel, who is a senior and respected member of the rugby community in this area, asked entirely proper clarification of Mr. Rothenburg, Mr. Rothenburg began to retort, "Well if you listen...". He had to be warned by the Chairman to remain respectful during his evidence.
26. Mr. Rothenburg was on the field when the Mr. Kerr and the Player were red carded. He indicated on the satellite image that he was stood within the in-goal area. Mr. Rothenburg recalled seeing Mr. Kerr leave the field of play and the Player change his direction and make for Mr. Kerr. He saw the Player punch Mr. Kerr to the back / side of the head. It was Mr. Rothenburg's written evidence that as Mr. Kerr was falling from the punch Mr. Kerr was kicked in the face.
27. The evidence was tested. Mr. Rothenburg said that there was no turning by Mr. Kerr. He did not hear anyone shout at or towards the Player. He heard Mr. Matthews shout to Mr. Kerr after the Player had started to run. Mr. Rothenburg said he saw the punches land to Mr. Kerr's left eye. The kick, he said, connected with the right side of Mr. Kerr's head. He did not say that Mr. Kerr was on a knee, but was in a squat position. Mr. Kerr's head was about the height of a table. As the incident was taking place Mr. Rothenburg moved towards the two players. He told us that despite his friend being both kicked and punched he said *nothing* at all, to the Player or to Mr. Kerr.

Evidence Read, Not Heard

28. We read the written statements identified. Mr Brad Teacher was playing in the game. When the Player and Mr. Kerr came together for the second time he saw Mr. Kerr tumble after the punch and he was kicked whilst stumbling. Mr. Teacher heard

(unspecified) words exchanged between the teams. Mr. Chris Moore was also playing. He described himself being dazed and laying on the ground. Mr. Moore says he sat up and saw the Player punch and kick Mr. Kerr. Mr. Luke Chaplin was playing in the game. Mr. Chaplin saw Mr. Kerr fall to the floor after being punched by the Player. Mr. Chaplin said, "As he tried to get up, [the Player] kicked [Mr. Kerr] in the face". The only inference to be drawn from what Mr. Chaplin says is that Mr. Kerr was *not* upright or in a squat position when he was kicked, but at least partially on the floor.

The Player's Case

The Player

29. The Player gave evidence through FaceTime. He was direct in how he gave his evidence, but did not present as especially forthcoming. He did his credibility no favour when he was reluctant to accept that he ran towards Mr. Kerr to strike him, especially given the evidence called on his behalf was to that effect.
30. We had no written statement from the Player. In his plea ahead of this hearing the Player admitted punching Mr. Kerr in response to racist abuse he alleged he received from Mr. Kerr and other players from Grimsby RUFC. He reiterated that he had heard racist and/or xenophobic abuse in his oral evidence. He was very clear about that and it was what he heard that made him turn and go for Mr. Kerr. He was apologetic for his actions. The Player firmly denied any kick. He said he was definite that he did not kick Mr. Kerr. The Player questioned how the witnesses called against him could be so sure about the detail of what they saw when everything happened so quickly and the situation was dynamic.

Dan Edson

31. Mr. Edson was acting as the touch judge on the club house side of the pitch at the relevant time. He saw the Player and Mr. Kerr walk in the direction of the clubhouse after being sent off. Mr. Edson was near Mr. Kerr. We were told he saw Mr. Kerr's mouth moving as Mr. Kerr was moving towards the touchline, but (fairly) said that because of the severe weather he did not clearly hear what was said. He could not recall seeing any gestures made by Mr. Kerr. Mr. Edson told us that what then followed was a quick fight. He did not see anyone go to the floor. Fairly, he said that he did not see everything because his view became obstructed. When cross-examined by Mr. Norman, he did not accept that Mr. Kerr went to the floor.
32. After both players were separated Mr. Edson alleged he heard a man, who he now knows to be Mr. Rothenburg, shout racial and/or xenophobic abuse to the Player, "Fuck off you foreign cunt," and, "That fucking foreign twat shouldn't be allowed to play." Mr. Edson recalled in his written statement that he confronted Mr. Rothenburg about his alleged conduct to which Mr. Rothenburg is alleged to have replied, "Fuck off. It's not your business and I'm not racist anyway."

Mark Rushby

33. At the outset of his evidence we invited Mr. Rushby to draw on a satellite map the direction he recalled the players walking in. Mr. Rusby's recollection of the direction the Player and Mr. Kerr walked in after being red carded were at variance with the recollections of others (which is not to say the other witnesses were all consistent with

each other). Whilst other witness recalled them walking away from each other initially, Mr. Rushby asserted that they headed in the same direction and it was because of that that he continued watching them.

34. Mr. Rushby laboured over how quickly the Player got from where he was to where Mr. Kerr was. In his oral evidence he said the Player walked quickly, but he accepted that his written statement was prepared on Sunday 13th December and it was more likely to be true that the player “ran”, as he wrote. Mr. Rushby confirmed what he put in writing, that Mr. Kerr was looking towards the Player and shouting something at him. Although he was looking at Mr. Kerr and Mr. Kerr was only about 5m from him, because of the weather, he could not make out what he was saying. Mr. Rushby described himself as being ‘upwind’ of Mr. Kerr. He rejected the suggestion that Mr. Kerr’s back was to the Player when the Player started running towards Mr. Kerr. Mr. Rushby was consistent and firm that Mr. Kerr was facing the Player face-on before the punches were thrown. We were told that both players remained on their feet after the punches were thrown. Mr. Rusby suggested that Mr. Kerr threw the first punch.
35. Mr. Rushby then ran up to the Player and Mr. Kerr to separate them. He recalls hearing the Grimsby RUFC second row (wearing number 5) shout, “Foreign cunt.” We do not know the name of the player who was wearing number 5. It was to Mr. Rusby’s credit did not seek to embellish his recollections, even where it was open or may have convenient for him to do so (for example not hearing what Mr. Kerr said initially).

Evidence Read, Not Heard

36. We read the written statements identified. Mr. Andy Fretwell said there was an exchange of words between the Player and Mr. Kerr after they had been sent off. He asserted that both the Player and Mr. Kerr ran towards each other. Mr. Fretwell is the only person to make the suggestion that Mr. Kerr moved towards the Player. Mr. Fretwell saw punches exchanged and that the players were slipping around. Mr. Fretwell added that Mr. Kerr, “...went down and [the Player] slipped and flailed his leg out which did not connect with [Mr. Kerr]. No other witness corroborates Mr. Fretwell’s statement. Mr. Fretwell saw a spectator throw a glass of wine *at* the Player.
37. Mr. Bill Austin was a Mellish RFC supporting spectator. He alleged to have heard Grimsby RFC number 7 (Mr. Kerr) say as he left the field, “Get off the pitch you fucking foreign prick.” He heard Grimsby RFC number 5 shout similar words. Mr. Austin considered the Player’s actions were in retaliation to what was said and that the Player punched Mr. Kerr first.

Discussion

38. At the conclusion of the evidence (and late into the night) we invited Mr. Norman and Mr. Bright to take a brief period of time to compose their submissions to us. We reminded them both of the standard and burden of proof. The Panel is grateful for the care and thoughtfulness with which Mr. Norman and Mr. Bright presented the evidence and made their submissions to the Panel.
39. We listened to the evidence and read the evidence carefully. We considered all the evidence in the round. Whilst we have read written statements of witnesses who did not appear in front of us, we give them very limited weight. Their evidence has not been tested before this Panel. After listening to the evidence, we were not satisfied that

Grimsby RUFC had discharged the burden of proving that the Player had kicked Mr. Kerr. There were simply too many inconsistencies on important and material matters.

40. First, Mr. Kerr was adamant he had been kicked on the left side of his head. The witnesses called to give evidence (who were not suffering the effects of any concussion) were all clear that the kick struck the right side of his head.
41. Secondly, there was no evidence *at all* of any kind of injury to the right side of Mr. Kerr's head. We were grateful for Mr. Norman's candour when he assisted the Panel by advising that when he saw Mr. Kerr a few days after the game Mr. Kerr had no injuries to his right side. The lack of injury struck the Panel as being inconsistent with the force it was alleged was used in the kick, which would inevitably have been high given the Player's sheer size.
42. Thirdly, the witnesses were not consistent on the position Mr. Kerr was in when he was kicked. Mr. Kerr asserted he was on a knee with at least one hand on the ground to push himself up. Mr. Matthews, Miss. Colbrook and Mr. Rothenburg did not support that (nor did any of the Mellish witnesses that we heard from). None supported the view that he fell to the floor.
43. Fourthly, the kick described by Mr. Matthews, Miss. Colbrook and Mr. Rothenburg was inconsistent with the height they described Mr. Kerr being. They all described a backward swing of the leg/foot. However, the Panel was left doubting how that kicking motion could reach Mr. Kerr's head when they said he was in an upright position and did not fall. The kick would more likely have needed to be a 'karate-type' kick than a backwards swinging motion.
44. Whilst Grimsby RUFC presented direct evidence of a kick being seen, after considering all the evidence in the round, we rejected the evidence of Miss. Colbrook and Mr. Rothenburg. They were unsatisfactory witnesses and we could not find their evidence on whether there was a kick to be credible or reliable. Mr. Matthews was some 25m away from the incident when it took place in poor weather. Those circumstances were limitations to the reliability of Mr. Matthew's evidence. The Mellish witnesses were closer to the situation and, on the issue of whether there was a kick, more reliable witnesses.
45. The Panel therefore upholds the citing to the extent it alleges the Player punched Mr. Kerr and dismisses it to the extent it alleges the Player kicked Mr. Kerr.

Sanction

46. The Player having admitted an offence under Law 9.12 the Panel then undertook an assessment of the Player's conduct under Regulation 19.11.8 as follows:

- a) *Intentional / deliberate.*

The Player's actions were intentional.

- b) *Whether the offending was reckless, that is the Player knew (or should have known) there was a risk of committing an act of Foul Play.*

N/A

- c) *The gravity of the Player's actions in relation to the offending.*

This was a physical attack by a larger and older man on a much younger and smaller player. The Player had just been red carded for striking and this incident happened just minutes later.

- d) *The nature of the actions, manner in which the offence was committed including part of the body used (for example, fist, elbow, knee or boot).*

The Player connected at least two forceful blows with his fist to Mr. Kerr's head. We were not satisfied Mr. Kerr was knocked to the ground.

- e) *The existence of provocation.*

The Player, on the Grimsby RUFC evidence, turned towards Mr. Kerr suddenly and charged at him. The Panel was satisfied that the Player heard something that caused him to feel significant provocation. We make no finding and have no view as to what was said by whom.

- f) *Whether the Player acted in retaliation and the timing of such.*

N/A

- g) *Whether the Player acted in self-defence (that is whether he used a reasonable degree of force in defending himself).*

N/A

- h) *The effect of the Player's actions on the victim (for example, extent of injury, removal of victim Player from game);*

Mr. Kerr said he had an injury over his eye. We reminded ourselves of the requirements in Appendix 5 of Reg 19, namely the importance of us having accurate medical evidence before making an assessment of the existence and extent of any injury. We had no such evidence.

- i) *The effect of the Player's actions on the match.*

Players from both sides (including substitutes) ran over to separate the players.

- j) *The vulnerability of the victim Player including part of the victim's body involved/affected, position of the victim Player, and the ability to defend himself.*

The blows were to the head.

- k) *The level of participation in the offending and the level of premeditation.*

The Player ran from a distance of approximately 10m. He had plenty of time to make another choice.

- l) *Whether the conduct of the offending Player was completed or amounted to an attempt.*

The blows were completed.

- m) *Any other features of the Player's conduct in relation to or connected with the offending.*

N/A

Aggravating Features

47. We considered the aggravating factors under Regulation 19.11.10, namely:

- a) *The Player's status as an offender of the laws of the game.*

The Player has received two red cards within the last two seasons for striking, including the red card he received during this match. The Player must understand that aggression of this type has no place in the Game and he must be deterred from repeating this conduct.

- b) *The need for a deterrent to combat a pattern of offending.*

As above.

- c) *Any other off-field aggravating factor that the Disciplinary Panel considers relevant and appropriate.*

N/A

Mitigating Features

48. We considered the mitigating factors under Regulation 19.11.11, namely:

- a) *The presence and timing of an acknowledgment of culpability/guilt by the offending Player.*

The Player admitted the citing before the hearing.

- b) *The Player's disciplinary record and/or good character.*

Poor. No good character.

- c) *The youth and inexperience of the Player.*

Although the Player is 41 years old, he has only been playing the Game for 5 years.

- d) *The Player's conduct prior to and at the hearing.*

The Player pleaded guilty. He ensured he remained present via FaceTime throughout the hearing. He was patient and attentive during the hearing.

- e) *The Player having demonstrated remorse for the Player's conduct to the victim including the timing of such remorse.*

The Player apologised for his actions, but highlighted his assertion that he had been provoked by reference to his race / nationality.

- f) *Any other off-field mitigating factor(s) that the Disciplinary Panel considers relevant and appropriate.*

N/A

Decision

49. The mandatory minimum entry point is Mid-Range (6 weeks). Top End entry is not appropriate. The entry point was reduced by 50% (3 weeks).
50. The offending in this case was aggravated by the Player's poor record and the proximity in time between the citing and his last red card. The aggravation amounts to 2 weeks.
51. **Accordingly, the total period of suspension is 5 weeks.**

Return to Play

52. The period of suspension must be meaningful. The Player last played on Saturday 19th January, 2019. **The Player is free to resume playing from Sunday 24th February, 2019.**

Costs

53. Grimsby RUFC was successful in its citing in part and unsuccessful in the remainder. Grimsby RUFC shall pay costs to NLD RFU of £62.50. The Player/Club shall pay costs to NLD RFU of £30.

Appeal

54. There is a right to appeal against this decision. Any such appeal must be made within 14 days of this judgment being received.

Comment

55. Grimsby RUFC, Mr. Norman and the officers of Grimsby RUFC are not criticised by the Panel for bringing this citing. Given their players presented them with written statements alleging very serious conduct by the Player, it is understandable they made the decision to bring the citing. However, the assertions the Grimsby RUFC players made simply did not withstand testing.
56. Mr. Norman was informed by the Panel at the conclusion of the hearing that a number of matters caused the Panel concern. The evidence read and heard by the Panel showed an arguable or *prima facie* case that some players of Grimsby RUFC engaged in racist and/or xenophobic abuse. This Panel has formed no view *at all* on whether what is alleged to have been said actually occurred or not. It would be totally inappropriate for any view to have been formed given this evidence has not been tested and the players

concerned have not had the opportunity to present any evidence rebutting the allegations. Accordingly, this preliminary view that there is an arguable case is just that, preliminary. The Panel has an open mind. If there was in fact such abuse, there would need to be consideration as to whether the denials of abuse, which were given by the Players in their evidence to this Panel, of themselves also amount to conduct that is prejudicial to the interests of the game.

57. Finally, for the reasons already set out, there will necessarily be an enquiry into Grimsby RUFC's approach to concussion and the welfare of Mr. Kerr, in particular.
58. Cases involving alleged verbal abuse that is racially aggravated are very serious. Unless otherwise directed by the RFU Head of Discipline, they are mandatory matters for a RFU, not a CB, disciplinary panel to consider. The Panel therefore directs that this judgment be sent to the RFU Head of Discipline at Twickenham so that he can liaise with the CB Disciplinary Secretary as to the right authority to bring any 5.12 charges, if that is the appropriate course. The judgment shall also be sent to Grimsby RUFC's Regional Development Officer so that she/he is alive to the enquiry that will be required of the club's concussion practices.
59. We conclude by repeating what was said at the close of the hearing on Thursday 31st January – no finding of misconduct, of any kind, has been made by this Panel in respect of Grimsby RUFC or any of its players.

Matthew O'Grady
Chairman, for and on behalf of the Panel

Saturday 2nd February, 2019