



NOTTINGHAMSHIRE, LINCOLNSHIRE & DERBYSHIRE  
RUGBY FOOTBALL UNION

DISCIPLINARY DECISION

*Professionalism • Transparency • Fairness • Integrity • Consistency*

**JUDGMENT OF THE PANEL**

**Venue:** Newark RUFC

**Date:** Thursday 16 January, 2020

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**Player:** Adam Ongley ('the Player')

**Club:** Skegness RFC

**Match:** Skegness 1<sup>st</sup> XV v Stamford College OB 1<sup>st</sup> XV

**Match Date:** Saturday 28 December, 2019

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**Panel:** Matthew O'Grady, Chairman  
Andy Stout  
Michael Hilton

**Secretary:** Andrew Statham, NLD Disciplinary Secretary

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**Attending:** The Player  
Jason Divilly (Club Coach)

**Decision of the Panel**

- (i) The Player satisfied the Panel that there was no foul play**
- (ii) The red card was dismissed and expunged from the Player's record.**

### Preliminary Issues

1. There were no objections to the composition of the Panel.

### Charge and Plea

2. On Saturday 28 December, 2019 the Player was sent off for allegedly kicking an opponent in the head. The Player denied the charge.

### The Approach

3. At the outset of the hearing the Panel reminded itself and the Player of Reg 19.11.1, that the burden was on the Player to prove that the Referee's decision to send off the Player was wrong. The standard of proof is the simple balance of probabilities. That is to say, it is more likely than not that the Referee was wrong. If the Panel considers that neither event is as likely as the other (essentially a 50-50 position), then the standard is not met, the burden is not discharged and the Referee's decision is treated as not being wrong. We reminded those present of the express terms of Reg 19.11.1: "*In any such case, the Disciplinary Panel shall not make a finding contrary to the Referee's decision unless it is satisfied, on the balance of probabilities, that the Referee's decision was wrong.*"

### The Evidence

4. The Panel heard oral evidence from the Referee, Mr. Rob Brown, the Player and the Player's coach, Mr. Divilly.

### The Referee

5. The Referee's report read as follows:

"A ruck formed approx 15m from the try line and approx 7m in from the touch line. Numerous players from both teams entered the ruck, which concluded successfully with SCOB recycling the ball from the ruck and attacking down the blind side. The attack resulted in a try in the corner.

From my position, on the open side of the ruck, I was able to see the SCOB player advance over the line to score. As I blew my whistle to award the try my attention was drawn to the last SCOB player to get up from the previous ruck. With a clear, unobstructed view, I saw SKEG No1 approach the SCOB player, who was on the ground, and kick out towards him. I believe No1's right boot contacted the top of the head of the SCOB player, still getting to his feet. Having watched this happen, I then delayed the conversion attempted to issue a red card for what I had observed." (emphasis added)."

6. We heard from the Referee by telephone evidence. We are grateful to him for giving up his time to speak with us. The following exchange between the Player and Referee was noteworthy:

"Q. How confident are you that you saw by foot kick his head?"

A. I believe it did. Hence why I sent you off.”

7. The Panel pressed the Referee further on whether he actually saw a kick to the head or did not and whether his ‘belief’ meant he inferred that that was what he saw from other events. The Referee said he did see a kick to the head. It was suggested to the Referee that at the time this happened a try was scored and a player was punched. The Referee did not see a player being punched.
8. The Player’s case was that one of his team mates was punched and that the player who was punched pushed that player to the ground. The Player further contended that this player fell into him and hit his leg or shin. This was put to the Referee by the Panel and the Referee said he could not recall seeing that.
9. The Referee added at the end of his evidence, “I would also like to add that I’ve reffed the player on few occasions and he’s been exemplary in conduct, even on that Saturday. He has always behaved well within our code of conduct. I’ve never had any issues with him. This was totally out of character.”

### The Player

10. The Player provided a written statement of his case before the hearing, which he restated in his oral evidence to the Panel. He said that this was totally accidental. The Player made this point in his written evidence, referring to the Referee’s reference to his ‘belief’ of a kick, “My foot / boot did not come in to contact with the player. I don’t *believe* this, I know this to be fact.” (emphasis as original).
11. The Player accepted his shin had made contact with the victim’s head, but he firmly denied he had kicked an opponent or that this actions amounted to foul play. The Player described arriving at the breakdown as the opponent fell and there was coming together between them both which was a rugby incident. He was given the opportunity to concede that his conduct may have been reckless as opposed to a deliberate kick, but rejected this. He agreed the Panel was therefore left with finding either a deliberate kick to the head or an accidental coming together.

### Discussion

12. After having the advantage of considering all the evidence the Panel found, by a majority, that there was no foul play by the Player.
13. We came to this conclusion having particular regard to the following:
  - a) The Referee’s reference to his ‘belief’ that there was foul play in both his written and oral evidence created some doubt in his account.
  - b) The Panel accepted the Player was truthful and accurate in his evidence to the Panel and we accepted his account.
  - c) There was no evidence of the victim suffering any injury or being attended to by coaching staff as a result of what would have been a serious act of foul play.

- d) There was no evidence the game was stopped in any way to deal with a player having been kicked to the head.
14. Nothing in this decision should in any way be construed as criticism of the Referee. This Panel finds that he was dealing with a dynamic situation in which at least three significant 'game events' occurred. The Referee made a completely understandable and honest mistake. It was not least understandable because there was contact between the Player's leg and the victim's head. Unlike the Referee, we have had the advantage of considering evidence in the calm of a hearing room, which has allowed us to come to the conclusion that the nature of that contact was accidental.

**Decision**

15. The Red Card is dismissed and the Player is free to play with immediate effect.

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

Saturday 19 January 2020