RFU REGULATIONS

RFU REGULATION 19 – DISCIPLINE (APPENDIX 5)

RFU Practice Notes and Sanctions Guidance

The following practice notes and sanctions guidance are issued under the authority of RFU Regulation 19.2.5 and are to be read in conjunction with the relevant provisions of RFU Regulation 19.

RFU Practice Note – Recklessness (RFU Regulation 19.4.49(b))

When deciding the relevant sanction in relation to a particular offence(s), Disciplinary Panels are required to assess the seriousness of the Player's conduct. One of the key assessments is to decide whether the relevant offending was deliberate or reckless, noting that if the offending was purely accidental then no sanction applies. The term 'reckless' is described in the following terms:

'The player knew (or should have known) that there was a risk of committing an act of Foul Play.'

The RFU's disciplinary regime reflects World Rugby Regulation 17. It exists to penalise Players whose Foul Play is other than purely accidental and one of its most important principles is to prevent the risk of injury to other Players in a dynamic and physical sport. **Players have an obligation to ensure that they do not cause injury to opponents, so there is a presumption that any conduct which is prescribed by World Rugby Law 9 merits a sanction.**

The offences listed in World Rugby Law 9 do not require mens rea (the mental element of a crime or offending behaviour) – they create offences of strict liability. That is, by way of illustration, it is illegal to stamp on an opponent – rather than deliberately stamp, or recklessly stamp unless of course the contact is entirely accidental in which case no act of Foul Play has been committed. An offence is committed if the prohibited act occurs. The mental state of the offending player at the time the offence was committed is only relevant to the level of subsequent sanction. It is therefore wrong in principle to import definitions of recklessness from any criminal jurisdiction or other regulatory jurisdiction in considering whether or not the alleged Foul Play was committed.

The definition of recklessness is derived from World Rugby Regulation 17. It has worldwide application and is rugby specific. It serves to penalise Players whose conduct is other than purely accidental and is designed to prevent the risk of injury to other Players. Nevertheless, panel members may find the following RFU expanded guidance helpful in interpreting the meaning of the World Rugby definition of reckless.

'A Player is acting recklessly if, before doing something they either fails to give any thought to the possibility that there is a risk that they might commit an act of Foul Play, or having recognised that there was such a risk, they nevertheless went on to do it.

Thus, again by way of illustration, where a Player intends to tackle an opponent by contact with their chest, but the opponent ducks just before contact is made so the contact is with the neck, an offence contrary to Law 9.13 will have been committed. In assessing the relevant entry point for sanction it would be appropriate to decide that this offending was reckless because

there was a risk that the opponent would duck into the tackle, or that the tackler may misjudge the point of contact. It could not be said in these circumstances that the contact with the head was purely accidental.

RFU Practice Note – Sanctions for Foul Play – Top End Entry Points

1. When undertaking an assessment of a Player's offending conduct Disciplinary Panels must apply the criteria in RFU Regulation 19.4.49. If after that assessment the panel concludes that the offending is at the top end of the scale of seriousness it must make a further assessment of where the starting point should be within the prescribed range.

2. Sanctions for offences assessed as being at the top end are expressed in Appendix 2 of RFU Regulation 19 as a figure followed by +. That means that the range is from that figure to the maximum sanction. Thus, for the offence of striking the top end range is from 10 – 52 weeks. Disciplinary Panels must not automatically use 10 weeks as the starting point, although that may be the appropriate point if the panel takes the view that the offending is the least serious possible in the Top End entry. Having decided what the entry point is, the Disciplinary Panel should then go on to consider mitigating and aggravating factors in accordance with RFU Regulations 19.4.52 and 19.4.55.

3. In assessing the entry point within the range Disciplinary Panels are likely to give significant weight to RFU Regulations 19.4.49(a), 19.4.49(g) and 19.4.49(h) as follows:

   19.4.49(a) – intent. If the Disciplinary Panel concludes that the offending Player intended to commit the offence and also that they intended to injure the victim, then the entry point would move higher up the range.

   19.4.49(g) – effect on the victim. If the Player needs no treatment and continues to play the entry point will be towards the bottom end of the range. The point will move higher up the range depending on the level of treatment on the pitch, whether they continue to play and the extent of any injury. The more severe the injury the higher up the range will be the starting point.

   Note: It is therefore very important for Disciplinary Panels to have accurate medical evidence before making this assessment. As a matter of practice, the Constituent Body Disciplinary Secretary or the RFU Case Manager should always seek to obtain a medical certificate or report from the victim Player's doctor confirming the injuries and the likely period of time that the victim Player is not going to be able to play. If it is not possible to obtain a medical certificate, then written confirmation from the victim's Club about the injury should be obtained. The medical evidence and/or the report should be disclosed to the ordered off/cited Player or their representatives prior to the hearing. If the ordered off/cited Player challenges it, the Disciplinary Panel should either adjourn to clarify or obtain further medical evidence or proceed depending upon the evidence before the Disciplinary Panel and in accordance with the principles of natural justice.

   19.4.49(h) – if the offending causes no reaction at all from other Players or spectators then the entry point is likely to be towards the bottom of the range. The point will move higher up the range if Players and spectators react to the offending and further up if the offending causes the Referee to abandon the game. Any media interest in the alleged offending which might have an adverse effect on the image of the Union and/or the Game may also be taken into account.

4. Panels may also take account of the actual commission of the offending – for example the number of punches, stamps or kicks or whether the offence was completed as

intended.

5. Disciplinary Panels must use their rugby experience to decide on the appropriate rugby specific sanction which properly reflects the seriousness of the offending and the view taken of it by the rugby community. The following example is provided as an indication of where a Disciplinary Panel may start, but each case must be dealt with on its merits.

Example: A Player gets involved in a fracas and punches an opponent to the head. The victim Player falls to the ground and requires treatment for about a minute.

Having made an assessment of the seriousness by applying the criteria in RFU Regulation 19.4.49 the Disciplinary Panel decides that this is top end on the scale of seriousness. Suggested entry points within the range of 10 - 52 weeks might then be as follows:

Where there is no player, spectator or media reaction:

No injury after treatment	–10- 13 weeks
Victim leaves the field but is fit the following week	– 14 - 19 weeks
Victim is injured and cannot play for a few weeks	– 20 - 37 weeks
Victim is badly injured (e.g. broken jaw requiring surgery)	– 38+ weeks

Where there is Player, spectator or media reaction
(increasing by more if the match is abandoned by the Referee)

No injury after treatment	– 12 - 15 weeks
Victim leaves the field but is fit the following week	– 16 - 21 weeks
Victim is injured and cannot play for a few weeks	– 22 - 43 weeks
Victim is badly injured (e.g. broken jaw requiring surgery)	– 44+ weeks

Having decided the appropriate entry point the panel must then apply mitigating and aggravating features in accordance with RFU Regulations 19.4.52 and 19.4.55.

This example is provided purely illustrative and does not provide an exact approach or a tariff.