

## DISCIPLINARY DECISION



Match	<b>Munster Rugby v Leinster Rugby</b>		
Player's Club	<b>Leinster Rugby</b>	Competition	<b>Guinness PRO14</b>
Date of match	<b>29/12/2018</b>	Match venue	<b>Thomond Park Stadium</b>
Rules to apply	<b>Guinness PRO14 Disciplinary Rules</b>		

### PARTICULARS OF OFFENCE

Player's surname	<b>LOWE</b>		
Forename(s)	<b>JAMES</b>		
Referee Name	<b>Frank Murphy (IRFU)</b>	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	<b>Breach of Law 9.17</b>	SELECT:	<b>Red card</b> <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other <input type="checkbox"/> If "Other" selected, please specify:
Summary of Sanction	<b>Suspension of TWO weeks until midnight on Sunday 13 January 2019</b>		

### HEARING DETAILS

Hearing date	<b>03/01/2019</b>	Hearing venue	<b>Hutchinson Thomas Pendril Court, 119 London Road, Neath SA11 1LF</b>
Chairperson	<b>Roger Morris (Wales)</b>		
Other Members of Disciplinary Committee	<b>Ray Wilton (Wales) Rhian Williams (Wales)</b>		
Appearance Player	<b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>	Appearance Club	<b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>
Player's Representative(s)	<b>Guy Easterby, Leinster Derek Hegarty, William Fry</b>	Disciplinary Officer and/or other attendees	<b>Amy Monaghan (Tournament Manager)</b>
List of documents/materials provided to Player in advance of hearing	<b>Hawk-Eye footage Broadcast footage Letter Notifying Player of Hearing Report of Referee Frank Murphy Report of Assistant Referee Sean Gallagher (IRFU) Report of TMO Simon McDowell (IRFU) Statement of Andrew Conway, victim player Statement of Jamie Kearns, Munster Rugby Team Doctor Follow up email from Jamie Kearns, Munster Rugby Team Doctor Player's Replies to Standing Directions Players Playing Schedule Player's Disciplinary Record Player's Availability to Play</b>		

## SUMMARY OF ESSENTIAL ELEMENTS OF MATCH FOOTAGE AND OFFICIALS' REPORTS

The Chairman confirmed that the Hearing was in respect of a Red Card issued to the Player for an alleged breach of Law 9.17 of the Laws of the Game. He pointed to the Player's responses to Standing Directions and asked the Player whether it remained his position that he accepted the Red Card was properly issued. The Player confirmed that remained his position. The Chairman therefore confirmed that the purpose of the Hearing, subject to categorising the correct description of the Player's actions, was to consider what sanction, if any, was appropriate properly to reflect the seriousness of the offending under consideration.

With the above in mind, the Hearing would first consider the video footage of the relevant incident before considering the other evidence to be taken into account.

**The video** recording was first watched in silence. It showed the following passage of play culminating with the incident that gave rise to the Red Card.

From a scrum just inside Leinster's 22 and 5 metres from their left touchline, L9 executed a box kick with his right foot such that the ball was destined to land on the Leinster 10-metre line about 15 metres infield.

The Player and M14 approached the falling ball from opposite, confrontational directions. M14 jumped in the air to catch the ball. The Player did not jump in the manner of contesting for the ball but maintained his line of approach towards and through the anticipated landing point of the ball.

The consequence of the coincidence of the two actions by the two opponents was that the Player's left shoulder made contact with the jumping M14's right thigh (at the moment when M14 was catching the ball) so that M14 was destabilised and tipped head over heels. M14 was upside down when his right shoulder and neck became the first parts of his body to come to ground.

The **Referee**, Frank Murphy, confirmed in his report that he had issued a red card for an offence contrary to Law 9.17 of the Laws of the Game and wrote as follows:

*“Tackle in the air – player landed on head. I observed Leinster No. 11, James Lowe, tackle Munster No. 14, Andrew Conway, in the air with no contest for possession, Munster player went beyond the horizontal and landed on his head. I referred the incident to the TMO to confirm point of impact.”*

The **Television Match Official** reported as follows:

*“Referee referred an incident of foul play by Leinster No. 11, James Lowe, to me to review where the player landed after being tackled in the air. No. 11 made no attempt to contest possession, Munster No. 14 was tipped beyond the horizontal and landed on his head.”*

**Assistant Referee**, Sean Gallagher, in his written report, said:

*“Leinster kicked the ball from their own 22. Munster 14 jumped to catch the ball on the 10 metre line and the Leinster 11 tackled him in the air while his feet were off the ground. I saw the incident and flagged it. The referee had also seen the incident. The referee reviewed it on the screen to determine the level of sanction. Leinster 11 was not in a realistic position to compete and did not make a genuine attempt to do so. Munster 14 landed on his head. The referee sent off Leinster 11.”*

#### ESSENTIAL ELEMENTS OF OTHER EVIDENCE

**M14 (Andrew Conway)** in an email to the Tournament Manager wrote:

*“My recollection is going up for the ball and coming down on my neck/head.”*

**Dr Jamie Kearns**, head of the Munster medical team, confirmed that M14 had returned to play during the Match but that post-game had reported pain and stiffness to his cervical spine. He was treated for pain and stiffness.

He had been further assessed on several occasions culminating in an email dated 3<sup>rd</sup> January 2019 in which Dr Kearns said:

*“Andrew was assessed this morning and has been cleared to train fully today with a view to selection for this weekend.”*

## SUMMARY OF PLAYER'S EVIDENCE AND SUBMISSIONS ON HIS BEHALF

The **Player** was asked (with assistance as necessary from Mr Hegarty and Mr Easterby) to give his explanation of the incident and his part in it. The essence of that explanation was as follows:

- A box kick was called by the Leinster team as a planned move.
- The Player's role was to follow the flight of the ball and attempt to regather it for his team.
- As he was running his eyes were "100% on the ball" as he was trying to make a judgment as to where the ball would land. He was expecting that an opponent would be competing with him to catch the ball.
- The Player's intention as he set off on his run and throughout his run was to compete in the air for the ball as he had done a "hundred times". As he ran towards the landing point of the ball, he was aware of a Munster player, M9, (not a player who would compete with him for the ball) running alongside him trying to influence his line of running and therefore his line of approach to the falling ball.
- The Player was running as fast as he could to get where he needed to be. Usually, his intention would be to approach the ball in a curve from left to right (a "J" run) so that when he contested for the ball, he would be doing so with his body facing the far touchline.
- That line of running was "taken from me" by the presence of M9.
- He was still intending to jump to contest for the ball and was trying to slow down in order to give himself a platform or launch pad from which to jump but was bumped by M9.
- He anticipated as he approached the ball that there would be a contest in the air but at the last second he saw his opponent, M14, realised that he was not in a position to contest for the ball and tried to pull out of contact.
- Meanwhile, M14 was committed to an attempt to catch the ball and jumping in the air.
- He had not approached the collision with an intention to interfere with M14 and had but a small window to make an educated guess as to what was going to happen.
- Unfortunately, in the circumstances of this collision he was not able to guess correctly.

Mr Hegarty added, by reference to the video footage, that M9 had started his run deliberately to block the Player from following his target line. He pointed out that the Player had to run around M9 and that the slight deviation had prevented the Player from following the "J" curve described as his preferred manner of approaching such contests for the ball. Mr Hegarty further added that in his view a collision was inevitable.

In response to a question from the Committee, the Player confirmed there was virtually no adverse reaction from the Munster team even though the Match was a feisty local derby.

There being no further evidence to consider, **Mr Hegarty** made the following submissions on behalf of the Player.

The incident in question, he said, was uniquely unusual. He and the Player had deliberated long and hard about his position and whether what had happened was no more than an accident. There was certainly no intention on the part of the Player to commit the foul and the question therefore arose as to whether the outcome of the Player's actions was reasonably foreseeable. Ultimately, the Player wished to accept that a Red Card was warranted and therefore not argue that what happened was a complete accident.

Mr Hegarty then sought to distinguish the foul play the Player accepted he had committed from a classification under Law 9.17. He did so on the basis that the Player's actions did not amount to a tackle, charge, pull, push or grasp which were the descriptors set out in that law.

The other relevant consideration in removing the act of foul play from classification under Law 9.17 was the absence in this case of what he called a "risk assessment" by the player involved. Usually when aiming to contest for a ball in the air, a player undertook a risk assessment weighing the requirement to contest fairly against the potential if that contest went wrong for a breach of his duty of care towards an opponent. Whenever a player made such a risk assessment, he knew there was the possibility of recklessly committing a foul contrary to Law 9.17.

In this case, because of its unique circumstances, the Player had not even had the opportunity of making any assessment of risk and therefore had not had the opportunity of assessing his actions in the light of his duty of care to other players. He had simply run into the space that M14 was to occupy. It was running into that space that created the conditions for M14 to be tipped and not interference with M14 in a manner anticipated for a foul to be committed under Law 9.17.

Mr Hegarty suggested that the correct classification of the foul was a foul contrary to Law 9.11 which was a law framed to cater for fouls that do not fit with another categorised offence and that the Committee should proceed to judge it on that basis.

Before the Committee retired to consider its conclusions, the **Player** spoke about his experience and history in the game. He confirmed he had never appeared before a disciplinary committee and his only previous transgressions had been in respect of Yellow Cards for offences with no similarity to the current transgression. He confirmed that he was friendly with Andrew Conway and that they had been in touch. He had apologised straight after the incident and after the Match. Andrew Conway had accepted his apology.... saying that the Player owed him a pint!

## THE COMMITTEE'S FINDINGS

The Committee then considered matters in private having first reminded themselves that the applicable standard of proof is the balance of probabilities.

They first considered whether or not the act of foul play which the Player accepted he had committed was correctly classified as a breach of Law 9.17. The committee noted the terms of Law 9.17 which states:

*"A player must not tackle, charge, pull, push or grasp an opponent whose feet are off the ground."*

Mr Hegarty had sought to persuade the Committee that the Player's actions did not amount to any of the five descriptors set out in Law 9.17 although he had not disputed the fact that M14's feet were off the ground.

The Committee noted from watching the video recording and also from the Player's own testimony that the Player had run at speed and with intensity towards the spot where he anticipated the ball would land expecting an opponent to be at that spot and there challenging for the ball. He knew (or, at the very least, in the Committee's view, should have known) that there was a likelihood of him colliding with that opponent and of him doing so following a powerful, forceful run directed towards the point of likely collision.

The Committee was satisfied that in terms of Law 9.17, the Player's actions amounted to "*a charge*" and that the foul committed was correctly classified as an act contrary to Law 9.17 even if the referee had incorrectly called it a "*tackle in the air*".

The Hearing was reconvened and the Committee's decision as to the classification of the foul relayed to the Player and his representatives. The Player was asked, in the light of the Committee's decision, if there was anything else he wished to add before the Committee considered the question of sanction. There was nothing further to add and the Hearing was again adjourned for the Committee to deliberate in private.

## DECISION

The Player had accepted the Red Card was correctly issued and there were no further factual issues to be adjudged. The Committee therefore turned their deliberations to the question of sanction which they determined following the regulatory process set out below before reconvening the Hearing and delivering their decision to the Player and his representatives.

<b>Breach admitted</b> <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"/> <b>Reckless</b> <input checked="" type="checkbox"/>
State Reasons
<b>The Committee was satisfied that the Player’s intention was to compete fairly and legally for the ball but in the event he was unable so to do. Continuing his run until contact was made with M14 was, in Rugby’s terms, reckless.</b>
Gravity of player’s actions – R 17.19.2(c) (or equivalent Tournament rule)
<b>The consequence of the force of the contact with M14 was to tip the opponent upside down so that he came to ground on his shoulder/neck under the combined force of his own momentum and gravity.</b>
Nature of actions – R 17.19.2(d) (or equivalent Tournament rule)
<b>The Player ran with speed and made contact with the leaping M14 so that the Player’s shoulder made contact with M14’s thigh causing M14 to tip upside down</b>
Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule)
<b>N/A</b>
Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule)
<b>N/A</b>
Self-defence – R 17.19.2(g) (or equivalent Tournament rule)
<b>N/A</b>

Effect on victim – R 17.19.2(h) (or equivalent Tournament rule)
<b>M14 continued playing in the Match but suffered subsequent pain and stiffness. By the date of the Hearing, however, M14 was fit , training and available for selection.</b>
Effect on match – R 17.19.2(i) (or equivalent Tournament rule)
<b>The Player was issued with a Red Card, reducing his team to 14 men.</b>
Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule)
<b>M14 was tipped upside down whilst in the air so that he landed on his shoulder/neck.</b>
Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule)
<b>Full participation but no premeditated commission of a foul</b>
Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule)
<b>Completed</b>
Other features of player’s conduct – R 17.19.2(m) (or equivalent Tournament rule)
<b>N/A</b>

**ASSESSMENT OF SERIOUSNESS CONTINUED**

Entry point						
<u>Top end*</u>	<u>Weeks</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Low-end</u>	<u>4</u>	<u>Weeks</u>
<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" 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)
<b>N/A</b>
Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule)
<b>N/A</b>
Any other off-field aggravating factors – R 17.19.4(c) (or equivalent Tournament rule)
<b>N/A</b>

Number of additional weeks:

0


### 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)
<b>Full and immediate</b>	<b>Previous good character with minimal (only Yellow Card) previous record</b>
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)
<b>Experienced player</b>	<b>Exemplary and fully engaged in the process with an understanding of its Rugby relevance</b>
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)
<b>Immediate and genuine</b>	<b>N/A</b>
Number of weeks deducted:	<b>2</b>
Summary of reason for number of weeks deducted: <b>There were no factors the Committee considered negative when assessing the entitlement to a mitigation allowance</b>	

## 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	<b>2 WEEKS</b>	Sending off sufficient <input type="checkbox"/>
Sanction commences	<b>The date of the Red Card</b>	
Sanction concludes	<b>Midnight on 13 January 2019</b>	
Matches/tournaments included in sanction	<b>All on Player's schedule</b>	
<b>Costs</b>	<b>N/A</b>	

Signature (Chair) 	Date	4 <sup>th</sup> January 2019
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**NOTE:** YOU HAVE 48 HOURS FROM NOTIFICATION OF THE DECISION OF THE CHAIR TO LODGE AN APPEAL WITH THE TOURNAMENT DIRECTOR – DISCIPLINARY RULES 8.1 (PAGE 4-32)