

**MISCONDUCT: IN THE MATTER OF ALLEGED BREACHES OF THE TERMS OF
PARTICIPATION AND WORLD RUGBY CODE OF CONDUCT IN RELATION TO
RWC 2019**

CHARGES BROUGHT BY: Rugby World Cup Limited ('RWCL')
AGAINST: Scottish Rugby Union ('SRU')

DECISION OF THE DISPUTES COMMITTEE

A. Introduction

1. RWCL is a wholly owned subsidiary of World Rugby and is the owner of all rights in the Rugby World Cup 2019 tournament ('RWC 2019') in which the SRU senior National Representative Team ('Scotland') participated.
2. Participation in RWC is governed by the Terms of Participation ('ToP'). The ToP contains a Participation Agreement, at Section 17 thereof, which was signed by SRU on 7 December 2018. The SRU is thereby bound by the terms of the ToP and the Participation Agreement.
3. By a document dated 15 October 2019 ('the Notice of Charge') and in accordance with Section 14.1 of the ToP, RWCL charged the SRU with Misconduct. RWCL referred the matter to the Independent Judicial Panel Chairman for the appointment of a Disputes Committee ('DC'). The DC was appointed in accordance with ToP Section 16.4 clauses 17 and clause 18.
4. The DC issued a number of pre-hearing Directions and Rulings, which are incorporated into this Decision and attached (Appendix 1). At the request of the parties, the matter was resolved without an oral hearing. This document constitutes our final reasoned Decision. It is unanimous and each of the DC members contributed to it. It is necessarily a summary. Nothing should be read into the absence of specific reference to any aspect

of the material or submissions placed before us: we considered and gave appropriate weight to all of the material and submissions placed before us.

5. Hereafter we refer to the following of the many documents we have received and read:
 - a. SRU's Response to charges against Scottish Rugby (21.10.19) – ('21 October Response').
 - b. RWCL Reply dated 23 October 2019 ('23 October Reply').
 - c. Mark Dodson's statement ('MD's statement').
 - d. Colin Grassie's (SRU Chairman) statement ('CG's statement').
 - e. SRU's Submissions dated 28 October 2019 ('SRU's Submissions').
 - f. RWCL Reply dated 29 October 2019 ('29 October Reply').
 - g. Witness statement of Alan Gilpin, Chief Operating Officer of World Rugby and head of RWCL, dated 27 October 2019 ('AG's statement').

B. Charges

6. As set out in the Notice of Charge, the particulars of the charges are as follows:

Charge SRU1:

In contravention of Section 17, clause 3.2 of the Participation Agreement and paragraph 20.5 of the World Rugby Code of Conduct, Mark Dodson (SRU CEO) on behalf of the SRU made the following comments:

- a. *"Dodson made plain his anger at a process he believes is weighted towards "economic powerhouses" of the game, such as the All Blacks. I think when you're asking for someone to reconsider something as big as this – and we are trying to base the argument on the fact that there's the sporting integrity around this – if you're an economic powerhouse of the game, yes, I think it comes with more clout," Dodson said. "And I think most people feel that if it was one of the economic powerhouse of the game, let's just say New Zealand, perhaps more thought would be given to a flexible approach." (Telegraph, 11 October 2019)*

b. *“...for World Rugby to just simply state that the game has to be cancelled, goes against the whole sporting integrity of the tournament...we had consistent dialogue since the last couple of days around this with senior people at World Rugby but World Rugby seem to be determined to sticking to its plan that the match is either played on the Sunday which is open to the elements or indeed it is cancelled. To have it cancelled, and to have our ability to progress in the group put at peril, we feel is absolutely unacceptable. World Rugby are pointing us back to the Participation Agreement and that this is clearly stated in the Participation Agreement we’ve had a legal opinion and we have taken a QC opinion. A leading sports QC in London that challenges that and unravels the World Rugby case...This is about the game, and supporters across the world, rugby supporters are absolutely astounded at this rigidity from World Rugby. The common sense approach to this is to play the game 24 hours later in perfect safety, where we can make sure the pool stages are completed and the sporting integrity of the tournament remains intact....World Rugby will be listening to what’s happening around the world...opinion on social media is rising all the time about the injustice of this...we’re not going to let Scotland be the collateral damage for a decision that was taken in haste”* (BBC Radio 4 Today Programme, 11 October 2019)

c. *“And we don’t want to get into some kind of a legal arm wrestle with World Rugby. We don’t want to criticise World Rugby. But we do believe that we are being timed out in this competition, and being timed out is not a comfortable place to be. And it’s collateral damage that’s going to be – Scotland will be collateral damage and it is not something we will be prepared to sit back and take.”* (Scotland Team Announcement media conference, 11 October 2019)

Charge SRU2:

In contravention of Section 17, clause 3.2 of the Participation Agreement and paragraph 20.5 of the World Rugby Code of Conduct, persons under the control of SRU made the following comments:

a. Those attributed to a senior spokesperson for Scottish Rugby (Telegraph, 10 October 2019).

b. SRU's Counsel, Nick De Marco QC:

"If the only obstacles to a change of venue are logistical ones, then World Rugby needs to find a way round those problems. There are other games going ahead this weekend. Not all of Japan will be affected by the typhoon."

"World Rugby may feel they find themselves in a very difficult position, but they need to salvage the reputation of their competition. To do that, they have to make sure Scotland are given the chance to go through."

"The advice I gave Scottish Rugby is that having looked closely at the rules of the competition, and the principles behind those rules, there is a duty of fairness on World Rugby to make sure they do absolutely everything possible to make sure this game gets played. The integrity of the competition can be protected only if the teams involved have an opportunity to progress."

"World Rugby may feel they find themselves in a very difficult position, but they need to salvage the reputation of their competition. To do that, they have to make sure Scotland are given the chance to go through." (The Sun, 11 October 2019).

In an email exchange with Mr Maclean, Mr De Marco confirmed "As to me publicising my involvement, my first duty is to my client, and I never mention anything about my work if my client prefers me not to." The clear inference being that his client in this matter wanted him to make the public comments that he did.

c. *"According to sources in the Scotland camp, New Zealand were the de facto decision-makers on a black day for the sport. The 'robust contingencies' which three months earlier World Rugby had assured were in place for a tournament held in typhoon season (Japan averages 20-25 typhoons each year) were understood to have included moving games to unaffected areas or postponing games...World Rugby denies Scottish claims that New Zealand, the world champions, exercised 'undue influence'." (Telegraph, 12 October 2019)*

7. Both charges were denied.

C. Factual Background

8. The factual background is taken from AG's statement.

9. The final pool matches of RWC were scheduled to take place on 11-13 October 2019. Typhoon Hagibis was categorised as Level Five (the highest level). It was forecast to make landfall in Japan over course of those dates. Typhoon Hagibis was predicted to be – and was – the biggest typhoon of the 2019 season and for many years. It was predicted to and did cause very considerable disruption in the Tokyo, Yokohama and City of Toyota areas of Japan. All public transport was cancelled in the area on Saturday 12 October. The last significant typhoon in Japan was Typhoon Faxias which resulted in widespread damage and the loss of three lives.
10. In the lead-up to landfall, Typhoon Hagibis was tracking at three times the diameter of Typhoon Faxias with the capacity to cause significant damage and risk to life. When the storm hit Japan, its force, size and impact were obvious. Two members of the DC experienced the storm and its aftermath first-hand. It was the most powerful typhoon to hit Japan in decades, caused widespread damage in parts of the country and a significant loss of life. Many more were injured.
11. We accept that “RWCL’s primary concern was for the safety and security of fans, teams, volunteers and staff required to safely operate the venues and the matches”¹.
12. In light of the opinions of the organising committee, JR2019, and independent weather experts, RWCL decided on 10 October to (1) cancel two RWC pool matches and (2) to keep remaining pool matches under review. It announced that decision at a press conference at 12.00 (JST) on Thursday 10 October 2019.
13. RWCL explained that the reason for the cancellation “was the significant risk to the safety of teams, match officials, workforce and fans”². The cancelled matches were:
- a. England v France (scheduled to take place on 12 October at 17:15 in Yokohama); and
 - b. New Zealand v Italy (scheduled to take place on 12 October at 13:45 in Toyota City).

¹ §5 AG’s statement

² §15 Notice of Charges and §15 AG’s statement

14. On the basis of the projected trajectory of the Typhoon it would not have been possible for the matches to take place on the scheduled date in either Yokohama or Toyota City or to any alternative venue³. SRU did not contend to the contrary.
15. As stated above, at 12.00 (JST) on 10 October, RWCL announced that certain other matches that were scheduled to take place over that weekend would remain under review. These matches were:
- a. Australia v Georgia (scheduled to take place 11 October at 19:15 in Shizuoka);
 - b. Ireland v Samoa (scheduled to take place on 12 October at 19:45 in Fukuoka);
 - c. Namibia v Canada (scheduled to take place on 13 October at 12:15 in Kamaishi);
 - d. USA v Tonga (scheduled to take place on 13 October at 14:45 in Higashiosaka);
 - e. Wales v Uruguay (scheduled to take place on 13 October at 17:15 in Kumamoto);
 - and
 - f. Japan v Scotland (scheduled to take place on 13 October at 19:45 in Yokohama).
16. It was also clear from the independent weather expert monitoring that the Typhoon would pass Yokohama and Higashiosaka by early morning on Sunday 13 October. Therefore, the risk to the two matches scheduled in these locations was dependent on damage caused by the Typhoon. We accept that plans were therefore made (and implemented) to protect the relevant match venues and infrastructure from damage. Contingency planning for suitable alternative venues also continued⁴.
17. Ireland v Samoa was scheduled to take place in Fukuoka, an area that fell outside the trajectory of the Typhoon. Teams, match officials and tournament staff were already in the region or were moved there from Tokyo in advance of the Typhoon so that, if safe to do so, the match could take place without placing anyone at risk by requiring them to travel from or through affected areas. That match was played.

³ §15 AG's statement

⁴ §17, Ibid.

18. Namibia v Canada was scheduled to take place in Kamaishi. It was ultimately cancelled as the area was severely impacted by the Typhoon.
19. USA v Tonga was scheduled to take place in Higashiosaka. It was played.
20. Japan v Scotland ('the match') was scheduled to take place in Yokohama. It too was played. We accept that it was played only after "*a massive effort by the organizing committee, security and emergency services, RWCL and the host city which included for example: the take-down and removal of significant temporary venue and related infrastructure (broadcast, commercial, signage, catering, retail and spectator services infrastructure) to protect the venue from Typhoon damage and maximise the chances of the match venue being able to stage the match; host city and organizing committee staff staying at the venue over the night of Saturday 12th October (during the Typhoon) to enable earliest possible assessment and monitoring, and commencement of restoration work; mobilization of significant staffing across multiple stakeholders early on Sunday 13th October to ensure best opportunity of making the match venue 'playable'*"⁵. It was confirmed as safe and suitable to stage the match by 08.00hrs and to be safe for full spectator access by 10.00hrs. This information was confirmed to Scotland's and Japan's team management.

21. We also accept the evidence of AG that:

"RWCL considered all possible options to allow matches to go ahead at the stadia where they were scheduled, or to relocate them to other stadia, or to reschedule them whether at the original stadia or other stadia, or even other venues."

22. In paragraph 18 of the Notice of Charge RWCL alleges:

"Over the course of 10 October-12 October, SRU, and persons on behalf of or with the consent of SRU, made comments in relation to the decision-making process that was taking place in respect of the possibility of playing the Japan v Scotland match referred to above. The comments included content that was unhelpful, untrue, unacceptable and which attacked, disparaged and denigrated

⁵ §29, Ibid.

RWC and/or World Rugby and/or RWC and brought RWCL and/or World Rugby and/or RWC into disrepute.”

23. It was in this context and against that background of a pending significant natural disaster that the contentious comments which give rise to the two charges arose. Details of the comments are pleaded in each charge. However, it is necessary to provide more of the essential factual context.

24. On Friday 11 October, 02:01 (JST)/Thursday 10 October, 18:01 (BST) an article was published by The Telegraph newspaper including quotes from an SRU “*senior spokesman*” describing the situation as “*shambolic*” and “*embarrassing*” and threatening that “*the Union will have no choice but to take immediate legal action*”.

25. In response to that article Brett Gosper, World Rugby CEO sent an email at 12.09 (JST) on 11 October, which was followed by a formal warning letter to SRU CEO Mr Dodson (sent by email at 13:45 JST) on 11 October 2019 (the ‘Warning Letter’) In the Warning Letter Mr Gosper referred to the 10 October Telegraph article and said, *inter alia*:

“RWCL believes that the SRU’s comments breach the TOP and Regulation 20. This letter should be taken as a formal warning that any further public statements of this nature and/or other matters that breach the TOP and/or Regulation 20, will result in RWCL issuing a misconduct charge and referring the matter to be considered by an independent Judicial Panel and seek the imposition of sanctions that are appropriate to such behaviour.”

26. From this point on, SRU was on notice that further remarks of the type included in the aforementioned article would result in Misconduct charges.

27. The SRU also instructed independent counsel Mr de Marco QC in relation to the risk posed by Typhoon to the playing of the match. The SRU has disclosed a copy of that Advice. Indeed, it is clear from paragraph 27 of that Advice that Mr de Marco prepared it on the basis that all or parts of it *may* be disclosed, as he put it, “*in the hope of obtaining a satisfactory resolution to this issue*”.

28. In that Advice Mr de Marco QC expressed his opinion “*in relation to the potential postponement or cancellation*” of the match. He also opined that if the match was not played, he “*believe the [SRU] shall have real prospects of obtaining substantial financial damages and/or, potentially, injunctive relief to remedy or prevent such decision by the RWCL*”⁶.
29. Our unanimous view of the legality of RWCL’s position is profoundly different from Mr de Marco’s and is clear from this Decision (see paragraphs 52-56). In our view, RWCL was correct in its interpretation of the ToP and Participation Agreement. Further we note that although he referred to Clause 6.4 of the Participation Agreement, Mr de Marco’s Advice makes no reference to, nor does it address the effect of, the critical Clause 6.4.2 thereof (see paragraph 55 below).
30. In its 10 October edition, The Sun national newspaper published an article on the potential impact the Typhoon may have on the playing of the match. The article made express reference to Mr de Marco and a series of quotes in which he expressed his opinion on the situation and disclosed his opinion on the matter, which (unsurprisingly) is in strikingly similar terms to the advice he gave to his client, the SRU. Advice given by a lawyer to their client is subject to legal professional privilege.
31. The RWCL case is that the Warning Letter was followed by:
- a. Mr Dodson’s remarks on the BBC Radio 4 Today Programme at c. 15:30 JST / 07.30 BST.
 - b. Mr Dodson’s remarks at the Scotland media conference later on Friday 11 October.
 - c. The Telegraph article published at 21.26 (BST) 11 October / 05.26 (JST) 12 October including further comments from Mr Dodson.
 - d. The Sun article published at 22.30 BST 11 October / 06.30 JST 12 October including comments from Mr De Marco.

⁶ §26 thereof

- e. The Telegraph article published at 17.10 (BST) 12 October / 01.10 JST 13 October including comments from “*sources in the Scotland camp*”.
32. The RWCL case is that the SRU ignored the Warning Letter and sought to apply as much pressure on RWCL as possible via the media in an attempt to ensure that the match would be played, and if not, that it would be relocated and/or postponed.
33. The SRU denied both charges. It claimed to have been treated unfairly by RWCL; it raised factual and legal issues in relation to each charge; and it contended that insofar as any comment was admitted or was found to have been made, such did not amount to Misconduct.

D. Regulatory Framework

34. As previously stated RWCL is a wholly owned subsidiary of World Rugby and is the owner of all rights in the RWC in which Scotland participated.
35. Participation in RWC is governed by the ToP. The ToP contains a Participation Agreement, at Section 17 thereof, which was signed by SRU on 7 December 2018. The SRU is thereby bound by the terms of the ToP.
36. The Disciplinary Programme for RWC is set out at Section 14 of the ToP. Section 14 provides *inter alia*

“Misconduct actions pursuant to Regulation 20 can be brought by RWCL to an independent Judicial Officer/Panel.”

37. Section 14.7 entitled “Misconduct” states:

“In addition to the examples of Misconduct set out in Regulation 20 (and Section 8.13 of these Terms of Participation), the following may constitute Misconduct:

.....

Making any comments (including to the media) that attack, disparage or denigrate the Game and/or any of its constituent bodies, RWCL, World Rugby and/or its appointed personnel or RWCL Partners and/or the Tournament and/or the Host Union (including without limitation in relation to their appointed personnel (including without limitation judicial and/or medical personnel), RWCL Partners, facilities, accommodation, provisions and/or the host country or city generally) and/or Match Officials and/or disciplinary personnel (including members of Judicial and Appeal Panels and Citing Commissioners)."

38. "Misconduct" is further defined in Section 18 of the ToP as:

"any conduct, behaviour or practices on or off the playing enclosure in connection with the Tournament (excluding Foul Play during a Match) that is unsporting and/or unruly and/or ill-disciplined and/or that brings or has the potential to bring the sport of Rugby Union, World Rugby, the Company and/or the RWCL Partners into disrepute."

39. In addition to the requirements contained in the ToP and Participation Agreement, the SRU is subject to World Rugby's Regulation 20: "Misconduct and Code of Conduct". Regulation 20.1 states:

"The provisions of this Regulation including the World Rugby Code of Conduct (Appendix 1) apply to all Unions and Associations within their respective jurisdictions at all levels and it is their responsibility to advise their Players, Persons and Rugby Bodies of this Regulation. Unions and Associations shall ensure that they have in place disciplinary regulations compatible and not in conflict with this Regulation 20 and such regulations are applied to and complied with by all Players, Persons and Rugby Bodies within their jurisdiction."

40. Regulation 20.3 provides:

"For the purposes of these Regulations Relating to the Game, 'Misconduct' shall mean any conduct, behaviour, statements and/or practices on or off the playing enclosure during or in connection with a Match or otherwise, that is unsporting and/or cheating and/or insulting and/or unruly and/or ill-disciplined and/or that brings or has the potential to bring the Game and/or any of its

constituent bodies, World Rugby and/or its appointed personnel or commercial partners and/or Match Officials and/or judicial personnel into disrepute. Misconduct shall only exclude Foul Play during a Match which has been the subject of consideration and a finding under the regime prescribed for Ordering Off and/or Citing in Regulation 17."

41. The test common to both Section 18 of the ToP and Regulation 20.3 is that the offending conduct amounts to Misconduct if, *inter alia*, it does, or it has the potential to, bring the sport of Rugby Union and certain identified bodies including (for the ToP) World Rugby, RWCL and/or the RWCL Partners into disrepute. It is a relatively low threshold and includes conduct which is potentially disreputable. Disrepute is not defined. It is an ordinary word which means the state of being held in low esteem by the public. Therefore, conduct which has the potential to lower the esteem in which the Game or RWCL or the RWC or World Rugby is viewed by the public amounts to Misconduct.

42. As for the ambit of a Union's responsibility, Regulation 20.5 provides:

"Unions are responsible and accountable for the conduct of their Players and all Persons within their jurisdiction. Unions, Players and Persons shall conduct themselves in a disciplined and sporting manner and ensure that they do not commit any act(s) of Misconduct."

43. The Participation Agreement sets out the process in the event of an alleged incident of Misconduct.

"11. Dispute Resolution and Compliance

11.2(b) All matters relating to Misconduct and breaches of World Rugby Code of Conduct shall be dealt with in accordance with the provisions of the Misconduct and Code of Conduct Regulations set out at Section 16 of the Terms of Participation."

44. Section 16.4 of the ToP provides that a Disputes Committee shall be appointed to deal with Misconduct. We were appointed in accordance therewith.

45. The burden of establishing the charges is upon RWCL. The standard of proof on all questions to be determined by the Disputes Committee is the balance of probabilities⁷. In *Re D (Secretary of State for Northern Ireland intervening)*, [2008] UKHL 33 Lord Carswell in his speech with which the other Lords agreed, described that standard (of proof) as “finite and unvarying”⁸. The balance of probabilities means that “a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not”⁹.
46. However, as Lord Nicholls of Birkenhead explained in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 some things are inherently more likely than others. One would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian¹⁰.
47. That is the approach we adopted, giving appropriately careful consideration to all the evidence and submissions in this serious matter. Where we express ourselves herein as satisfied it is to that standard.

E. The ‘disparity of treatment’ argument

48. Before dealing with the individual charges it is necessary to address a general argument SRU mounted. We have called it the ‘disparity of treatment’ argument in an attempt to encapsulate in a phrase the thrust of the submission. In paragraph 53 of the 21 October Response the argument was summarised thus:

“RWCL has been unfair in its inconsistent and discriminatory application of tournament discipline rules, in choosing to pursue charges against SR and choosing not to pursue charges against FIR and Parris, or Australian Rugby and Cheika.”

⁷ Section 16.5 clause 28 of the ToP

⁸ At §28

⁹ Per Lord Nicholls of Birkenhead, *re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, at 586

¹⁰ *Ibid.*

49. In support thereof the SRU's representatives submitted a considerable amount of media reportage, material published on the Internet and social media comment. We read and considered all of it.
50. The fallacy of the argument is not difficult to identify. We must deal with the case which is put before us. We must assess the merits or otherwise of these charges, not to comment upon conduct or alleged or possible Misconduct of others. It is not for us to comment upon the actual or apparent conduct of other Unions and/or persons under or apparently under their control. We will not be drawn into doing so; nor engage in an exercise of comparing or analysing such actual or alleged conduct. Instead, our task is to focus on the charges in this case and determine whether either or both has been proved.
51. In any event, so far as the comments attributed to one of those others, Sergio Parisse, RWCL position is that his comments were unacceptable. Further, had Italy been scheduled to play any further part in the Tournament, RWCL would have issued to him a formal warning, precisely as it did to the SRU after the 10 October Telegraph article¹¹.

F. The Participation Agreement

52. It is necessary to comment on the relevant regulations for they provide context both for the actions of RWCL and the circumstances in which SRU chose to make public comment. Section 5.3 of the ToP is entitled "*Delayed, Postponed, Abandoned and Cancelled Matches*". The full terms are set out in Appendix 2. In respect of cancelled pool matches it provides:

"Where a pool Match cannot be commenced on the day in which it is scheduled, it shall not be postponed to the following day, and shall be considered as cancelled. In such situations, the result shall be declared a draw and Teams will be allocated two Match points each and no score registered. For the avoidance of doubt, no bonus points will be awarded."

¹¹ §12, 23 October Reply

53. Mr Gilpin is correct that all “*participating teams in the RWC understood from the outset that there was a risk of match cancellation during the pool phase of the tournament*”¹². Not only is that made clear from Section 5.3 of the ToP, but also from his presentations to all Team Managers, in Tokyo on 17 September 2019, during which he highlighted the relevant provisions in the ToP.

54. It is correct that the ToP and Clause 6.1 of the Participation Agreement, grants RWCL the power “*exercisable from time to time before and/or during the Tournament, to make rules and to issue directions...supplementing or varying the Terms of Participation*”.

55. Importantly, that power is not without limitations. Clause 6.4.2 provides that:

“*[v]ariations of the Terms of Participation, rules or directions will only be applied **if they are uniform** across all Participating Unions and Team Members.*” (emphasis added).

56. It is important to understand and to remember that in this extremely challenging situation, RWCL was not free to act as it wished. It was a party to agreements, namely the ToP and Participation Agreement. By virtue of clause 6.4.2, RWCL was empowered to vary the terms of the ToP only if such variation was uniform across all Unions, and so all teams. It had already cancelled matches from the final pool stages. This is the regulatory context in which properly to assess RWCL’s decision that it was not able to act in respect of the match, differently from the approach it had taken in respect of the two cancelled matches. By way of example by postponing it if it could not be played on the scheduled day.

57. We are satisfied RWCL was correct and acted properly and in accordance with the ToP and the Participation Agreement. As will be appreciated we, both individually and collectively, take a fundamentally different view of the correct legal position than those acting for the SRU.

¹² §35 AG’s statement

G. Charge 1

58. We consider each element of the charge in turn. In respect of the charges it is unnecessary to add further to the length of this Decision by setting out the lengthy and detailed case advanced by SRU and RWCL. We gave appropriate weight to the arguments advanced.

(1) Charge 1.a

59. The offending words were attributed to Mr Dodson and appeared in the article published by The Telegraph on 11 October 2019. There is no issue that he said them: the SRU admits that he did¹³.

60. Next, we are required to consider whether those words did or had the potential to bring the sport of Rugby Union, World Rugby, RWC 2019 and the RWCL into disrepute. That is an objective test.

61. Unhesitatingly we find that they did. What Mr Dodson was saying and would be understood to be saying was that if the situation involved for example New Zealand then a different outcome would result. That is a clear suggestion that RWCL treats Participating Unions differently depending on their economic value. It also suggested that RWCL would breach its own ToP by applying an individually applicable variation if it were economically beneficial to do so.

62. Further, we agree with the SRU that these words should not be viewed in a vacuum. The SRU's 10 October remarks, which included describing WR's "*handling of the affair has been disgracefully poor*" with the situation "*shambolic*" and "*embarrassing*", were inaccurate, wrong and misleading. They also helped create the context in which the 11 October (SRU) words should be seen.

¹³ §3 21 October Response

(2) Charge 1.b

63. Mr Dodson spoke these words during an interview on the BBC Radio 4 programme on 11 October 2019. There can be, and is, no issue that he spoke them. We have seen and read a transcript of that interview.

64. We are satisfied that the words did bring the sport of Rugby Union, World Rugby, RWC 2019 and the RWCL into disrepute. If the game was cancelled it would have been in accordance with the ToP. Such a decision would not have offended the sporting integrity of the tournament. To suggest otherwise publicly in this way was wrong. It had the effect of lowering the esteem of the Game, World Rugby, RWCL and RWC 2019 in the eyes of the public.

65. Further, to suggest the SRU was in some way “*collateral damage*” at a time when widespread physical destruction was expected and life was imperilled was an extraordinarily insensitive observation, to put it mildly.

(3) Charge 1.c

66. Once more there is no issue that these words were spoken. There could not be for Mr Dodson said them during a press conference.

67. We reject the SRU’s argument that “*Mr Dodson was in fact dispelling the suggestion of legal challenge and saying SR does not want to criticise World Rugby*”¹⁴. That is untenable when the interview is read as a whole, which we have been able to do with the benefit of a transcript. Therein he again referred to the legal opinion the SRU had obtained. That is the full context in which to assess the words, including the reference to SRU being “*collateral damage*” and “*it is not something we will be prepared to sit back and take*”.

¹⁴ §33 SRU Submissions

68. We therefore agree with RWCL that Mr Dodson was threatening that legal action might follow if the match was not played. We reject the suggestion in MD's statement and in CG's statement to the contrary. In so doing we are satisfied that the words did bring the sport of Rugby Union, World Rugby, RWC 2019 and the RWCL into disrepute.

(4) Conclusion on charge 1

69. It follows that we find each aspect of the charge proved. Taken individually and cumulatively the words amount to Misconduct. We find this was part of a campaign wrongly played out in public designed to put pressure on RWCL to have the match played, at a time when it was properly and understandably endeavouring to plan for and deal with the consequences of a substantial imminent natural disaster. In our judgment, and to adopt the test postulated by its own lawyer, by this campaign the SRU through Mr Dodson was clearly "*failing to act in the best interests of the tournament*"¹⁵ especially when viewed in the full context, including the Warning Letter. It thereby brought the RWC 2019 and RWCL, together with World Rugby and the Game itself, into disrepute.

H. Charge 2

70. We consider each element seriatim. We do so by reference to the subsections

(1) Charge 2.a

71. This aspect of the charge reflects the 10 October comments. They were dealt with by way of the Warning Letter. We think it inappropriate to, in effect, try them for a second time. Instead, and as is clear from the above, we have used those comments, and the content of the Warning Letter, as part of the context. They are also relevant – in our judgment – as an indicator of SRU's intent, and the gravity of SRU's various (and inter-connected) statements the following day, as reflected (in part) by charge 1.

¹⁵ §23 Ibid.

(2) Charge 2.b

72. The first issue is whether Mr de Marco was a person “*within their jurisdiction*” for the purposes of Regulation 20.5. It is a question of fact.

73. There appears to be no dispute that Mr de Marco said the words attributed to him in that Sun newspaper article. In an email exchange with Alistair Maclean, World Rugby General Counsel, on 13 October 2019 Mr De Marco said:

“As to me publicising my involvement, my first duty is to my client, and I never mention anything about my work if my client prefers me not to.”

74. RWCL submit that from this the “*clear inference being that his client in this matter wanted him to make the public comments that he did*”. However, we consider that a careful reply, which expressly (and rather obviously) does not address whether in fact the SRU knew and gave permission for him to speak to the journalist.

75. In a further email Mr de Marco sent to Alistair Maclean 15 October 2019 he said this:

“The views I expressed to the journalist represented my personal and professional opinion of the matter. They did not necessarily represent the views of Scottish Rugby and nor did I suggest otherwise. I did not check whether SR were ‘happy’ with any of those views.”

76. Acting in accordance with his professional code of conduct Mr de Marco would not disclose publicly advice he gave privately to a client without that client’s express consent. There is (of course) striking commonality in what he said to the journalist (which he characterises as his own personal and professional opinion) and what he advised the SRU. We have not heard from Mr de Marco either by way of a written statement or any oral evidence. We gave thought as to whether we should, at the least, seek further evidence from him, so that we could explore what he said, why he said it and the timing thereof. We could not compel him to do so.

77. The inference contended for by RWCL, namely “*that his client in this matter wanted him to make the public comments that he did*” is one reasonable inference we could draw from the facts. The timing of the interview adds weight to drawing of that inference. However, there are a number of other reasonable inferences which can properly be drawn from the materials before us, which are not necessarily mutually exclusive. In an email exchange we have seen, Mr Maclean characterised Mr de Marco’s conduct as self-publicising. It could be that he acted entirely ‘off his own bat’ in speaking to a Sun journalist.

78. We have to act on the basis not of suspicion but on inference drawn from proven facts. Standing back, there is not sufficient evidence before us to make a finding, to the requisite standard, that Mr de Marco was “*within the jurisdiction of the SRU*”.

(3) Charge 2.c

79. The SRU and Mr Dodson deny responsibility for these comments. On the written evidence before us, we cannot elevate our suspicions as to the source of these remarks into findings of fact. We cannot therefore attribute to the requisite standard, responsibility for making of those remarks to the SRU or to any person “*within their jurisdiction*” Therefore, we do not find this element of the charge proved.

(4) Conclusion on Charge 2

80. Therefore, we are not satisfied that charge 2 is proved and accordingly dismiss it.

I. Sanction

81. Pursuant to Section 16.5 clause 26 our sanctioning powers are extensive. In determining the appropriate sanction, we had regard to the principles and factors in Section 16.5 clauses 31 and 32. Naturally, we had regard to the submissions of both parties. We have also considered and applied with care the relevant factors in assessing the seriousness of the Misconduct and the appropriate sanction.

82. In assessing the seriousness of the Misconduct in Charge 1 the following is relevant:
- a. The comments and the conduct were intentional.
 - b. The conduct was repeated.
 - c. That repeated conduct came after, and notwithstanding, the Warning Letter, which is a significant aggravating factor.
 - d. We find that it was part of campaign wrongly devised and carried out to put pressure or seek to put pressure on RWCL to have the match played.
 - e. The publicity generated in consequence was considerable.
 - f. The SRU's conduct did bring the Game, World Rugby, RWCL and RWC 2019 into disrepute and damaged the RWC 2019 competition.
 - g. Given the factors set out above, the DC concludes that this was egregious behaviour, sitting towards the most serious end of the misconduct spectrum.
83. In light of the above, and reflecting also the need to ensure that, in the future, the SRU specifically and others generally are deterred from conducting themselves in similar ways, the appropriate sanctions are as follows;
- a. The SRU is formally reprimanded for its Misconduct (ToP Section 16.5 clause 29(k)).
 - b. We direct that the SRU shall, not more than 48 hours from receipt by it of this Decision, issue in writing a meaningful and public apology to World Rugby and RWCL for its Misconduct, in terms to be approved by us (ToP Section 16.5 clause 29(l)(m)).
 - c. The SRU shall be fined in the sum of £70,000, seventy thousand pounds sterling (ToP Section 16.5 clause 29(f)).
84. While this does not aggravate the position, we note that SRU does not have the mitigation of an admission. It continues to deny fault. As can be seen from the following paragraphs it refused to apologise as part of a compromise of these proceedings.
85. Mr Dodson is not charged separately. We are not satisfied we have jurisdiction to sanction him. In any event, we have made clear our view that he committed Misconduct and his conduct put the SRU in breach of the relevant provisions. He is 'caught' by the

Misconduct finding against his employer (the SRU) and the sanctions imposed in consequence.

86. We gave the parties a not inconsiderable amount of time while they discussed whether it was possible to resolve this dispute without our being required to determine it. That proved impossible. We were made party to the potential terms of a settlement made to the SRU by RWCL ('the offer'). We informed the parties that we may well refer to the offer in this Decision.

87. The offer was set out in Appendix 2 to the 29 October Reply. The key components of the offer from RWCL were that the SRU must apologise for its conduct and make a donation to the Typhoon disaster relief fund in Japan. The SRU reply suggested alternative wording which included a mutual expression of "regret" from both parties, and no apology.

88. We do not have power to direct how the fine must be applied. However, in light of the terms of the offer, we are confident RWCL will consider it appropriate to contribute it to the Typhoon disaster relief fund in Japan.

89. We will consider written submissions on costs. We direct that RWCL file any such submissions within 7 days of receipt of this Decision and any reply by SRU within 7 days thereof.

J. Summary

90. For the reasons set out above:

- a. We find Charge 1 proved.
- b. We dismiss Charge 2 as unproven.
- c. The SRU is formally reprimanded for its Misconduct.
- d. We direct that it shall issue in writing a meaningful and public apology to World Rugby and RWCL for its Misconduct, in terms approved by us.

e. The SRU shall be fined in the sum of £70,000.

A handwritten signature in black ink, appearing to read 'Chris Quinlan', written in a cursive style.

Christopher Quinlan QC, Chair, Independent Judicial Panel Chairman (England)

Adam Casselden SC, Chair, SANZAAR Foul Play Review Committee (Australia)

Nigel Hampton QC, Chair NZRU Judicial Committee, Former Chair SANZAAR Foul
Play Review Committee (New Zealand)

Signed on behalf of the Disputes Committee

6 November 2019

MISCONDUCT: IN THE MATTER OF ALLEGED BREACHES OF THE TERMS OF
PARTICIPATION AND WORLD RUGBY CODE OF CONDUCT IN RELATION TO
RWC 2019

CHARGES BROUGHT BY: Rugby World Cup Limited ('RWCL')
AGAINST: Scottish Rugby Union ('SRU')

A. Background

1. RWCL is a wholly owned subsidiary of World Rugby and is the owner of all rights in the Rugby World Cup 2019 tournament ('RWC') in which the SRU senior National Representative Team ('Scotland') participated.
2. Participation in RWC is governed by the Terms of Participation ('ToP'). The ToP contains a Participation Agreement, at Section 17 thereof, which was signed by SRU on 7 December 2018. The SRU is thereby bound by the terms of the ToP.
3. The Disciplinary Programme for RWC is set out at Section 14 of the ToP and provides that World Rugby Regulation 20.2 (Misconduct and Code of Conduct) applies to RWC, save for the modifications made in the ToP. "Misconduct" is defined in Section 18 of the ToP as:

"any conduct, behaviour or practices on or off the playing enclosure in connection with the Tournament (excluding Foul Play during a Match) that is unsporting and/or unruly and/or ill-disciplined and/or that brings or has the potential to bring the sport of Rugby Union, World Rugby, the Company and/or the RWCL Partners into disrepute."
4. The Participation Agreement sets out the process in the event of an alleged incident of misconduct.

“11. Dispute Resolution and Compliance

11.2(b) All matters relating to Misconduct and breaches of World Rugby Code of Conduct shall be dealt with in accordance with the provisions of the Misconduct and Code of Conduct Regulations set out at Section 16 of the Terms of Participation.”

5. Section 16.4 of the ToP provides that a Disputes Committee shall be appointed to deal with Misconduct.
6. By a document dated 15 October 2019 (‘the Notice of Charge’) RWCL charged the SRU with Misconduct. RWCL referred the matter to me as Independent Judicial Panel Chairman for the appointment of a Disputes Committee pursuant to Section 16.4 clause 17 and clause 18 of the ToP.

B. Charges

7. In accordance with Section 14.1 of the ToP the SRU is charged with Misconduct as follows:

Charge SRU1-

In contravention of Section 17, clause 3.2 of the Participation Agreement and paragraph 20.5 of the World Rugby Code of Conduct, Mark Dodson (SRU CEO) on behalf of the SRU made the following comments:

- a. *“Dodson made plain his anger at a process he believes is weighted towards “economic powerhouses” of the game, such as the All Blacks. I think when you’re asking for someone to reconsider something as big as this – and we are trying to base the argument on the fact that there’s the sporting integrity around this – if you’re an economic powerhouse of the game, yes, I think it comes with more clout,” Dodson said. “And I think most people feel that if it was one of the economic powerhouse of the game, let’s just say New Zealand, perhaps more thought would be given to a flexible approach.” (Telegraph, 11 October 2019)*

b. *“...for World Rugby to just simply state that the game has to be cancelled, goes against the whole sporting integrity of the tournament...we had consistent dialogue since the last couple of days around this with senior people at World Rugby but World Rugby seem to be determined to sticking to its plan that the match is either played on the Sunday which is open to the elements or indeed it is cancelled. To have it cancelled, and to have our ability to progress in the group put at peril, we feel is absolutely unacceptable. World Rugby are pointing us back to the Participation Agreement and that this is clearly stated in the Participation Agreement we’ve had a legal opinion and we have taken a QC opinion. A leading sports QC in London that challenges that and unravels the World Rugby case...This is about the game, and supporters across the world, rugby supporters are absolutely astounded at this rigidity from World Rugby. The common sense approach to this is to play the game 24 hours later in perfect safety, where we can make sure the pool stages are completed and the sporting integrity of the tournament remains intact....World Rugby will be listening to what’s happening around the world...opinion on social media is rising all the time about the injustice of this...we’re not going to let Scotland be the collateral damage for a decision that was taken in haste”* (BBC Radio 4 Today Program, 11 October 2019)

c. *“And we don’t want to get into some kind of a legal arm wrestle with World Rugby. We don’t want to criticise World Rugby. But we do believe that we are being timed out in this competition, and being timed out is not a comfortable place to be. And it’s collateral damage that’s going to be – Scotland will be collateral damage and it is not something we will be prepared to sit back and take.”* (Scotland Team Announcement media conference, 11 October 2019)

Charge SRU2:

In contravention of Section 17, clause 3.2 of the Participation Agreement and paragraph 20.5 of the World Rugby Code of Conduct, persons under the control of SRU made the following comments:

a. Those attributed to a senior spokesperson for Scottish Rugby (Telegraph, 10 October 2019)

b. SRU's Counsel, Nick De Marco QC:

"If the only obstacles to a change of venue are logistical ones, then World Rugby needs to find a way round those problems. There are other games going ahead this weekend. Not all of Japan will be affected by the typhoon."

"World Rugby may feel they find themselves in a very difficult position, but they need to salvage the reputation of their competition. To do that, they have to make sure Scotland are given the chance to go through."

"The advice I gave Scottish Rugby is that having looked closely at the rules of the competition, and the principles behind those rules, there is a duty of fairness on World Rugby to make sure they do absolutely everything possible to make sure this game gets played. "The integrity of the competition can be protected only if the teams involved have an opportunity to progress.

"World Rugby may feel they find themselves in a very difficult position, but they need to salvage the reputation of their competition. To do that, they have to make sure Scotland are given the chance to go through." (The Sun, 11 October 2019). In an email exchange with Mr Maclean, Mr De Marco confirmed "As to me publicising my involvement, my first duty is to my client, and I never mention anything about my work if my client prefers me not to." The clear inference being that his client in this matter wanted him to make the public comments that he did.

c. *"According to sources in the Scotland camp, New Zealand were the de facto decision-makers on a black day for the sport. The "robust contingencies" which three months earlier World Rugby had assured were in place for a tournament held in typhoon season (Japan averages 20-25 typhoons each year) were understood to have included moving games to unaffected areas or postponing games...World Rugby denies Scottish claims that New Zealand, the world champions, exercised 'undue influence'." (Telegraph, 12 October 2019)*

C. Appointment of Disputes Committee

8. In my capacity as Independent Judicial Panel Chairman, and in exercise of my powers pursuant to Section 16.4 clause 18 of the ToP I appoint myself to Chair the Disputes Committee which will deal with this case. In addition, the Disputes Committee will comprise (in accordance with Section 16.4 clause 19 of the ToP) the following independent legal professionals:

- a. Adam Casselden SC (Australia)
- b. Nigel Hampton QC (New Zealand)

D. Directions

In accordance with Section 16.5 clause 21 of the ToP, I issue the following directions

1. By 14.00 (Tokyo time) on 16 October 2019 the SRU must respond in writing to the charges and accompanying documentation as follows:
 - a. State whether it admits or denies the charges.
 - b. If it admits either or both charges, identify any factual matter alleged by RWCL with which it takes issue or disputes.
 - c. If it denies either or both of the charges, state with full particularity the basis of such denial including
 - i. In general terms, its defence to each charge; and
 - ii. In specific terms, the factual matters alleged by RWCL in respect of which it takes issue or disputes.

2. By 14.00 (Tokyo time) on 16 October 2019 the SRU must submit to RWCL and the Disputes Committee the following:
 - a. Any application for an oral hearing of this matter, and the reasons for any such request, RWCL having indicated in paragraph 30 of the Notice of Charge that the matter can (in its submission) “*be appropriately dealt with on the papers in accordance with Section 16.5, clause 23*”;
 - b. Any written submissions it wishes to advance in support of its case; and
 - c. The following (which shall be attached to the said written submissions)
 - i. All evidence it will rely upon in support of its case – any such evidence must be in writing;
 - ii. Any arbitral awards or decisions relied upon; and
 - iii. The names of the witnesses relied upon.

3. RWCL by 22.00 (Tokyo time) 16 October 2019 shall:
 - a. Reply to the above from the SRU.
 - b. In relation to paragraph 27 of the Notice of Charge, set out any submissions it has in relation to
 - i. financial sanction it seeks;
 - ii. costs; and
 - iii. the imposition of a prohibition on SRU CEO Mark Dodson from entering all remaining official events for Rugby World Cup 2019

A handwritten signature in black ink, appearing to read 'Christopher Quinlan', written in a cursive style.

Christopher Quinlan QC

15 October 2019

**MISCONDUCT: IN THE MATTER OF ALLEGED BREACHES OF THE TERMS OF
PARTICIPATION AND WORLD RUGBY CODE OF CONDUCT IN RELATION TO
RWC 2019**

CHARGES BROUGHT BY: Rugby World Cup Limited ('RWCL')
AGAINST: Scottish Rugby Union ('SRU')

A. Introduction

1. This is to be read together with my document dated 15 October 2019.
2. From the correspondence we have seen, we understand the SRU denies both charges. In light of, and to reflect, the content of that correspondence it is appropriate for me to re-issue my Directions of 15 October (pursuant to Section 16.5 of the ToP) in the following amended terms.

B. Directions

1. By 17.00 (Tokyo time) on 22 October 2019 the SRU must respond in writing to the charges and accompanying documentation as follows:
 - a. State with full particularity the basis of such denial including:
 - i. In general terms, its defence to each charge; and
 - ii. In specific terms, the factual matters alleged by RWCL in respect of which it takes issue or disputes.
 - b. Submit the written submissions it wishes to advance in support of its case; and
 - c. Submit the following (which shall be attached to the said written submissions):
 - i. All evidence it will rely upon in support of its case – any such evidence must be in writing;
 - ii. Any arbitral awards or decisions relied upon; and
 - iii. The names of the witnesses relied upon.

2. RWCL by 17.00 (Tokyo time) 23 October 2019 must
 - a. Reply to the above from the SRU.

A handwritten signature in black ink, appearing to read 'Christopher Quinlan', written in a cursive style.

Christopher Quinlan QC

19 October 2019

MISCONDUCT: IN THE MATTER OF ALLEGED BREACHES OF THE TERMS OF
PARTICIPATION AND WORLD RUGBY CODE OF CONDUCT IN RELATION TO
RWC 2019

CHARGES BROUGHT BY: Rugby World Cup Limited ('RWCL')
AGAINST: Scottish Rugby Union ('SRU')

RULINGS AND FURTHER DIRECTIONS

A. Introduction

1. This is to be read together with the Chair's documents dated 15 and 19 October 2019.
2. In response to those documents we have received 6 emails from the SRU each with attachments. Two are headed "FAO Chris Quinlan QC [sic]". They are not indexed.
3. We have also received a substantive reply from RWCL dated 23 October 2019.

B. "Response to charges against Scottish Rugby (21.10.19)"

4. Paragraph 1
 - a. States: *reserves its rights as to all matters raised in Scottish Rugby's first response to directions of the Disputes Committee*
 - b. We direct that within 24 hours of receipt hereof the SRU must disclose in writing full particulars of what rights it purports to "reserve".¹
5. Paragraph 87
 - a. States: "We rely also on the first response to directions and repeat our requests made therein; and we rely on the comments prepared in response to RWCL's reply to directions."
 - b. Although charting a course through the various SRU lengthy documents and attachments is not easy (the format of those documents and [apparently]

¹ Other than those set out in §45 thereof

supporting material not being without their challenges), we understand the SRU's position is as follows:

- i. The SRU "believes" the Disputes Committee ('DC') is not the "appropriate forum" to determine these charges;
- ii. The SRU denies the charges;
- iii. The SRU requests an oral hearing (if the DC has jurisdiction).
- iv. At such hearing (and at the present time) the SRU will rely upon the evidence of Mark Dodson; and
- v. The SRU requests disclosure of certain material.

C. Jurisdiction

6. In paragraph 1 its email of 16 October 2019, the SRU averred:

"We do not believe this is an appropriate matter for a Misconduct charge before the Disputes Committee. The matters to which the RWCL letter refers relate to a dispute relating to the Tournament that arose between RWCL and Scottish Rugby in which both parties have made public statements. As such this is a matter which, if RWCL believe it has a claim against Scottish Rugby, ought to be determined by Arbitration pursuant to clause 11.10 of the Participation Agreement. It is not appropriate for RWCL to try and avoid the procedural and legal safeguards available to Scottish Rugby if the matter was dealt with by arbitration, and Scottish Rugby reserves all of its rights in regard to the Disputes Committees procedure being the inappropriate forum. In the circumstances, we invite the RWCL to withdraw the charges and/or to bring any complaint RWCL may have against Scottish Rugby to an arbitration pursuant to clause 11.10."

7. In paragraph 16.c of the same document it invited the DC to "to dismiss the charges, the dispute being brought in an inappropriate forum"
8. If the SRU is, by its "belief", challenging the DC's jurisdiction, we need first to determine that issue. It is appropriate to do so on the basis of the written submissions we have received.

9. Participation in RWC is governed by the Terms of Participation ('ToP'). The ToP contains a Participation Agreement, at Section 17 thereof, which was signed by SRU on 7 December 2018. The SRU is thereby bound by the terms of the ToP.

10. Clause 11.10 of the Participation Agreement provides:

"For the avoidance of doubt, the parties agree that prior to and during the Tournament no challenges shall be made to any decisions of the Tournament Director (save in the limited circumstances set out in Section 16 of the Terms of Participation) and no challenges shall be made to any decisions of the Disputes Committee and/or any other persons or bodies appointed by RWCL in respect of any and all operational, participatory, commercial and any other matters relating to the Tournament. Subject strictly to the foregoing and the exclusive mechanisms set out in this Clause 11 for resolution of disputes (arising prior to or during the Tournament) by the Tournament Director (or his nominees) or the Disputes Committee or any other official body or person appointed by RWCL, any claim or dispute relating in any way to the Tournament including any challenge to any decision made during the Tournament, shall be resolved by arbitration after the Tournament before an independent arbitrator appointed by agreement of the parties to the dispute (or if such agreement cannot be reached within thirty days, by such further person as may be nominated by the President for the time being of the Law Society of England and Wales)."

11. The Disciplinary Programme for RWC is set out at Section 14 of the ToP and provides that World Rugby Regulation 20.2 (Misconduct and Code of Conduct) applies to RWC, save for the modifications made in the ToP. The modifications are not relevant for these purposes.

12. "Misconduct" is defined in Section 18 of the ToP as:

"any conduct, behaviour or practices on or off the playing enclosure in connection with the Tournament (excluding Foul Play during a Match) that is unsporting and/or unruly and/or ill-disciplined and/or that brings or has the potential to bring the sport of Rugby Union, World Rugby, the Company and/or the RWCL Partners into disrepute."

13. The Participation Agreement sets out the process in the event of an alleged incident of misconduct.

“11. Dispute Resolution and Compliance

11.2(b) All matters relating to Misconduct and breaches of World Rugby Code of Conduct shall be dealt with in accordance with the provisions of the Misconduct and Code of Conduct Regulations set out at Section 16 of the Terms of Participation.”

14. Section 16.4 of the ToP provides that a Disputes Committee shall be appointed to deal with Misconduct. The DC has been appointed and is properly constituted according to the ToP.

15. The key to resolution of this issue is the nature of the dispute. It is important not to conflate merit with jurisdiction. RWCL has brought two charges of Misconduct against the SRU. Each alleges conduct *“in contravention of Section 17, clause 3.2 of the Participation Agreement and paragraph 20.5 of the World Rugby Code of Conduct”*. Each of the two charges of Misconduct alleges conduct which *prima facie* is covered by the definition of Misconduct provided by Section 18 of the ToP. Therefore, the charges fall squarely within the ambit of Section 11.2(b) of the Participation Agreement and the DC is the correct forum for resolution thereof.

16. It follows that we decline the invitation to dismiss the charges and refuse SRU’s request for *“the matter be put before a Disciplinary Panel of World Rugby”*².

D. Charge 2

17. In paragraph 15 of its email of 16 October 2019, the SRU stated:

² §16.d SRU email 16 October 2019

“Lastly RWCL is called upon to retract those charges that relate to Mr Nick De Marco QC... If RWCL does not retract those allegations then the Disputes Committee is asked to strike them out without further delay.”

18. One element of one of the charges (Charge 2.b) concerns Mr de Marco QC’s public conduct. RWCL has declined to withdraw that element of the charge.
19. In our judgement it is premature to dismiss or strike out that element of the charge. It is an aspect of the charge which is not without complication. We consider it inappropriate to dismiss or to strike it out before considering the relevant evidence and submissions in relation thereto.

E. Disclosure request

20. Unsurprisingly, the ToP does not contain detailed procedural rules of the conduct of proceedings such as these. Section 16.5 clause 21 of the ToP provides:

“The Disputes Committee shall have full discretion as to its procedures (including any pre-hearing directions) and as to what evidence it may require. The Disputes Committee will not be bound by judicial rules governing procedure and/or admissibility of evidence provided that the proceedings are conducted with reasonable notice and in a fair manner with a reasonable opportunity for relevant parties to present their arguments, always having due regard to the need to resolve disputes relating to the Tournament on an expedited basis. The Disputes Committee shall be entitled to call on such experts (legal or otherwise) as it considers appropriate to assist in the matter under consideration.”

21. Those are the principles we apply in determining these (and all) applications and aspects of these proceedings.
22. In paragraph 5 its email of 16 October 2019, the SRU requested:

“RWCL is also requested to disclose in full precisely what was discussed with other unions and when given that comments attributed to Mr Gilpin of RWCL have confirmed that discussions took place.”

23. In its response of 19 October RWCL replied:

“This question is irrelevant when considering SRU’s conduct and comments. RWCL remained in contact with Unions as is a normal part of the day-to-day running of the Tournament and to ensure the welfare of teams and Tournament Personnel during this challenging time.”

24. On the basis of the material before us, we presently cannot see the claimed relevance of the material sought and refuse the application.

F. Hearing and further directions in relation thereto

25. RWCL submits that the matter can be resolved on the papers. In paragraph 11 of its 16 October email, the SRU requested an oral hearing, at which (we note) it wishes to rely upon the evidence of Mr Dodson. RWCL does not oppose that application.

26. In accordance with Section 16.5 clause 21 of the ToP, we grant the request for an oral hearing and so direct. There is no good reason why it cannot be conducted using, where necessary, technology and video conferencing facilities³. Our firm view is that it should be heard as soon as reasonably practicable. Therefore, we fix the substantive hearing for Monday 28 October 2019, at time to be arranged. The parties have 24 hours from receipt hereof to make any representations in respect thereof.

27. Our Directions of 15 October and 19 October stand. Therefore, the SRU is directed to comply within 24 hours with Direction 2.c/Direction 1.c respectively namely:

“The following (which shall be attached to the said written submissions)

- i. All evidence it will rely upon in support of its case – any such evidence must be in writing;*

³ Per Section 16.5 clauses 22 and 23 of the ToP

ii. *Any arbitral awards or decisions relied upon..*”

28. In accordance with Section 16.5 clause 24 of the ToP, we direct that not more than 24 hours before the hearing, the parties shall complete “*a statement of agreed facts and issues for submission to the Disputes Committee*”. That shall address and specifically plead to paragraphs 14-22 of the Notice of Charge and paragraphs 4-7 of RWCL Reply dated 23 October 2019.

29. We further direct that not more than 24 hours before the start of the hearing, the parties submit (for our approval or otherwise) a joint timetable for the said hearing.

G. Conclusion

30. We express no view on the merits of the respective case of the parties nor on the gravity of the allegations nor any sanction which may imposed should either be proved. However, we trust both parties used the time we granted last week to reflect on whether these matters truly need to be litigated in this way, or at all. If they do, then so be it. We would urge both parties to focus on the true issues in this dispute. Each member of this DC is an extremely experienced and senior trial advocate and tribunal chair. We are not assisted by repetition or hyperbole.



Christopher Quinlan QC, Chair, Independent Judicial Panel Chairman (Eng.)

Adam Casselden SC, Chair SANZAAR Foul Play Review Committee (Aus.)

Nigel Hampton QC, Chair NZRU Judicial Committee, Former Chair SANZAAR Foul Play Review Committee (N.Z.)

Signed on behalf of the Disputes Committee

23 October 2019

Disputes Committee Direction – 25 October

The Disputes Committee has received the recent material from SRU (its two letters of 24 October 2019 with attachments) and makes the following Further Directions:

As to SRU’s application that the Chair recuse himself (with potential consequential recusal of other Committee members)

- 1. If RWCL wishes to make any submissions in respect of this application, it is to do so by no later than midnight (Japan time) on Friday, 25 October 2019.*

Thereafter the application will be determined by the Committee on the papers.

As to SRU’s application for an adjournment

In order for the Disputes Committee to properly consider SRU’s application for an adjournment the Committee directs:

- 1. SRU (a) to advise the length of the proposed adjournment sought by it; and (b) to provide a written outline of the evidence that it wishes to adduce from Messrs Dodson, Grassie and any other proposed witness by no later than midnight (UK time) on Friday, 25 October 2019; and*
- 2. that any submissions RWCL wishes to make in respect of this application are to be made by no later than midnight (Japan time) on Friday, 25 October 2019.*

General matters

- 1. The Disputes Committee directs RWCL to respond to paragraphs 7 and 8 of SRU’s letter dated 16 October 2019 by no later than midnight (Japan time) on Friday, 25 October 2019; and*
- 2. The Disputes Committee directs RWCL to produce any documents relevant to the requests made by SRU in paragraphs 5 and 7 of SRU’s letter dated 16 October 2019 by no later than midnight (Japan time) on Friday, 25 October 2019.*

Note: The Disputes Committee is not moved to change the position adopted, and the comments already made regarding Mr De Marco QC.

**MISCONDUCT: IN THE MATTER OF ALLEGED BREACHES OF THE TERMS OF
PARTICIPATION AND WORLD RUGBY CODE OF CONDUCT IN RELATION TO
RWC 2019**

CHARGES BROUGHT BY: Rugby World Cup Limited ('RWCL')
AGAINST: Scottish Rugby Union ('SRU')

RULING AND FURTHER DIRECTIONS

A. Introduction

1. This is to be read together with the Chair's documents dated 15 and 19 October 2019, the Disputes Committee's Rulings and Further Directions dated 23 October 2019 and its Directions of 25 October 2019.
2. The most recent communique from SRU's representative (Mr Caldow) was sent at 22.51 (JST) on 25 October ('the 25 October email').

B. Recusal

3. It is unclear from the 25 October email whether the SRU persists in its "*request*" for the Chair to recuse himself, first made in a letter from Harper Macleod dated 24 October 2019 ('the 24 October letter'). Therein the SRU (or its representative) indicate that they do "*not want to make this request but must do given the circumstances that are developing...*". Attached to that letter is a copy of the 'Call for Applications' for the post of Judicial Panel Chairman ('JPC') issued by World Rugby on 26 July 2016, with the JPC Role Description.
4. The 24 October letter makes two additional points:
 - a. The Chair had no power to appoint himself to the Disputes Committees.
 - b. If the Chair stands down, then the remaining members should also recuse themselves.

5. As to the power to appoint, the application is simply incorrect. Section 16.4 clause 18 of the TOP permits the JPC to appoint himself as the Chair of this Disputes Committee.
6. The basis of the application to recuse is said to be the appearance of bias and/or a lack of independence. No allegation of actual bias is made; nor could it properly be made (we observe).
7. The individual and separate view of each member of the Dispute Committee is that the application is without a scintilla of merit. In summary the reasons are as follows
 - a. The JPC is appointed by World Rugby Council following an open public competition. The JPC is expressly (*per* the Role Description) appointed in an independent capacity.
 - b. The JPC's role includes "*Working with Head of Legal*" and others. That means no more than the obvious practical need to do so and to be able to do so. Judges and Independent Judicial Chairs in many jurisdictions and sports often can be required to fulfil advisory roles with varying degrees of formality/informality. Further, any system of justice, sporting included, must have such an interface. The Chief Judges/Justices in many jurisdictions are often that judicial interface with the executive or legislature but they not thereby barred from sitting in a judicial capacity.
 - c. As World Rugby correctly identified:

"The JPC is independent. References to 'working with' World Rugby staff in the 'Call for Application' are references to a practical, but independent working relationship and must be read in the context of the remainder of the document that states that the JPC 'shall exercise the function impartially'".
 - d. Indeed, to underline (if that were necessary) the independent role of the JPC the Role Description which accompanied the Call for Applications repeatedly stresses the independence of the role.
 - e. The *reasonable and informed* bystander would well understand all of the above.

- f. There is also force in World Rugby's observation that "SRU and their advisers in Harper Macleod fully understand that there is a working relationship between World Rugby and the JPC."
8. Accordingly, there is no merit in the suggested appearance of bias and/or a lack of independence submission and the Chair declines to recuse himself.
9. Further, there is no basis for the other two members to recuse themselves and they decline to do so.

C. Directions

10. On 25 October 2019 we directed, *inter alia*, in relation to the SRU application for an adjournment of the hearing fixed for 28 October:

"In order for the Disputes Committee to properly consider SRU's application for an adjournment the Committee directs:

SRU (a) to advise the length of the proposed adjournment sought by it; and (b) to provide a written outline of the evidence that it wishes to adduce from Messrs Dodson, Grassie and any other proposed witness by no later than midnight (UK time) on Friday, 25 October 2019; and

that any submissions RWCL wishes to make in respect of this application are to be made by no later than midnight (Japan time) on Friday, 25 October 2019."

11. In response thereto in the 25 October email Mr Caldow replied thus:

"To assist in the determination of this matter and to seek to ensure that this matter concludes sooner, rather than later, Scottish Rugby proposes that following receipt of the information and documentation to be provided today by RWCL, Scottish Rugby makes its final reply in this matter by way of a written submission, and provides a written statement from Mr Dodson, and that this be provided by 1pm (UK time) on Tuesday 29th October. Scottish Rugby would need until that time to conclude its final response due to the availability of persons and that includes external advisers. Thereafter, the matter can be determined without a further hearing.

Scottish Rugby has identified that it is proving logistically very difficult if not impossible to propose a meaningful date and time for hearing in either of w/c 28th October or w/c 4th November due to collective availability. The time difference is not necessarily a challenge, but rather as you know, Mr Dodson's availability and that of other key persons including Mr Grassie, who also has longstanding immovable commitments in the coming fortnight, together with availability of advisers. It has been made clear to Scottish Rugby that there is a wish to reach a conclusion swiftly; on balance Scottish Rugby considers that a hearing in w/c 11th November is not in any party or person's interests."

12. We interpret that to mean the SRU no longer seeks an oral hearing – having applied for and been granted one. It now wishes – like RWCL – to have the matter revolved on the papers.
13. We accede to the SRU's application for the matter to be determined on the papers and so direct.
14. We direct that no later than 12.00 (GMT) on 28 October 2019 the SRU must file any written evidence and further written submissions (if any) upon which it wishes to rely.
15. We direct that no later than 12.00 (GMT) on 29 October 2019 RWCL may file any written reply it wishes to.



Christopher Quinlan QC, Chair, Independent Judicial Panel Chairman (Eng.)

Adam Casselden SC, Chair SANZAAR Foul Play Review Committee (Aus.)

Nigel Hampton QC, Chair NZRU Judicial Committee, Former Chair SANZAAR Foul Play Review Committee (N.Z.)

Signed on behalf of the Disputes Committee

26 October 2019

Disputes Committee Direction – 30 October

1. *In light of para 2 of SRU's Submissions of 28 October 2019 and Appendix 2 to RWCL Reply dated 29 October 2019 we direct that the parties inform us within 12 hours of receipt hereof if they wish any further time to try to resolve this and if so, to make a joint request in respect thereof, setting out a proposed timetable.*
2. *Are we to infer from the draft statement of facts and issues that even that cannot be agreed by the parties?*

We have read with care the open offer in Appendix 2. It being an open offer, if we are required to resolve this dispute it is very likely that it will form part of our written decision. We urge the parties to reflect on their respective positions and think hard about the potential consequences for each of them if agreement cannot be reached. No one will forget we are concerned here with a dispute which concerns in part events which led to a significant loss of human life.

Section 5.3 Terms of Participation Delayed, Postponed, Abandoned and Cancelled Matches

In the interests of the Teams, the commencement of Matches at the scheduled time shall be the first priority in all instances. However, in circumstances deemed necessary and/or appropriate by RWCL, Matches may need to be delayed, postponed, abandoned or cancelled. All decisions in this regard shall be communicated to Teams by the Match Commissioner.

Where the delay, abandonment, postponement or cancellation of a Match is deemed to be caused by a Participating Union, not acting under instruction of a Match Official or Match Commissioner, such Participating Union shall, in accordance with the provisions of the Participation Agreement, be subject to the decisions of RWCL regarding forfeiture of the Match, and financial and/or other sanctions as appropriate.

A policy regarding the minimum time Teams will receive for warm up and other Match preparation in the cases of delayed Matches will be circulated to Teams in due course. At all times, Teams should adhere to the transport and Match day timings provided to them by JR2019 and RWCL.

Pool Matches

Delayed Matches

Where a pool Match cannot be started at the scheduled time, it will be considered delayed. Decisions on the delay of Matches will be taken as early as possible on the Match day and be communicated to Teams by the Match Commissioner.

Cancelled Matches

Where a pool Match cannot be commenced on the day in which it is scheduled, it shall not be postponed to the following day, and shall be considered as cancelled. In such situations, the result shall be declared a draw and Teams will be allocated two Match points each and no score registered. For the avoidance of doubt, no bonus points will be awarded.

Abandoned Matches

Where a pool Match is stopped following commencement, and cannot be completed the same day, it will not be rescheduled to the following day, and will be considered as abandoned.

In such situations, the following procedures shall apply:

1. Where a Match has to be abandoned either at half time or at any time during the second half, the score at the time of the abandonment shall be considered as final and used to determine the result of the Match.
2. Where a Match has to be abandoned at any time during the first half the result shall be declared a draw for Match points purposes, however each Team will keep its score at the time of the abandonment. Any bonus points for scoring four tries secured at the time of the abandonment are also retained by the Teams involved in abandoned pool Matches.

Knock-out Matches

Delayed Matches

Where a knock-out Match cannot be started at the scheduled time, it will be considered delayed. Decisions on the delay of Matches will be taken as early as possible on the Match day and be communicated to Teams by the Match Commissioner.

Postponed Matches

Where a knock-out Match cannot be commenced on the scheduled Match day, it will be considered as postponed, and will be re-scheduled to be played within the two days following the scheduled Match day, or such longer period as determined by RWCL.

Abandoned Matches

Where a knock-out Match is stopped following commencement, and cannot be completed the same day, it shall be considered as abandoned.

In such situations, the following procedures shall apply:

1. Where a Match has to be abandoned either at half-time or at any time during the second half or any additional periods of play, the score at the time of the abandonment shall be considered as final and used to determine the result of the Match.

If the above result is a tie, then the winner will be determined by reference to the following sequential criteria:

- The Team which scored most tries in that particular Match.
- The Team with the most Match points from the pool phase.
- The Team which in all its Tournament Matches has the best difference between points scored for and points scored against.
- The Team which in all its Tournament Matches has the best difference between tries scored for and tries scored against.
- The Team which in all its Tournament Matches has scored most points.
- The Team which in all its Tournament Matches has scored most tries.
- Where all criteria above are not able to determine a winner, the winner shall be the Team that is higher ranked in the official World Rugby World Rankings at the time the Match is scheduled to be played (this criterion will not apply for the Final; in the case that the winner of the Final cannot be determined from the above criteria the two Teams shall be jointly declared winners).

2. Where a Match has to be abandoned at any time during the first half, the Match shall be played again in full within the two days following the scheduled Match day at the same Venue, or if required, an alternate Venue as directed by RWCL, for the full time, or such longer period as determined by RWCL.

Cancelled Matches

Where a knock-out Match cannot commence within the two days following the scheduled Match day (or such longer period as specified by RWCL) or is abandoned prior to half-time and cannot be postponed and re-scheduled within this period, it shall be considered as cancelled.

In such situations, the following sequential criteria shall apply to determine the winner of the cancelled Match:

- The Team with the most Match points from the pool phase (applicable in quarter-finals and semi-finals).
- The Team which in all its Tournament Matches has the best difference between points scored for and points scored against.
- The Team which in all its Tournament Matches has the best difference between tries scored for and tries scored against.
- The Team which in all its Tournament Matches has scored most points.
- The Team which in all its Tournament Matches has scored most tries.
- Where all criteria above are not able to determine a winner, the Team that is higher ranked in the official World Rugby World Rankings at the time the Match is scheduled to be played (this criterion will not apply for the Final; in the case that the winner of the Final cannot be determined from the above criteria the two Teams shall be jointly declared winners).