

## EPCR SHORT JUDGMENT FORM

Match	Saracens	Vs	Northampton Saints
Club's Country	England	Competition	EPCR Champions Cup
Date of match	20 January 2018	Match venue	Allianz Park
Rules to apply	<b>EPCR Disciplinary Rules 2017/18</b>		

### PARTICULARS OF OFFENCE

Player's surname	Burger	Date of birth	13 April 1983
Forename(s)	Schalk	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Saracens		
SELECT:	Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	9.20 – dangerous play in a ruck or Maul		
Summary of Sanction	1 week		

### HEARING DETAILS

Hearing date	23 January 2018	Hearing venue	Sofitel, London Heathrow
Chairman/JO	Pamela Woodman (Scotland)	Panel member 1	Antony Davies (England)
Panel member 2	Graham Quinn (Ireland)	Disciplinary Officer	Liam McTiernan
Appearance Player	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Appearance Club	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Player's Representative(s):

Sam Jones, legal representative for the Player

Other attendees:

Observers:

Mark McCall, Director of Rugby, Saracens  
Warrick Lang, Team Manager, Saracens

List of documents/materials provided to player in advance of hearing:

1. Notice of hearing issued on 22 January 2018 (in e-mail form)
2. Letter to chairman of EPCR Disciplinary Panel from Disciplinary Officer dated 22 January 2018
3. Citing complaint submitted by Peter Ferguson ("Citing Commissioner") dated 21 January 2018
4. Supplementary report from the Citing Commissioner containing stills taken from the video evidence – provided by the Disciplinary Officer on 22 January 2018
5. Player's responses to standing directions (via e-mail from the Player's Representative) dated 22 January 2018
6. Disciplinary Officer's responses to standing directions (via e-mail) dated 23 January 2018
7. Statement from the referee, Mathieu Raynal (via e-mail) dated 22 January 2018
8. Statement from the TMO, Philippe Bonhoure (via e-mail) dated 22 January 2018
9. Statement from the assistant referee, Alexandre Ruiz (via e-mail) dated 22 January 2018
10. Statement from the assistant referee, Thomas Charabas (via e-mail) dated 23 January 2018
11. Statement from Northampton Saints number 6 ("N6"), David Ribbans, (via e-mail – sent on by Paul Shields) dated 21 January 2018
12. Character reference in respect of the Player from Mark McCall provided on 23 January 2018
13. Video clip - link provided by the Disciplinary Officer (via e-mail) on 22 January 2018

[In terms of other relevant documents/materials, after conclusion of the hearing, there was e-mail correspondence between the Chairman and the Player's Representative (copied to various others) with regard to the Player's playing schedule. A letter issued by Mark McCall was provided by the Player's Representative on 24 January 2018 in this respect.]

## SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/FOOTAGE

The citing complaint was made by the Citing Commissioner under law 9.20 in respect of an alleged incident which the Citing Commissioner stated occurred in the 48<sup>th</sup> minute of the Match. The citing complaint was in the following terms:

"Northampton are attacking and kick from their 10m line, the ball is caught by Saracens between their 22m and 10m line, a ruck ensues. Northampton No.6 RIBBANS head is exposed at this ruck. Saracens No.8 BURGER's enters the ruck without binding correctly, his arm is by his side with his hand up towards his shoulder, he makes contact above the shoulder in the head area of Northampton No.6 RIBBANS, Northampton No.6 RIBBANS head moves side-wards suggesting forceful contact. After the contact Northampton No.6 RIBBANS appears to react to the blow. I consider the actions of BURGER to be serious foul play which would have warranted a red card if the referee had detected it. I therefore cite Saracens No.8, Schalk BURGER, under Law 9.20 of World Rugby's Laws of the Game."

The referee and both of the assistant referees confirmed in their respective statements that they did not see the alleged incident live.

The (unofficial translation into English of the) statement from the TMO was in the following terms:

"On this action I perceive a shoulder to shoulder contact without speed or violence between the 8 black and 6 green. I do not perceive live contact with the head especially as the green player (Northampton) does not even fall and immediately stands on the side to intervene in defense."

The statement from N6 was in the following terms:

"It was in the second half and we chased a box kick on the left hand side of the pitch. Nafi made the tackle and I was the next Saints player there and I went in to compete for the ball. I remember a big collision on my head on being cleared out. I was frustrated by this but made the decision to get back into the defensive line rather than go back at the player or the ruck as the ball was lost. I then just carried on with the game."

It had been requested by the Player's Representative and agreed by the Disciplinary Officer that the Disciplinary Committee should have regard to the 'new' sanction table introduced by World Rugby (and adopted by EPCR) which had come into force from 1 January 2018 ("New Sanction Table").

The video clip evidence has been taken into account in the "FINDINGS OF FACT" section below.

## ESSENTIAL ELEMENTS OF OTHER EVIDENCE (e.g. medical reports)

The Disciplinary Officer noted that much would turn on the Disciplinary Committee's factual findings. He made only a few submissions with regard to sanction which were, in summary:

1. The head of a player was inherently vulnerable.
2. There was no general breakdown of order as a result of the incident but the offending was completed.
3. He was not urging the Disciplinary Committee to find that there were any aggravating factors.
4. He was willing to take as read the points raised in mitigation on behalf of the Player but noted that, as a general proposition, the existence of the Player's disciplinary record was something to which the Disciplinary Committee would require to give consideration, particularly with regard to how much weight it was to be given.

## SUMMARY OF PLAYER'S EVIDENCE

In his responses to the standing directions (and confirmed at the hearing), the Player accepted that he had committed an act of foul play as set out in the citing complaint, that that act would have warranted a red card, and that the Player, therefore, admitted the charge. Accordingly, the citing complaint was upheld.

The Player's Representative noted that the Player had carefully considered his position with regard to the citing complaint and that accepting the complaint was a finely balanced decision. On the balance of probabilities, he stated that the act of foul play tipped in favour of warranting a red card but, on the overall spectrum of the seriousness of the offending, this act was at the low end.

The submissions made by the Player, or on his behalf by the Player's Representative, were, in summary:

1. This incident should be categorised as low end offending.
2. There were four key points which they wanted to address, namely:
  - a. **Reckless not deliberate act** – the Player did not intentionally commit an act of foul play. It was just a collision at a ruck which he had originally thought was innocuous (prior to viewing the video evidence a few times). He was attempting to bind onto Saracens number 2 (“S2”), who was on the ground, to resist N6 pushing. It was accepted that there was no attempt to bind on N6, but it would have been more serious if there had been no attempt to bind onto any player at all. It was accepted that the Player was guilty of dangerous play in a ruck but not of charging without binding.
  - b. **N6 changed his body** position and rose up – When the Player committed to the ruck, N6’s head was down and the Player wanted to stop him from getting the ball. If N6 had stayed in that position, then it was likely that the Player would predominantly have hit his shoulder and arm. It could be seen from the video evidence that N6’s head rose up. The Player was committed to the contact, he was coming in at a bit of an angle and everything happened very fast. Both the Player and N6 appeared to sense the contact and both moved their heads away from where the contact was made. The Player had expected N6 to continue what he was doing, contesting for the ball with a strong body position, and so he was surprised when N6 rose up. Also, the Player was 4-5 metres away from the ruck and so he was later to the breakdown, when there was always a greater risk of getting it wrong.
  - c. **Force of collision was on the neck and shoulder simultaneously and, in following through, there was contact with the head of N6** – this was consistent with the evidence of N6 regarding the “big collision” on his head but N6’s evidence did not resolve where contact had been made first. It would have been more serious if the first contact had been with the head of N6. The target was not the head of N6. When N6 moved, it was then out of the Player’s control where contact was made. By the way N6 moved, the force of the contact went through the shoulder/neck area of N6, not his head. The Player should get the benefit of the doubt.
  - d. **Point of contact was the Player’s upper arm** – the fleshy part of his bicep/tricep, not his shoulder or his forearm. His lower arm was tucked in and he did not lead with his forearm. Contact by the elbow, knee, forearm, etc would be more serious than contact by the upper arm and would probably warrant a mid-range entry point but the upper arm would not. There was no swinging motion.
3. With regard to whether or not the potential risk of injury had been considered by the Player, it was submitted that every ruck entailed risk; rugby was a contact sport. When pilfering/contesting for a ball, the head and shoulder area of the player who was doing so were always exposed.
4. There was no effect on the Match.
5. There was no injury to N6 and he did not require any treatment on the pitch. There was a limit on the vulnerability of N6.
6. Whilst the Player had received sanctions in the past (which have been set out later in this decision), this incident was the first example of this type of offence. There were no aggravating factors.
7. The Player knew N6 well. Both he and N6 were South Africa players. N6 did not make any comment to the Player about the incident.
8. The Player had 86 caps for South Africa and had played in over 200 senior games. He was part of the Rugby World Cup winning team in 2007 and was the IRB world player of the year in 2004.
9. The Player had made an early guilty plea, had a good record (his last sanction being almost 10 years ago), had a good character, had demonstrated exemplary conduct at the hearing and had expressed remorse (but confirmed that he had not spoken to N6 yet).
10. Even if there was contact with the head, World Rugby had not included a mandatory mid-range entry point in the New Sanction Table for law 9.20, presumably because it had accepted that there was bound to be some incidental contact with the head in every ruck. Otherwise, to get to a mid-range entry point, it was submitted that there would require to be some evidence of injury to the other player. The Disciplinary Committee had discretion to find that it was at the low end on the scale of seriousness.
11. If the Disciplinary Committee did find that the offending was at the low end on the scale of seriousness, it might already have given the Player the benefit of the doubt in reaching that decision. The effect of mitigation would be of more significance if it was found to be in the mid-range, where the entry point was 4 weeks and so there could be a 0%, 25% or 50% reduction.

## FINDINGS OF FACT

Law 9.20 states:

"Dangerous play in a ruck or maul.

- a. A player must not charge into a ruck or maul. Charging includes any contact made without binding onto another player in the ruck or maul.
- b. A player must not make contact with an opponent above the line of the shoulders.
- c. A player must not intentionally collapse a ruck or a maul."

Based on the Disciplinary Committee’s review of the video evidence (taking into consideration the submissions made

by, or on behalf of, the Player), the Disciplinary Committee found that:

1. Saracens number 15 ("S15") had caught a high ball cleanly before being tackled by Northampton Saints number 11 ("N11"). A ruck had then ensued. Initially, the Player was not involved in the ruck.
2. N6 was the first Northampton Saints player to the breakdown (other than the tackler). He was on his feet in a strong body position with his head down and was looking towards the ball. He appeared to be attempting to get his hands on the ball, presumably to "steal" it.
3. S2 was the first Saracens player to the breakdown (other than S15). S2 appeared to grasp onto S15 with his right hand and N11 with his left hand. S2 appeared to drive upwards with his right shoulder into the right shoulder of N6, causing N6's head and upper body to rise and N6's upper body to twist towards his left such that his right shoulder was lower than his left shoulder and his head was higher and more exposed.
4. At this point, the Player was committed to the ruck and would not have been able to avoid contact.
5. The Player approached the ruck with his left arm outstretched and appeared to make contact with S2 with his left hand. The Player's right arm was bent with his upper arm at approximately a 45 degree angle to his ribs with his lower arm in front of his body.
6. Given that the video evidence available was only from one angle, it was difficult to be definitive regarding the point of contact on N6 and which part(s) of the Player's body had made contact with N6.
7. It was not clear from the video evidence if the Player's lower right arm was tucked in against his body or held out in front of it. The Player's evidence was that he did not lead with his forearm and he did not think that he had made contact with N6 with his lower arm. The Disciplinary Committee was prepared to give the Player the benefit of the doubt and found, on the balance of probabilities, that the Player had not led with his forearm.
8. It was not clear from the video evidence if the Player had made contact with his shoulder or his upper arm. The Player's evidence was that he made contact using the fleshy part of his upper arm, the side of his bicep and tricep. The Disciplinary Committee was prepared to give the Player the benefit of the doubt and found, on the balance of probabilities, that the Player had made contact with his upper arm, rather than his shoulder.
9. It appeared that contact had been made with the head of N6 based on the movement of N6's head – being pushed away towards N6's right hand side and out of the ruck, with his upper body twisting and following. It was not clear from the video evidence if the Player made initial contact with the head of N6 or, based on the Player's submissions, with the neck and shoulder area of N6 first, with contact with the head of N6 then following (the resulting contact with the head being why he had accepted that the act warranted a red card). Again, the Disciplinary Committee was prepared to give the Player the benefit of the doubt and found, on the balance of probabilities, that initial contact had not been to the head of N6 but that contact to the head of N6 had been made during the course of the contact. One of the factors which it took into account in doing so which, for the avoidance of doubt, was not determinative, was that, whilst there was some reaction from N6 to the contact, the reaction may have been more pronounced and significant had there been direct contact to the head with significant force.

The Disciplinary Committee noted that it did not accept that there would require to be some form of injury to N6 in order for it to make a finding that the offending was in the mid-range on the scale of seriousness.

### DECISION

Breach admitted  Proven  Not proven  Other disposal (please state below)

### SANCTIONING PROCESS

### ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 7.8.32 (a)-(b)

PLEASE TICK APPROPRIATE BOX Intentional/deliberate  Reckless

State reasons

The Disciplinary Committee was satisfied (on the balance of probabilities) that, whilst the Player intended to clear N6 out of the ruck, the movement of N6 (as described in the "FINDINGS OF FACT" section above) contributed to where the Player made contact with N6, including the contact with the head, and so it found the offending to be reckless.

<b>Gravity of player's actions – R 7.8.32 (c)</b>
The action of the Player was not particularly grave but had the potential to cause injury.
<b>Nature of actions – R 7.8.32 (d)</b>
As described above in the "FINDINGS OF FACT" section, the Disciplinary Committee was prepared to accept that there appeared to be contact between the upper arm of the Player with, initially, the neck and shoulder area of N6 and then contact with N6's head.
<b>Existence of provocation – R 7.8.32 (e)</b>
None.
<b>Whether player retaliated – R 7.8.32 (f)</b>
No.
<b>Self-defence – R 7.8.32 (g)</b>
No.
<b>Effect on victim – R 7.8.32 (h)</b>
None.
<b>Effect on match – R 7.8.32 (i)</b>
None.
<b>Vulnerability of victim – R 7.8.32 (j)</b>
N6's head was exposed and the head was an inherently vulnerable part of the body.
<b>Level of participation/premeditation – R 7.8.32 (k)</b>
The Player participated fully but there was no evidence of premeditation.
<b>Conduct completed/attempted – R 7.8.32 (l)</b>
Conduct was completed.
<b>Other features of player's conduct – R 7.8.32 (m)</b>
None.

**ASSESSMENT OF SERIOUSNESS CONTINUED**

<b>Entry point</b>					
<u>Top end*</u>	<u>Weeks</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Low-end</u>	<u>Weeks</u>
<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>	
					2

\*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
Not applicable.

**ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS**

<b>Player's status as an offender of the Laws of the Game – R 7.8.34 (a)</b>
<p>The Player's Representative confirmed that the Player had previously received 3 sanctions:</p> <ul style="list-style-type: none"> <li>• 2007 – 2 weeks for a high tackle;</li> <li>• 2008 – 2 weeks for misconduct as a result of words/gesture towards an official; and</li> <li>• 2009 – 8 weeks for contact with the eye area, which was found to be reckless rather than intentional.</li> </ul> <p>Given that the Player had received the last of these sanctions over 8 years ago and that none of them was of substantially the same nature as that for which the citing complaint in the present case had been issued, the Disciplinary Committee decided that the Player's record should not be treated as an aggravating factor in the present case.</p>
<b>Need for deterrence – R 7.8.34 (b)</b>
Not applicable.
<b>Any other off-field aggravating factors – R 7.8.34 (c)</b>
Not applicable.

Number of additional weeks:                      0

**RELEVANT OFF-FIELD MITIGATING FACTORS**

<b>Acknowledgement of guilt and timing – R 7.8.35(a)</b>	<b>Player's disciplinary record/good character – R7.8.35 (b)</b>
The Player accepted the citing complaint at the earliest opportunity.	<p>The Player did not have a "clean" disciplinary record, as noted above.</p> <p>Mark McCall provided a reference as to the Player's good character.</p> <p>The Player had otherwise had a distinguished career in rugby over a period of a number of years.</p>
<b>Youth and inexperience of player – R 7.8.35 (c)</b>	<b>Conduct prior to and at hearing – R 7.8.35 (d)</b>
Not applicable.	<p>The Player's conduct was good during the hearing.</p> <p>[However, following conclusion of the hearing and as described below, the Disciplinary Committee became aware of certain facts which should have been disclosed to it during the hearing. As the lack of disclosure of these facts only came to light following conclusion of the hearing, this was not taken into account in determining whether or not there should be any reduction in sanction as a result of mitigating factors but, had this been known, it would have had an impact on the decision regarding any reduction to be allowed.]</p>

Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)
None. It was explained to the Disciplinary Committee that the Player had not spoken to N6 since the Match to express remorse as a result of the short period of time before the hearing and the risk of prejudicing matters for the Player at the hearing.	None.

Number of weeks deducted: 1

Summary of reason for number of weeks deducted:
<p>The Disciplinary Committee discussed this at length. In light of the fact that the entry point in this case had been determined to be 2 weeks, the Disciplinary Committee was aware that it would only be possible to allow a reduction of either 0% or 50% of the entry point.</p> <p>Notwithstanding that the Player did not have a “clean” disciplinary record and that the Player had already been given the benefit of the doubt on various points (as described in the “FINDINGS OF FACT” section above), the Disciplinary Committee decided that the Player should receive some “credit” in this case as a result of his early acknowledgement of guilt. As a result and given that the only options open to it were a 0% or a 50% reduction, it assessed that there should be a reduction in the sanction of 50% of the entry point, being 50% of 2 and so a reduction of 1 week.</p>

### SANCTION

**NOTE:** PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 7.2.5

Total sanction	1 week	Sending off sufficient <input type="checkbox"/>
Sanction commences	Saturday 20 January 2018	
Sanction concludes	Midnight on Sunday 4 February 2018	<p><b>Relevant information regarding conclusion of the sanction, including that which came to the attention of the Disciplinary Committee after conclusion of the hearing</b></p> <p><u>Before the hearing</u></p> <p>In terms of the notice of hearing issued on 22 January 2018, the Player was made aware of the requirement to bring to the hearing:</p> <p>“a written schedule evidencing [the Player’s] playing commitments for the remainder of season 2017/18, along with (<i>pursuant to clause 7.8.44 of the Disciplinary Rules</i>) any written evidence (for example, from [the Player’s] club and/or union) as to <i>whether or not [the Player is] fit, available and/or expected to play in each such match</i>”.</p> <p><i>[Emphasis added in italics]</i></p> <p>In addition to Rule 7.8.44, Rule 7.8.38 states: “The World Rugby sanctions for Foul Play, as set out at Appendix Three to these Disciplinary Rules, are drafted on the basis that a one-week period of suspension would ordinarily result in a Player missing one match.”</p> <p><u>During the hearing</u></p> <p>Upon having been advised of the total sanction, the Player/Player’s Representative was asked to confirm the</p>
Free to play	Monday 5 February 2018	

Player's upcoming playing schedule. Each of them knew, or should have known, that this confirmation was requested in order to allow the Disciplinary Committee to determine for which match the Player was to be suspended and the date on which the sanction would conclude. Each of them also knew, or should have known, that the information provided should reflect the requirements set out in Rule 7.8.38 and, in particular, Rule 7.8.44 which had been highlighted in the notice of hearing (as reproduced above), and that the information provided should not be misleading.

The Disciplinary Committee was advised by the Player's Representative that there was an Anglo-Welsh Cup match on 27 January 2018. Implicit in that confirmation was that the Player would be fit, available and expected to play in that match. It would have been clear to the Player and the Player's Representative (and, for that matter, Mr McCall and Mr Lang) that it was the Disciplinary Committee's understanding (from that confirmation) that the Player would be fit, available and expected to play in that match. None of them took any step to disabuse the Disciplinary Committee of that understanding. It is not known if the Player's Representative was aware, at that stage, that the Player was expected to be on holiday on that date and so would not be expected to play in that match.

Based on the confirmation provided, the Disciplinary Committee informed the Player that his sanction would conclude on Sunday 28 January 2018 and that he would be free to play from Monday 29 January 2018.

*[These dates have subsequently, but before issue of the written decision, been revised in light of the information which came to light after conclusion of the hearing.]*

#### Following conclusion of the hearing

Shortly after conclusion of the hearing and after the Player, the Player's Representative and other Saracens' representatives had departed, the Disciplinary Committee became aware that the Player was leaving for a holiday the next morning (Wednesday). As a result, the Chairman sought a specific confirmation from the Player's Representative (via e-mail) that the Player would be fit, available and expected to play in the Anglo-Welsh Cup match on 27 January 2018. The Player's Representative advised (via e-mail) that Saracens had confirmed that the Player was not (at that stage) expected to play in that match but was fit, available and expected to play in the Anglo-Welsh Cup match on 3 February 2018.

Upon making its own enquiries, the Disciplinary Committee noted that, as well as not being expected to play in round 3, the Player had not played in either of the prior two rounds of Anglo-Welsh Cup matches in season 2017/18.

Upon querying this, the Player's Representative provided (via e-mail) a lengthy explanatory letter from Mr McCall in response, highlighting (amongst other things) that there were a number of players who were not available for selection for Saracens as a result of injury or call up to the England senior or under 20s squads. Therefore, the Player was expected to play in the round 4 Anglo-Welsh Cup match on 3 February 2018.

		<p>Having regard to the particular combination of circumstances set out in Mr McCall's letter and taking those at face value, the Disciplinary Committee decided that the Player's period of suspension would include both the Anglo-Welsh Cup round 3 match (in which the Player was not expected to play) and the round 4 match (in which the Disciplinary Committee had been told that the Player was expected to play). Accordingly, the Player would be free to play from Monday 5 February 2018.</p> <p><u>General note to all</u></p> <p>Generally speaking, disciplinary committees will not independently investigate what they are told regarding the upcoming playing schedule of a player to ensure that it meets the requirements of Rules 7.8.38 and 7.8.44. However, nothing prevents disciplinary committees from doing so or from challenging, or not accepting, what they are told. Nonetheless, disciplinary committees should be able to rely on what they are told in that respect during a disciplinary hearing.</p> <p>All participants (including players and players' representatives) should ensure that the information that they provide to a disciplinary committee with regard to the upcoming playing schedule of a player is clear, accurate and not misleading and meets the requirements of Rules 7.8.38 and 7.8.44.</p>
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Signature (JO or Chairman)	Pamela Woodman	Date	25 January 2018
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**NOTE:** YOU HAVE THE RIGHT OF APPEAL AGAINST THIS DECISION AS SET OUT IN REGULATION 8.1 AND 8.2 OF THE EPCR DISCIPLINARY REGULATIONS. YOUR ATTENTION IS SPECIFICALLY DRAWN TO THE TIME LIMIT AND DIRECTIONS/REQUIREMENTS RELATING TO AN APPEAL SET OUT IN REGULATION 8.2.1 TO 8.2.4 OF THE REGULATIONS