

## EPCR SHORT JUDGMENT FORM

Match	RC Toulon	Vs	Benetton Treviso
Club's Country	France	Competition	European Professional Championship
Date of match	14 January 2018	Match venue	Stade Felix Mayol
Rules to apply	<b>EPCR Disciplinary Rules 2017/18</b>		

### PARTICULARS OF OFFENCE

Player's surname	Bastareaud	Date of birth	Age 29
Forename(s)	Mathieu	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	RC Toulon		
SELECT: Red card <input type="checkbox"/>	Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	Breach of Law 9.12, Verbal Abuse.		
Summary of Sanction	3-week suspension		

### HEARING DETAILS

Hearing date	17 January 2018	Hearing venue	Sofitel, Heathrow
Chairman/JO	Rod McKenzie	Panel member 1	Jennifer Donovan
Panel member 2	Becky Essex	Disciplinary Officer	Liam McTiernan
Appearance Player	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Appearance Club	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Player's Representative(s):

Other attendees:

Philip Fitzgerald, Avocaat, Solicitor/Barrister	Lauren Quajlea, Player Agent
---	------------------------------

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

<p>Citing Commissioner Report  Video Footage of Incident  Statement and Supplementary Statement of Referee  Statement of AR1  Statement of AR2  Statement of TMO  Statement of Sebastian Negri Da Oleggia ("Opponent")  Supplementary Statement of Opponent  Statement of Player  Letter from Player to Chairman  Fixture List for RC Toulon 2017/2018  List of Previous Disciplinary Sanctions for Player  Text of Tweet sent by Player  Player response to Standing Directions  EPRC response to Player response to Standing Directions  Written submission for Player  Testimonial for Player by Max Guazzini  Testimonial for Player by Bernard Laporte  Testimonial for Player by Cedric Rouhaud  World Rugby Judicial Decision re <i>Joseph Marler</i>  Press Release for RC Toulon 15 January 2018</p>
---



## EPCR SHORT JUDGMENT FORM

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

#### PROFESSIONAL CLUB RUGBY

What occurred in this incident, what was said and done by those involved and the generally understood 'English' meaning of words spoken were all not in dispute.

The Player accepted the Citing Complaint in full, admitted the commission of Foul play in terms of Law 9.12 (Verbal Abuse), and admitted that the Foul play had been such as to have warranted a red card.

None of the Match Officials including the TMO heard, either in person at the time or on audio feed at the time, the words used by the Player at the time of the incident. No action was taken on the field in relation to this incident. However, the words used by the Player are clearly audible on the Broadcast feed supplied to the Committee and the Player.

The incident occurs in the 79<sup>th</sup> minute of the Match which at the time was being led 36 to 0 by RC Toulon.

The Opponent has possession of the ball and is driving into a tackle in which the Player is the opposing player most centrally involved. The Opponent is brought to ground and the Player attempts to gain possession of the ball, in what has become a ruck, but the Player is penalised because he is 'off his feet'. At the same time the Opponent is orally protesting to the referee and to the Player that in tackling him the Player had used a 'swinging arm'. The opponent takes exception to this because it is late in the Match, the result is no longer in doubt and in his view the Player's actions in making the tackle carry a degree of danger of injury to the Opponent. We are unable, from the video to detect any actions by the Player which might be regarded as a swinging arm but this carries no weight in our consideration of what follows. Its only significance is that the allegation might have contributed to the sense of grievance which is caused in the Player since his tackle of the opponent appears to be 'clean'.

After the referee blows for the penalty both the Player and the Opponent get to their feet and there is a confrontation between them. The Opponent continues to complain of a swinging arm in the tackle and the Player denies that he had done so. The opponent pushes the Player in the chest, but the player does not respond physically. The Player is ushered away by other players and the Opponent is heard to continue to complain of the alleged swinging arm. At this point the Opponent is heard to use the word 'fucking'; from the audio tape the context in which it is used is not clear, but the Opponent told us during a conference call which took place during the hearing, that he used the word in the context of referring to the swinging arm being used by the player in the tackle "late in the fucking game".

The Opponent agreed that it was possible that the Player may have misunderstood and thought that the word was being used abusively towards the Player. The Player has some facility with English but is not fluent. The Opponent has English as his first language. The word "fuck", we were told, has no direct equivalent in French, the Player's first language. The crowd noise was particularly high at the time. The Opponent agreed that the Player, who told us that he understood, at the time, that he was being unfairly criticised for having committed Foul Play, which he had not, and that he was now being verbally abused by the Opponent, including use of the word "fucking" towards him. He was irritated by what was being alleged and what he understood was being said in English and responded by saying:

*".... come after, come after, come after..... fucking faggot".*

For the Player this was, in effect, broken English and was intended to communicate, 'come and see me after the match and we will sort it out between ourselves' followed by personal abuse.

"Faggot" is not a word used in French, at least not in that form and other similar words in French bear no unacceptable meanings. The Player was attempting to use it in the English sense. It was a word which he had heard used as an abusive term by English speaking players. He knew it had a meaning linked to homosexuality but was not fully cognisant of its meaning in English. He knew it was offensive and, particularly in association with the word "fucking" constituted verbal abuse. It was that limited understanding of its meaning that caused him to use the words he spoke. He intended them to be and be understood by the Opponent as being abusive.

It is noted that in studies undertaken in the USA, from where the homosexual meaning of the word was first identified in common usage, that the word "fag" or "faggot" is commonly used, particularly amongst young persons, as an abusive comment directed at a male person's masculinity/physical prowess as opposed to being a comment on an individual's presumed or known homosexual orientation.



## EPCR SHORT JUDGMENT FORM

The Player told us that he did not know and was not thinking of the Opponent's actual sexual orientation when he used the words. He knew nothing of the sexual orientation of the Opponent and had given no thought to that issue before saying the words. He was irritated at having been, as he saw it, falsely accused regarding the 'swinging arm' and then, as he understood it, by being verbally abused, including being sworn at by the Opponent. He had heard the abusive term "fucking faggot" used by English speaking players on the pitch and at training. He knew the opponent was an English speaker and, without pre-meditation, used the phrase as verbal abuse, in effect as retaliation, against the Opponent. He told us that if he had properly understood the degree of abusiveness in the phrase and fully appreciated the meaning behind the word "faggot" in English, as a reference to a person being a homosexual then he would not have used the phrase or the word faggot. He told us that he was not in any way negatively disposed towards anyone on the grounds of sexual orientation and that he came from and lived in a culture where homosexuality was not regarded as in any way inappropriate. The reports of what he had said has and would cause him great personal upset and criticism because those who were his family and friends would not understand why he would appear to have referred to homosexuality at best negatively and at worst abusively.

The Opponent told us that he is not gay, had not said or done anything by which the Player would be able to ascertain his sexual orientation and that he had not taken the remark by the Player as being intended to be a comment on his, the Opponent's, sexual orientation. The Opponent had taken it as being verbal abuse, in the same way as he would not have taken as being referred to as a 'bastard' as being intended to be a reference to his legitimacy. The opponent regarded it as abusive denigration and it had not crossed his mind that the Player might be making an assertion about his, the Opponent's, sexual orientation.

No further words passed between the Player and Opponent until after the end of the Match when the Player sought out the Opponent, shook his hand and apologised to him for having verbally abused the Opponent by stating that he was a "fucking faggot". The Opponent immediately accepted the apology, was no longer thinking at all about the incident and regarded it as a minor on-field matter which was over.

### DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/>	Not proven <input type="checkbox"/>	Other disposal (please state below) <input type="checkbox"/>

### SANCTIONING PROCESS

### ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 7.8.32 (a)-(b)		
<b>PLEASE TICK APPROPRIATE BOX</b>	Intentional/deliberate <input checked="" type="checkbox"/>	Reckless <input type="checkbox"/>
State reasons		
The Player intended to use the words which he spoke. This was not disputed		
Gravity of player's actions – R 7.8.32 (c)		
Whilst swearing, including the use of the 'f' word in a rugby context is unacceptable it is the word 'faggot', used by the Player as a term of abuse, particularly in association with the strong swear word "fucking", that is of particular concern. It is unacceptable for a Player to use any word associated with a particular sexual orientation as a term of abuse. It equiperates a particular sexual orientation as being in some way negative and causes offence to many persons whether they are gay or not.		



## EPCR SHORT JUDGMENT FORM

Being gay has no negative implications and words which are negatively associated with homosexuality, particularly words such as “faggot” which in this context have an abusive connotation related to homosexuality, have no place in rugby, whether on or off the field of play.

**CLUB RUGBY**  
The *Marler Case*, to which we were referred, was brought by World Rugby as a Misconduct case. Reference was made to Mr Lee’s being a gypsy and to him returning to his traveller background. Mr Marler knew of Mr Lee’s background and his remarks were targeted at that background. There was evidence of Mr Lee having been upset by the remarks. None of these features are part of the current case. The abuse by the player had no negative effect on the Opponent. Mr marler received a sanction of 2 weeks suspension and 20,000 Euros Fine.

Whilst, in theory, a fine is a possible sanction in a Disciplinary case brought as a citing in terms of DR 7.8.29 there is no precedent for a fine being imposed for Foul Play brought by a citing or by a red card. In any event the Committee is subject to a mandatory requirement to apply the World Rugby Table of Sanctions by DR 7.8.31. This is not a case where consideration of a fine is appropriate, so the Committee is required to sanction the Player by reference to the table as with any other act of on-field Foul Play.

Nature of actions – R 7.8.32 (d)
Self-explanatory
Existence of provocation – R 7.8.32 (e)
There was a degree of mild provocation of the Player, particularly being pushed by the Opponent, but this is not uncommon on a rugby pitch and such provocation as there was, the oral part of it arising from a misunderstanding by the Player, could never be considered as being such as to make the use of the language deployed by the Player understandable, far less acceptable.
Whether player retaliated – R 7.8.32 (f)
In the sense only of being said in response to mild provocation
Self-defence – R 7.8.32 (g)
N/A
Effect on victim – R 7.8.32 (h)
Nil
Effect on match – R 7.8.32 (i)
Nil
Vulnerability of victim – R 7.8.32 (j)
N/A
Level of participation/premeditation – R 7.8.32 (k)
Full participation but no premeditation.
Conduct completed/attempted – R 7.8.32 (l)
Complete
Other features of player’s conduct – R 7.8.32 (m)



# EPCR SHORT JUDGMENT FORM

NI EUROPEAN <b>PROFESSIONAL          CLUB RUGBY</b>
---

## ASSESSMENT OF SERIOUSNESS CONTINUED

The committee carefully considered all of the evidence before it and the submissions made to it in coming to its decision. In this written decision we record only the principal issues which weighed most heavily in making our determinations.

The absence of any intent on the part of the Player to cause upset to the Opponent based on the opponent's sexuality was a significant feature as was the absence of any actual upset on the part of the Opponent. Also, the Players lack of full facility with English was taken into account. Against that has to be weighed the seriousness of the abusive phrase spoken. Law 9.12 is not limited to verbal abuse of opposing players. Whilst the Player had intended to direct the abuse at the Opponent his lack of care, no doubt contributed to by his irritation, caused him to say what he did where a live microphone to the public was open. There will have been many who heard the remark who were offended by it and we believed the Player was genuine when he explained how upset and regretful he was at the upset and damage to reputation which had been caused by what he had said.

If we had found that the phrase used by the Player had been an attack on the presumed sexuality of the Opponent, then we would have considered this to have been an incident of Mid-range verbal abuse. However, we are satisfied that the Player was not personally attacking the sexual orientation of the Opponent and in all of the circumstances determined that it should be characterised a low-end offending.

Entry point					
<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"/>	6

\*If Top End, the JO or Panel should identify, if appropriate, an entry point between the Top End and the maximum sanction and provide the reasons for selecting this entry point, below.

In making this assessment, the JO/Committee should consider World Rugby Regulations 17.19.2(a), 17.19.2(h), and 17.19.2(i) or the equivalent provisions within the Tournament Rules referred to above.

Reasons for selecting Entry Point above Top End
---

## ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

Player's status as an offender of the Laws of the Game – R 7.8.34 (a)
None, see discussion in the context of mitigation.
Need for deterrence – R 7.8.34 (b)



## EPCR SHORT JUDGMENT FORM

None
<b>EUROPEAN PROFESSIONAL CLUB RUGBY</b>
Any other off-field aggravating factors – R 7.8.34 (c)
No

Number of additional weeks:

### RELEVANT OFF-FIELD MITIGATING FACTORS

<b>Acknowledgement of guilt and timing – R 7.8.35(a)</b> At first opportunity a full and complete acknowledgment of contravention of Law 9.12 and acceptance that a red card was warranted.	<b>Player’s disciplinary record/good character – R7.8.35 (b)</b> The Player only has one red card in his playing career and that in 2008/2009 for 2 yellow cards in a match for two technical offences. Given the intensity of his career in rugby and the number of matches played domestically, in European competitions and internationally we considered this to be a good record.  The three testimonials submitted, and the number of his charitable and community involvements speak of his good character.
<b>Youth and inexperience of player – R 7.8.35 (c)</b> He is 29 and massively experienced in the sport.	<b>Conduct prior to and at hearing – R 7.8.35 (d)</b> Exemplary
<b>Remorse and timing of remorse – R 7.8.35 (e)</b> Immediate and then sustained. In person on the day of the Match to the Opponent, to the wider rugby community by tweet, by the Club by Press Release and personally on a number of occasions to the Committee.	<b>Other off-field mitigation – R 7.8.35 (f)</b>

Number of weeks deducted:

Summary of reason for number of weeks deducted:
It was submitted for the Player that DR 7.8.37 should be applied in this case. The Committee considered that the low-end sanction of six weeks suspension could not be regarded as disproportionate given the high level of offensiveness of the verbal abuse in this case to many parts of the rugby community. We did not consider it to be appropriate, for that reason, to consider a level of mitigatory reduction of greater than 50%.

### SANCTION



## EPCR SHORT JUDGMENT FORM

**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

**EUROPEAN  
PROFESSIONAL  
CLUB RUGBY**

Total sanction	3 Weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	Monday 15 January 2018	
Sanction concludes	Mid-Night 4 February 2018	
Free to play	0001 Hours 5 February 2018	

Signature (JO or Chairman)	___Rod McKenzie_____	Date	18 January 2018_____
-------------------------------	-------------------------	------	-------------------------

**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