

EPCR SHORT JUDGMENT FORM

Match	Leinster Rugby	Vs	Exeter Chiefs
Club's Country	England	Competition	EPCR Champions Cup
Date of match	16 December 2017	Match venue	Aviva Stadium, Dublin
Rules to apply	EPCR Disciplinary Rules 2017/18		

PARTICULARS OF OFFENCE

Player's surname	Lees	Date of birth	12 October 1988
Forename(s)	Mitchell	Plea	Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name	Exeter Chiefs		
SELECT:	Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	Charging into a ruck or maul - law 10.4(h)		
Summary of Sanction	No Sanction		

HEARING DETAILS

Hearing date	20 December 2017	Hearing venue	Sofitel, London Heathrow
Chairman/JO	Pamela Woodman (Scotland)	Panel member 1	Roger Morris (Wales)
Panel member 2	Nigel Williams (Wales)	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):

Christopher Over, legal representative for the Player

Other attendees:

Danny Rumble, EPCR's Regulations and Compliance Executive
 Observers:
 Mike Hamblin, Chairman of EPCR Disciplinary Panel
 Rob Baxter, Director of Rugby, Exeter Chiefs

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

1. Notice of hearing issued on 18 December 2017 (in e-mail form)
2. Letter to chairman of EPCR Disciplinary Panel from Disciplinary Officer dated 18 December 2017
3. Citing report issued by Patrice Frantschi dated 18 December 2017
4. E-mail from the Disciplinary Officer (attaching items 5., 6., 7. and 8. and a further copy of item 3. above) dated 19 December 2017
5. Statement from Pascal Gauzere, referee, dated 18 December 2017 (in e-mail form)
6. Statement from Jean-Luc Rebollal, assistant referee, dated 18 December 2017 (in e-mail form)
7. Statement from Eric Gauzins, TMO, dated 18 December 2017 (in e-mail form)
8. Statement from Cian Healy, Leinster number 1 ("L1"), dated 18 December 2017 (in e-mail form), forwarded by Guy Easterby, Leinster Rugby
9. Video clip - link provided in item 4. above
10. Witness statement from the Player dated 19 December 2017
11. Disciplinary Officer's responses to standing directions issued on 20 December 2017 (in e-mail form)

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

The citing report, in respect of an alleged incident which was stated to have occurred after 39 minutes 19 seconds in the Match, was in the following terms:

"During a tackle situation, Exeter n°4 player ,off feet, dived and with his head hit Leinster n°1 player's head with enough force and speed to spin L1 right around. Contact was head to head."

The referee and the assistant referee (Jean-Luc Rebolal) each confirmed that they did not see the alleged incident during the Match.

The statement from the TMO was in the following terms:

"I saw the incident live and waited for replays to come. My perception was : Exeter player was cleaning at ruck and that at the same time Leinster player went down to contest. I did not notice intentional foul play but more a rugby collision. On the last replay I perceived that the head of Exeter player was hitting the top of the shoulder of his opponent and not the head. I did not communicate with the referee on the incident during the game."

The statement from L1 was in the following terms:

"This is my recollection of the ruck in question.

Towards the end of the first half one of our players tackled an Exeter player near the halfway line and as I was in the tackle area I attempted to make a poach. When I was in the poach position I was cleared out of the ruck and took a couple of steps backwards. As my head was down at the time I didn't see the player that had cleared me out and I'm not sure which part of my body contact was made with. As the whistle went soon afterwards for a scrum I just got on with preparing for that."

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)

No medical report was provided. In his e-mail forwarding L1's statement (item 8 above), Guy Easterby (Leinster Rugby) confirmed that L1 needed no treatment on the pitch or after the alleged incident.

On the question of whether or not an act of foul play had been committed, the submissions made by the Disciplinary Officer were, in summary:

- L1 had his head down at the back of the breakdown but then raised his head before contact was made by the Player, at which point L1's head, neck and shoulders were exposed and in a vulnerable position; the Player came off his feet going into the breakdown, was not in control of his own motion and, by coming off his feet, gave rise to a substantial risk of committing an act of foul play; the Player coming off his feet of itself was an offence but the Player also made contact with the right hand side of L1's head and with sufficient force to cause L1 to spin round 360 degrees, leaving L1 looking a little dazed
- the Player might not have been aware of making contact with L1's head given that the Player was wearing a scrum cap
- even if the Disciplinary Committee did not agree that contact was head to head, the alleged incident was still an act of foul play and would have warranted a red card
- (in response to a point raised by Mr Over) match officials were under pressure to make a decision quickly, citing commissioners had more time and the Disciplinary Committee had more time still to consider the alleged incident; it was also open to the Disciplinary Committee to amend the offence for which a player was cited

On the question of whether or not such act of foul play (after being found to be such by the Disciplinary Committee) would have warranted a red card, the submissions made by the Disciplinary Officer were, in summary:

- the guidelines presented by Joel Judge to coaches of, amongst others, EPCR Champions Cup teams for season 2017-18 regarding "Charging with no arms – Charging players on the ground" indicated that a yellow card would likely be issued for a charge on the body and a red card would likely be issued for a charge on the head/neck
- the head of the Player made contact with the head of L1 with force, causing L1 to spin round
- given that the Player entered the tackle area and went off his feet, there was a significant risk to L1 regardless of where the Player made contact with him and, once the Player left his feet, he had very little ability to control where contact would be made
- the force of the contact was significant and L1 appeared to be unsteady on his feet after the contact
- the Player should have taken more account of the possibility of L1 "popping up" and it should not have been entirely unanticipated
- the Player's conduct was, accordingly, dangerous and would have warranted a red card
- the act of foul play was not merely an accident

SUMMARY OF PLAYER'S EVIDENCE

The Player did not accept that the alleged incident amounted to an act of foul play.

On the question of whether or not an act of foul play had been committed, the submissions made by the Player, or on his behalf by his legal representative, were, in summary:

- the Player was looking down at and was focused on (and committed to) clearing out Leinster number 4 ("L4"); as L4 adjusted his position, L1 "popped up", which the Player had not expected to happen; as he was about to make contact, the Player tucked in his chin and moved his head to the left because he realised that he would otherwise come into contact with L1's head; his left arm missed L4 and made contact with L1's shoulder
- the Player was not conscious of having made any contact with L1's head
- it was accepted that (i) the Player had come off his feet at the breakdown, (ii) the contact by the Player on L1 had caused L1 to spin round and (iii) the Player had made contact with his head to the shoulder/upper body of L1
- there was no reaction by Leinster, there being no complaint to the referee and L1 did not hold his head
- the Player was 29 years old and had been a professional rugby player for 5 years
- the referee was there and looking directly at the breakdown and the TMO was on the scene with the task of highlighting foul play at the time, but neither took any action
- it was possible that there could be space between the heads of the Player and L1, the angles in the video clip evidence were not conclusive
- if there had been head to head contact, with the force alleged by the Disciplinary Officer, there would have been some demonstrable injury or time out required
- the movement of L1's head was not consistent with head to head contact - L1's right shoulder moves round/down and his head popped up
- the Disciplinary Committee might be somewhat constrained by the citing report because the citing commissioner alleged head to head contact but, upon questioning from the Disciplinary Committee, it was accepted that it would be competent for the Disciplinary Committee to find that an act of foul play had been committed by virtue of the Player's feet leaving the ground but the Disciplinary Committee was asked to note that that was not what was alleged in the citing report

On the question of whether or not such act of foul play (after being found to be such by the Disciplinary Committee) would have warranted a red card, the submissions made by the Player, or on his behalf by his legal representative, were, in summary:

- even if there were head to head contact (which was not accepted) that should not automatically result in the issue of a red card - this submission was supported by the decision in the Dylan Hartley case decided on 25 October 2017
- if there were any head to head contact (which was not accepted), then at most it would have been a glancing blow to the side of L1's head
- the Player was attempting to clear L4 out of the ruck and was committed to doing so, which involved physical force but there was no evidence that the force was excessive; the Player came off his feet at the last moment and would not have expected L1's head suddenly to appear
- the act of foul play (as found by the Disciplinary Committee) was not an intentional act and was accidental, rather than reckless
- in his statement, L1 did not confirm where contact was made but, if there had been head to head contact with the level of force suggested by the Disciplinary Officer, then L1 would have been knocked off his feet
- the act of foul play (as found by the Disciplinary Committee) might have led to a penalty kick, probably not even a yellow card, but would not have justified a red card

FINDINGS OF FACT

Law 10.4(h) states "A player must not charge into a ruck or maul. Charging includes any contact made without use of the arms, or without grasping a player."

On the question of whether or not an act of foul play had been committed and having viewed the video clip evidence (with the benefit of having heard submissions), the Disciplinary Committee:

- found that the Player had launched himself into the breakdown and, in doing so, had gone off his feet
- noted that, in light of the distance between the Player and L4 when the Player commenced his move to clear out L4 (approximately 2/3 of the height of the Player) and the fact that the tackler and tackled player were lying between the Player and L4, the Player would have been likely to have gone off his feet in seeking to clear out L4 even if L1 had not moved from the jackal position
- found that the Player's head had made contact with L1 at speed and with force, such force being so significant as to cause L1 to spin through 360 degrees
- found that contact by the Player was made without any genuine attempt to use his arms or to grasp L1 - but the Disciplinary Committee did not make any finding at that stage of the hearing regarding the point of contact with L1
- the Player had committed an act of foul play contrary to law 10.4(h)

On the question of whether or not such act of foul play would have warranted a red card and again having viewed the video clip evidence (with the benefit of having heard submissions), the Disciplinary Committee:

- found that it was not satisfied, on the balance of probabilities, that there had been contact with the head of L1, other than (possibly) glancing contact
- found that it was satisfied, on the balance of probabilities, that the Player's head made contact with the right shoulder of L1 with significant force
- accepted that there had been no injury to L1 as a result of such act of foul play
- accepted that the Player had been committed to clearing out L4 and, at the point of the Player reaching the breakdown and commencing his move to clear out L4, L1 was in a jackal position behind L4, but the Disciplinary Committee did not accept that it was unexpected that L1 would move from this position given that the breakdown was a dynamic situation
- in light of all of the above, found that the act of foul play committed by the Player would not have warranted a red card
- noted that contact with the head was not a necessary prerequisite to the issue of a red card in respect of conduct contrary to law 10.4(h) and each case would require to be looked at on its own facts and merits

DECISION

Breach admitted

Proven

Not proven

Other disposal (please state below)

On the question of whether or not an act of foul play had been committed, the Disciplinary Committee was satisfied that an act of foul play under law 10.4(h) had been committed by the Player.

On the question of whether or not such act of foul play would have warranted a red card, the Disciplinary Committee was not satisfied that such act of foul play would have warranted a red card and rather would have warranted a yellow card.

Accordingly, the citing complaint was not upheld.

SANCTIONING PROCESS**ASSESSMENT OF SERIOUSNESS**

Assessment of Intent – R 7.8.32 (a)-(b)
PLEASE TICK APPROPRIATE BOX Intentional/deliberate <input type="checkbox"/> Reckless <input type="checkbox"/>
State reasons
Not applicable
Gravity of player's actions – R 7.8.32 (c)
Not applicable
Nature of actions – R 7.8.32 (d)
Not applicable
Existence of provocation – R 7.8.32 (e)
Not applicable
Whether player retaliated – R 7.8.32 (f)
Not applicable
Self-defence – R 7.8.32 (g)
Not applicable
Effect on victim – R 7.8.32 (h)
Not applicable
Effect on match – R 7.8.32 (i)
Not applicable
Vulnerability of victim – R 7.8.32 (j)
Not applicable
Level of participation/premeditation – R 7.8.32 (k)
Not applicable
Conduct completed/attempted – R 7.8.32 (l)
Not applicable
Other features of player's conduct – R 7.8.32 (m)
Not applicable

ASSESSMENT OF SERIOUSNESS CONTINUED

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

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

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

Reasons for selecting Entry Point above Top End
Not applicable

ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

Player's status as an offender of the Laws of the Game – R 7.8.34 (a)
Not applicable
Need for deterrence – R 7.8.34 (b)
Not applicable
Any other off-field aggravating factors – R 7.8.34 (c)
Not applicable

Number of additional weeks:

RELEVANT OFF-FIELD MITIGATING FACTORS

Acknowledgement of guilt and timing – R 7.8.35(a) Not applicable	Player’s disciplinary record/good character – R7.8.35 (b) Not applicable
Youth and inexperience of player – R 7.8.35 (c) Not applicable	Conduct prior to and at hearing – R 7.8.35 (d) Not applicable
Remorse and timing of remorse – R 7.8.35 (e) Not applicable	Other off-field mitigation – R 7.8.35 (f) Not applicable

Number of weeks deducted:

Summary of reason for number of weeks deducted: Not applicable

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	0 Weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	Not applicable	
Sanction concludes	Not applicable	
Free to play	At conclusion of hearing	

Signature (JO or Chairman)	Pamela Woodman	Date	21 December 2017
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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