



EUROPEAN  
PROFESSIONAL  
CLUB RUGBY

## EPCR SHORT JUDGMENT FORM

|               |                              |             |                        |
|---------------|------------------------------|-------------|------------------------|
| Match         | WASPS                        | HARLEQUINS  |                        |
| Competition   | EUROPEAN RUGBY CHAMPIONS CUP |             |                        |
| Date of match | 22/10/2017                   | Match venue | RICOH STADIUM COVENTRY |

### PARTICULARS OF OFFENCE

|                  |                           |   |  |
|------------------|---------------------------|---|--|
| Player's surname | HUGHES                    | Date of birth   |  |
| Forename(s)      | NATHAN                    | Plea  | Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/> |
| Club name        | WASPS                     | SELECT: Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other <input type="checkbox"/> |  |
| Offence          | 10.4(a) - Punch or strike |   |  |

### HEARING DETAILS

|                |   |                |                   |
|----------------|---|----------------|-------------------|
| Hearing date   | 25/10/2017  | Hearing venue  | Sofitel, Heathrow |
| Chairman       | Roger Morris  | Secretary      | Liam McTiernan    |
| Panel member 1 | Antony Davies   | Panel member 2 | Andrea Caranci    |
| Decision       | Proven <input checked="" type="checkbox"/> Not proven <input type="checkbox"/> Other disposal (please state) <input type="checkbox"/> |                |                   |

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

The Player appeared before the Panel accompanied by Kevin Harman from his Club and represented by Andrew Hunter QC. Also present were Gary Oliver (accompanying Mr Hunter) and Mike Hamlin (observing).

There were no preliminary issues.

#### CITING COMPLAINT

The Citing Complaint brought by the appointed citing commissioner, Murray White, alleged that the Player had committed a foul contrary to Law 10.4(a) of the Laws of the Game – striking an opponent.

The foul was alleged to have been committed after 29 minutes of the first half of the Match when Wasps were leading by 14 points to 3. The citing commissioner's brief report of the incident said:

*"No 8 Wasps strikes No 10 red high around the head/neck area."*

It was noted by Mr Hunter and accepted by Mr McTiernan that although the citing complaint said the other player required attention there was in fact no evidence of the other player requiring any medical attention whether on or off the pitch.

The Player did not accept the citing complaint as accurate and denied that he had committed an act of foul play. The first function of the Hearing, therefore, was to consider the evidence to determine whether the Player had committed the cited act of foul play and if so whether it should have merited the issue of a Red Card so that the complaint might be upheld.

#### MATCH OFFICIALS

The Match referee, Matthieu Reynal, in his report said:

*"I didn't see any infringement or foulplay in this situation on the pitch."*

His assistant referees both said they had *"nothing to add"*.

Mr Hunter said that the referee's comment was significant because he was in a good position on the field to see the incident and that he also had the opportunity of observing what had happened when he was looking at the stadium replay screen whilst reviewing a different incident that had happened almost at the same time as the incident in question.

## VIDEO FOOTAGE

The video showed Harlequins, in possession and in midfield, pass the ball left from a ruck towards their No10 player, Marcus Smith (H10), who was positioned as stand-off half. He caught the ball, advanced towards Wasps' defensive line, shimmied inside the left shoulder of a defender and appeared to have broken through. The Player, however, covering across the field from behind the previous ruck managed to catch H10 by grasping the lower back of his jersey with his left hand.

Having had his progress thus curtailed but before he could be fully tackled, H10 passed the ball to his left. Coincidentally the Player's right arm was brought around H10's right hand side and made the contact the subject of the citing complaint. Both H10 and the Player fell to the ground with the Player behind and on top of H10.

Mr McTiernan suggested that the video showed the Player's straight right arm swinging around H10 and without bending making contact with H10 around the area of his shoulder or neck at the very lowest but likely because of the recoil of H10's head, with the head itself. He acknowledged that the point of contact was difficult to identify with precision because the contact was on the far side of the camera shot available.

The essence of the Player's explanation of the incident was as follows:

- He was covering across field at speed when H10 managed to make a line break
- He pursued H10 and managed to grasp the back of his shirt with his left hand so hauling him back and slowing him down
- Having slowed him down the Player was now in a position to make a tackle and released his left-hand grip with a view to wrapping his left arm around H10's left side
- At the same time, he aimed to bring his right arm around H10's right side so wrapping both arms around his opponent
- The movement of his right arm was designed to perform the tackle he intended to make and, he maintained, his arm was not straight but bending when contact was made
- He acknowledged that contact was made with the shoulder/neck of H10 but the reason it was so high was that in passing the ball, H10 had dipped his body to a lower level
- In response to questions from the Panel, the Player said that he did not know when H10 had released the ball and reasserted his view that his arm was bending when contact was made, and that contact was not with H10's head

## HARLEQUINS

There were two relevant items of evidence that originated from Harlequins.

First, the citing commissioner had examined the incident in question as a consequence of a telephone message left in the voicemail of his cell phone by Graeme Bowerbank, Harlequins' team manager. The transcript of that voicemail message was:

*"[Inaudible]...Wasps, match clock 28:37, arm connects with Marcus Smith's head, he was trying to make a tackle; bit of history, about 5 weeks ago there was a fixture, a few bits and bobs going on, appreciate you are going to have a look at it. A few sledges flying about, if we could we'd forget the whole lot but suspect we can't, but yeah, if you could have a look at that incident as well I'd be grateful. Thank you, bye-bye."*

The second item of evidence from Harlequins comprised a letter on Harlequins' notepaper from H10, Marcus Smith which read as follows:

*"24th October 2017*

*Ref: Incident involving myself and Nathan Hughes v Wasps, 22nd October 2017*

*To whom it may concern*

*I was involved in an incident in the Wasps v Harlequins EPCR fixture on 22<sup>nd</sup> October 2017. During the 28<sup>th</sup> minute, I have received the ball and set off on an outside arc to beat Nathan Hughes who is the defender in front of me.*

*My recollection is both from the time of the incident and also having seen the post-match footage, but I have clearly managed to just about get away from him and he has managed to get hold of my shirt at the back which has slowed me down.*

*He has then clearly gone to make the tackle and his right arm has come around and caught me on the upper part of my arm/ shoulder initially which has then gone on to catch me in my neck area.*

*I have felt the initial shock of the blow, but it didn't hurt too much, and I did not receive any treatment from the tackle.*

*He is such a big man that he has picked me up by the scruff of my neck, dusted me down with a big grin on his face! Although it caught me, it was in the act of a tackle and I just got on with the game.*

*Marcus Smith  
Harlequins number 10"*

Mr McTiernan, noting that in his responses to Standing Directions the Player had said he would be relying on a statement from H10, that those responses were distributed before Mr McTiernan had circulated H10's letter and that the tenor of the letter did not reflect a situation in which Harlequins had referred the incident to the citing commissioner, expressed some disquiet about the process by which H10's letter was solicited and written.

Mr Hunter confirmed that he had drafted the responses to the Standing Directions and that in stating the Player would rely on a statement from H10 was merely assuming that a statement from the victim player would be forthcoming because such a statement was routinely obtained in rugby discipline cases.

## **FINDINGS OF FACT**

The Panel retired to consider in private all the evidence they had seen and heard reminding themselves that the applicable standard of proof is the balance of probabilities. They determined as follows;

- As the Player pursued H10 he was doing so with the aim and intention of performing a legitimate tackle
- H10 all but eluded him but the Player managed to achieve a firm hold of the back of H10's jersey with his left hand so slowing H10's progress
- His attempt to wrap his right arm started with that arm extended, unbending, behind him and came forward, still unbending, in a wide arc so that the Player's right forearm, wherever else it may have landed, made significant contact with H10's neck
- When the Player's right arm started its forward motion, the ball had already been passed away by H10 and the Player retained his hold on H10's jersey
- There was no bending of the Player's right arm or crooking of his elbow that made a successful wrap of the opponent likely
- The Player's execution of his intended tackle was clumsily reckless and resulted in a strike to the neck of H10 with the Player's extended forearm
- The Player's actions amounted to an act of foul play as cited and of sufficient gravity to have warranted the issue of a Red Card

## DECISION

The Citing Complaint would be upheld

Decision

Proven  Not Proven

## ASSESSMENT OF SERIOUSNESS

### Assessment of Intent

**PLEASE TICK APPROPRIATE BOX** Intentional/deliberate  Reckless

### State Reasons

The Panel accepted the Player's intention was to perform a proper tackle and that what happened was the reckless consequence of the Player's failure to execute his original legitimate intention

### Gravity of player's actions

The Player's forearm made powerful but, fortunately, not damaging contact with H10's neck

### Nature of actions

Contact was made with a straight arm swung in a wide arc

### Existence of provocation

N/A

### Whether player retaliated

N/A

### Self-defence

N/A

### Effect on victim

None

### Effect on match

None

### Vulnerability of victim

No unusual vulnerability beyond that of any player tackled from behind and high

### Level of participation/premeditation

Full participation but no premeditation

### Conduct completed/attempted

Completed action

### Other features of player's conduct

None

## ASSESSMENT OF SERIOUSNESS CONTINUED

|             |  |   |  |
|-------------|--|---|--|
| Entry point | Top end* weeks<br><input type="checkbox"/> | Mid-range weeks<br><input type="checkbox"/> | Low end 2 weeks<br><input checked="" type="checkbox"/> |
|-------------|--|---|--|

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

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

### Reasons for entry point:

The foul was a reckless act which, although with some force, caused no harm to the other player and there was no effect on the Match

## ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

### Player's status as an offender of the Laws of the game

None

### Need for deterrent

None

### Any other off-field aggravating factors

None

Number of additional weeks:  weeks

## RELEVANT OFF-FIELD MITIGATING FACTORS

|   |  |
|---|--|
| Acknowledgement of guilt<br><br>The Player contested the citing complaint   | Player's disciplinary record/good character<br>No previous record and of admirable character   |
| Youth & inexperience of player<br>A young man but an International player with significant experience as a professional | Conduct prior to and at hearing<br>Excellent and helpfully respectful of the rugby processes and rugby imperatives reflected by that process |
| Remorse & timing of remorse<br>The Player contested the complaint and maintained he had not committed a foul            | Other off-field mitigation<br>None   |

Number of weeks deducted:  weeks NOTE: SUBJECT TO REGULATION 19.11.13, A DISCIPLINARY PANEL CANNOT APPLY A GREATER REDUCTION THAN 50% OF THE RELEVANT ENTRY POINT SUSPENSION

## SANCTION

NOTE: PLAYERS ORDERED OFF ARE PROVISSIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING

|                |         |   |
|----------------|---------|---|
| Total sanction | 2 weeks | Sending off sufficient <input type="checkbox"/> |
|----------------|---------|---|

|                |            |              |            |
|----------------|------------|--------------|------------|
| Banned from    | 23/10/2017 | Banned to    | 05/11/2017 |
| Ban split from |            | Ban split to |            |
| Free to play   | 06/11/2017 |              |            |

|                         |              |      |            |
|-------------------------|--------------|------|------------|
| Signature<br>(Chairman) | ROGER MORRIS | Date | 26/10/2017 |
|-------------------------|--------------|------|------------|

NOTE: YOU HAVE 48 HOURS FROM NOTIFICATION OF THE DECISION OF THE CHAIRMAN/JO TO LODGE AN APPEAL WITH THE RELEVANT BODY