

DECISION OF THE INDEPENDENT DISCIPLINARY COMMITTEE

EPCR Rugby Challenge Cup, Season 2017/2018

**Held at Sofitel Hotel, Heathrow Terminal 5
on Wednesday, 18th October 2017**

In respect of:

FRANÇOIS LOUW (“the Player”) of Bath Rugby

In respect of a citing by the Citing Commissioner, Tim Lowry, alleging breach of Law 10.4(m) of the Laws of the Game (acts contrary to good sportsmanship – contact with the eye area) in the European Rugby Challenge Cup match between Bath Rugby and Benetton Treviso played at The Rec, Bath on 14th October 2017.

Disciplinary Committee appointed to hear the case:

Antony M. Davies (England) (Chairman)
Achille Reali (Italy)
Becky Essex (England)

Decision of the Disciplinary Committee:

- (i) **The Player accepted that he had carried out an act contrary to good sportsmanship, contrary to Law 10.4(m) and that the act of foul play merited the imposition of a red card. On that basis, the Committee proceeded to consider the question of sanction.**
- (ii) **The Player is suspended for three weeks, namely from 15th October 2017 to 5th November 2017. He may play again on Monday, 6th November 2017.**
- (iii) **There was no order for costs.**

N.B. This decision is to be read in conjunction with the Committee’s decision in the citing of Marco Fuser heard contemporaneously with this case.

Introduction

1. The Disciplinary Committee was appointed by Mike Hamlin, Chairman of EPCR's Independent Disciplinary Committee pursuant to the Disciplinary Rules found in the Participation Agreement of the European Rugby Challenge Cup 2017/2018.

The Parties at the Hearing

2. Present at the hearing in addition to the Disciplinary Committee were the following persons:

- François Louw (the Player)
- Sam Jones (Counsel for the Player)
- Sophie Bennett (Bath Team Manager and Welfare Officer)
- Liam McTiernan (EPCR Disciplinary Officer)
- Mike Hamlin (EPCR Disciplinary Panel Chairman – in the capacity of observer)

Evidence Considered

3. The evidence for consideration comprised the following :

- Correspondence between Mr. McTiernan and Mr. Hamlin leading to the hearing and appointment of the Disciplinary Committee.
- Citing Commissioner report, Tim Lowry, dated 15th October 2017.
- Written statement and oral evidence from the Player.
- Two photographs of the Player's forearm.
- Reports from the match officials, Mike Adamson, Sam Grove-White, Nigel Owens and Neil Hennessy.
- Match footage of the incident.
- The Player's written response to directions and statement.
- Submissions from Mr. McTiernan and Mr. Jones.

Evidence Supporting the Citing

4. Mr. McTiernan recited the relevant content of the Citing Commissioner's report:

"Bath 20, François Louw, pulled Benetton Treviso 4, Marco Fuser, through a ruck ... as Fuser was pulled towards the ground his mouth appeared to make contact with the left forearm of Bath 20 ... once Benetton Treviso 4 landed on the pitch, Bath 20 placed the open palm of his right hand on the face and eye area of Benetton Treviso 4 with a sudden pulling motion, jerking the Benetton Treviso number 4's head a quarter turn towards Bath 20, whilst also pushing his head to the ground. The final action of Bath 20's right hand was a clawing motion across the headband on the forehead of Benetton 4 ... Bath 20 is seen pointing at his left forearm as he gesticulates to AR1, Nigel Owens. Finally, at this point there is a faint but audible "he bit me" heard on the soundtrack."

5. The written statement of Nigel Owens confirmed :

"I saw players grasping and pushing and pulling on the floor. I did not see any illegal action at the time as I shouted at them to get up and get on with the game. François Louw shouted to me he had been bitten. I told him we need to see the bite mark and to show it to the Referee if there was (play was still going on at this time). Louw ran back towards the play and I watched to see if he was going to speak to the Referee and show the mark if there was one, but he did not do so, so I did not input to the Referee then at the time as the

Player did not continue with his claim to the Referee”.

6. The match footage was viewed. There were a number of angles. Mr. McTiernan indicated that there were a couple of places where it could be possible that there was a potential bite, but in both contact was hidden and there was no clear evidence on the match footage of actual mouth/arm contact. He pointed out that the footage clearly showed Mr. Louw making immediate complaint, pointing to his forearm and gesticulating to the Assistant Referee.

7. The Committee considered two still photographs of what the Player confirmed was his left forearm. They showed a barely discernible area of apparent abrasion injury. There were no teeth marks, nor was the skin broken. The photographs were taken by the Citing Commissioner immediately after the game.

The Player’s Position

8. The Player confirmed that he had made contact with the eye area, but not the eye of Marco Fuser, and that in doing so his conduct was reckless rather than intentional. He drew the Committee’s attention to the game footage, which he said showed that whilst he was trying to remove Mr. Fuser from the ruck he was struck with an elbow in his face. As he continued to drag Mr. Fuser to the ground, he was bitten on the forearm. He reacted to this by placing the open palm of his right hand on the face of Mr. Fuser and attempted to push his head to the ground. In doing so, he accepted that his palm came into contact with the opposing player’s eye area. He had only intended to push the opposing player’s face to the ground but in doing so made contact with the eye area and should have appreciated there was a risk of such contact when he put his hand on Mr. Fuser’s face.

9. The Committee considered character references from Todd Blackadder, Director of Rugby, Bath Rugby, Tarquin McDonald, Chief Executive, Bath Rugby and Allister Coetzee, Springbok Coach, together with the Player’s up-coming playing schedule.

Decision as to Disposal

10. The Committee noted the offence of contact with the eye area contrary to Law 10.4(m) was listed within World Rugby recommended sanctions for offences within the playing enclosure (found at Appendix 3 of the European Rugby Disciplinary Rules) which are as follows :

Low end – 4 weeks
Mid range – 8 weeks
Top end – 12 + weeks
Maximum sanction – 52 weeks.

Factual Findings

11. The Committee made the following determinations in relation to the facts of what had occurred in the incident under consideration and did so having heard evidence in support of a cross citing by the Citing Commissioner of Marco Fuser for an alleged offence of biting the Player’s forearm, which in the view of the Committee had not met the evidential burden for it to be upheld :

- Contact was with the eye area, not with the eye.
- The Player acted recklessly but with no intent to target the eye area.
- The Player’s actions were preceded by an incident whereby pain was caused to his forearm whilst in contact with Mr. Fuser (but which did not pass the evidential threshold to be regarded as a bite).
- The Player’s actions followed this incident and were in retaliation to it.

- The contact with the eye area was not for any substantial period of time or with any significant force. It was acknowledged by the Citing Commissioner that contact was with the open palm to the face and eye area whilst pushing and pulling Mr. Fuser's head. Insofar as the Citing Commissioner described a clawing motion, that was clearly across the headband on the forehead and not in the eye area.
- Mr. Fuser suffered no injury and remained on the field of play without treatment.
- There was no effect on the match.

The Committee determined in view of the above that the appropriate entry point was **LOW END** equating to four weeks.

12. The Committee found no aggravating features to the offending within DR 7.8.34 and went on to consider mitigating features under DR 7.8.35.

Mitigating Features

13. With regard to mitigation, the Committee noted and gave credit for the following :
- The Player acknowledged his culpability immediately after the match by seeking out Mr. Fuser and apologising. He had done so prior to the hearing and following the conclusion of the hearing. He had admitted the offending in his response to standard directions and again at the hearing.
 - In a long and distinguished career the Player has only one previous disciplinary matter, namely a two week suspension in February 2017 for a dangerous tackle contrary to Law 10.4(e).
 - The character references considered were fulsome in their positive comments about the Player as an extraordinary leader and role model and his generally impeccable on field discipline. He was highly regarded as a role model and mentor.
 - The Player is very experienced. He has more than 100 Premiership games for Bath Rugby and 54 caps for his country.
 - The Player's conduct prior to and at the hearing had been exemplary. Without prompting and in the knowledge that the Committee had not upheld the citing against Mr. Fuser, he nonetheless shook hands with Mr. Fuser at conclusion of the hearing and in doing so the Committee felt that he was genuinely contrite.

14. Starting at 0% and moving upwards for each of the above found mitigating factors, the Committee would have been minded to grant a full reduction of 50% on the entry point, but for the Player's previous suspension which the Committee found sufficiently proximate so could not be ignored. Accordingly, the sanction was reduced on account of mitigating factors by one week, resulting in a suspension for three weeks previously referred to.

15. The Committee then considered Mr. Jones' submissions that a three week suspension would be wholly disproportionate pursuant to the provisions of DR 17.8.37. The Committee noted that World Rugby had now created an additional offence of contact with the eye area which had considerably reduced entry point sanctions from the original offence of contact with the "eye". The Committee could not be persuaded that a three week suspension was wholly disproportionate. Such cases, in the Committee's view, would be of an exceptional nature and this was not such a case.

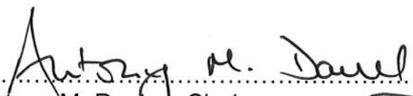
16. The Player will be suspended from 15th October 2017 (the date of the citing) to the 5th November 2017. He may play again on Monday, 6th November 2017. This means that he misses the following games which were all found to be meaningful :

- Friday, 20th October 2017 - European Rugby 2nd Round v Scarlets
- Sunday, 29th October 2017 – Aviva Premiership Round 7 v Gloucester Rugby
- Saturday, 4th November 2017 – Anglo Welsh Round 1 v London Irish.

17. No costs were sought and none were awarded.

Appeal

18. The Chairman reminded all present that the Disciplinary Rules afforded them the right to appeal against this decision.


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Antony M. Davies, Chairman

Date: 20th October 2017
Achille Reali
Becky Essex