

DECISION OF THE INDEPENDENT JUDICIAL OFFICER

EPCR

**Held via telephone from Hutchinson Thomas Solicitors, Neath, Wales
on 1st June 2017**

In respect of

Craig Burden of Stade Français, Paris (“the Player”)

And

The citing of the Player in the match played between Northampton Saints –v– Stade Français, Paris on 26th May 2017 at Franklin's Gardens, Northampton for an act of foul play of charging into a ruck or maul contrary to Law 10.4(h) of the Laws of Rugby Union.

Judicial Officer appointed to hear the case:

Simon Thomas (Wales) (“the Judicial Officer”)

Decision of the Judicial Officer:

- i. The Player denied committing an act of foul play. The Judicial Officer however found that the Player had committed an act of foul play by illegally charging into a ruck contrary to Law 10.4(h) and that the said act had merited an ordering off.
- ii. The Player is suspended from taking part in the game of rugby union up to and including 13th August 2017. This represents two weeks suspension commencing 26th May 2017.

Introduction

1. The Judicial Officer was appointed by Professor Lorne D. Crerar, Chairman of the EPCR's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the European Rugby Champions Cup 2016/2017. The Judicial Officer was appointed to consider the Citing Complaint ("the Complaint") against the Player in a match played between Northampton Saints –v– Stade Français, Paris on 26th May 2017 in the Champion Cup 2016/2017.
2. Mr Peter Ferguson (Ireland) was appointed as the Citing Commissioner to the match and had cited the played for charging into a ruck or maul and in so doing so made contact with the head of an opponent, Nicholas Groom (Northampton 9).
3. Present at the hearing by telephone link by telephone link in addition to the Judicial Officer were the following persons:
 - Mr Liam McTiernan, EPCR Disciplinary Officer
 - Mr Craig Burden ("the Player")
 - Camille Perritaz, Legal and Administrative Officer, Stade Français, Paris

Preliminary Matters & Procedures

4. At the commencement of the hearing the Judicial Officer noted the identities of all present and narrated the complaint reminding the Player that the complaint was in respect of an allegation that the Player had committed an act of foul play of charging into a ruck and making contact with the head of Nic Groom.
5. The Judicial Officer reminded all parties that the EPCR Disciplinary Rules found in the Participation Agreement for the Champions Cup 2016/2017 (the "Disciplinary Rules" and "DR" in the singular) would apply. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all agreed to proceeding on that basis.
6. The Judicial Officer established what evidence had been placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Judicial Officer the enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was as follows:
 - The citing complaint
 - The statement of George Clancy, Assistant Referee No. 1
 - The statement of Nigel Correll, Assistant Referee No. 2
 - The statement of Simon McDowell, Television Match Official
 - The statement of Nicholas Groom
 - An email from Paul Shields (Northampton Team Manager)

- The Player's response to standing directions
 - Disciplinary Officer's response to the Player's response to standing directions.
 - A montage of various clips of the incident in real-time and slow-motion.
7. The Judicial Officer explained to the Player and Madame Perritaz that because she was in France and the Player in South Africa, if at anytime either one of them needed the hearing to be adjourned to confer in private then they need only ask and this would be permitted.
 8. The Judicial Officer noted the terms of the Player's response to the standing directions found at Appendix 6 of the Rules as follows:
 - i. *"I do not intend to refer to the video footage.*
 - ii. *The alleged foul play did take place.*
 - iii. *I do not believe that the alleged foul play warrants a red card.*

I remember the incident clearly and I had no malice intent at all. I initially made an attempt to clear the ruck however Nic Groom appeared to play the ball and so I backed out of the tackle. Once Nic Groom then proceeded to latch over his fellow player to protect the ball I saw an opportunity to counter the ruck. My only intention was to clean the ruck and obtain possession of the ball. The incident occurred in front of the referee and was seen by the touch official as well."
 9. The Judicial Officer therefore sought clarification of the Player's position in that it appeared from his response that he admitted an act of foul play but denied that the act of foul play was sufficiently serious to warrant a red card.
 10. The Player clarified that he did not consider he had committed an act of foul play at all.
 11. The Judicial Officer therefore explained that in accordance with his function under the Rules, the Disciplinary Officer would present the evidence and that pursuant to DR 7.8.11, the burden was on the Disciplinary Officer to prove, on the balance of probabilities, that the Player had committed the act of foul play specified in the complaint.
 12. The Judicial Officer also explained that if the act of foul play was established on balance, the Judicial Officer would need to consider whether the said act had merited a red card. If either of those tests had not been met, the proceedings would be concluded at that stage. If it had been proved on the balance of probabilities that the Player had committed an act of foul play, and the act had merited a red card then the Judicial Officer

would consider what sanction (if any) should be imposed in accordance with the Rules.

The Evidence

13. The evidence was as follows:

- Citing Complaint

The Citing Compliant confirmed that after the elapse of 45 minutes of the match at the beginning of the second half when the scores were Northampton 9 – Stade Français 22, the following had occurred.

“Northampton are attacking the Stade Français goal line or on the 5 metre mark. In an attempt to clear the ruck Stade Français No. 16 Craig Burden initially latches onto the Northampton No.9 Nic Groom. Burden the releases his bind detaches and moves backwards. He then with momentum launches himself forward with arms by his side and hits groom in the neck and head area with his shoulder making contact. On slow motion I deemed the first contact to be on the side of the head moving down onto the neck area. Groom is looking away to his left with the right side of his head exposed. After the contact Groom is knocked off his feet, he then gets up and carries on playing”.

The Citing Commissioner also confirmed that he had not discussed the passage of play with the match officials as the incident was reviewed in the TV van and the match officials had left the stadium.

He also confirmed that no attention was required to the alleged victim player and that after making enquiries with Northampton Team Manager, the Northampton No. 9 had remembered the incident but did not suffer any injury.

- Match Official Reports

There was no report from Mr John Lacey, the match referee as although a request had been made it was understood he was on holiday. None of the match official reports which were available assisted as none of them had reported seeing the incident.

- Statement of Nicholas Groom

Nicholas Groom had provided an email to his Team Manager which, in turn, had been forwarded to the Disciplinary Officer which read as follows:

“I do remember being cleaned out of a ruck I remember it purely because I felt I was the half back and I thought I deserved a penalty as I was counter-rucked. I do not remember who it was exactly and I was not hurt at all. In hindsight I can see why it could be deemed a citable offence, but during the game the thought did not cross my mind. It was easy to get on with things.”

- Email from Paul Shields

The Northampton Team Manager, in response to a question by the Disciplinary Officer as to where contact was made upon him by the Player confirmed that “Mr Groom could not remember where contact was made. He thought it might have been his shoulder.”

- Video Evidence

The Judicial Officer asked the Disciplinary Officer to present the match footage and draw the Judicial Officer’s attention to any parts which he regarded were of particular importance.

- The various angles shown

The Disciplinary Officer stated that a ruck had formed close to the Stade Français’ try line and the ball was on the ground with Northampton No. 9 in the scrumhalf position. It was apparent that the Player had initially driven into him but then withdrawn holding his hands out realising that his actions at that point might have constituted foul play. The next relevant event was that Northampton No. 9 adopts a crouched position over the ball almost on all fours. Having done so, the Player can then be seen lowering his body and driving directly into Northampton No. 9 and from the various angles, it appeared that the first point of contact was on Northampton No. 9’s head area as that appears to move first before any impact is obviously seen from the rest of his body. As a consequence of the Player’s charge into the ruck Northampton No. 9 is knocked back out of the ruck area. Play carries on.

The Disciplinary Officer referred the Judicial Officer in particular to the footage shown at 1 minute 13 seconds and a different angle shown at 1 minute 18 seconds. The 1.18 angle is side on from the Player’s right-hand side. It showed Northampton No. 9’s face looking in the direction of the camera and this evidences, in the submission of the Disciplinary Officer, the fact that Northampton No. 9’s head was contacted by the Player’s head or shoulder as he charged into the ruck.

The Judicial Officer had, prior to the hearing, highlighted the potential difficulty of conducting this case satisfactorily in circumstances where the Player had said he was unlikely to have

access to a computer to view the video footage during the course of the hearing.

Accordingly, at this stage, the Judicial Officer asked the Player if he felt he was at any disadvantage by not being able to see the particular stages which were referred to by the Disciplinary Officer in his commentary. The Player was quite clear that he did not consider that there was any difficulty at all because he had reviewed the footage on multiple occasions and knew exactly what was depicted.

Accordingly, the Judicial Officer invited the Player to give his evidence in accordance with the footage.

- The Player's Evidence

The Player stated that he initially made contact with Nic Groom but because he was adopting a halfback position he withdrew from that contact because had he continued he would have been penalised. However, having withdrawn from the contact and put his arms out, Nic Groom then proceeded to "seal over the ball". The Player said that he believed that Nic Groom was therefore no longer in the halfback position and he observed one of Groom's team-mates coming behind him to retrieve the ball. He had noticed that Nic Groom was adopting a very low body position necessitating he himself drop very low himself in order to counter-ruck. He said that having adopted a low position himself, he then drove into the ruck so that his shoulder connected the shoulder of Nic Groom. He said that the contact was with the whole of his shoulder upon the whole shoulder of Groom as opposed to the point of his shoulder.

He regarded his actions as being legitimate rucking and clearing out and did not consider that he had committed an act of foul play let alone an act of foul play which had merited a red card. He emphasised on numerous occasions that it had certainly not been his intention to commit an act of foul play and certainly he would not have intended to have made any contact with Groom's head.

The Judicial Officer asked the Player whether he accepted that the video footage indicated contact with Groom's head as a consequence the nature in which Groom's head suddenly moved immediately upon impact. The Player suggested that because Groom had looked to his left immediately before impact his neck would have been probably relaxed and that this would have meant that the head's movement would have been exaggerated compared to what would have occurred upon impact if he had been bracing himself with his head forward and towards the Player.

The Judicial Officer asked the Player whether he accepted that the video evidence suggested that there was no obvious attempt by him

to use the arms as part of his charge nor was there any evidence of him attempting to grasp Groom. The Player's evidence was that he had tried to use his arms and that he had not intended to commit an illegal charge.

The Judicial Officer asked the Player whether there had been any communication between he and Groom after the match in which the incident was mentioned. The Player stated that he and Groom have known each other for quite some time, having both come from South Africa to play in Europe. He said that after the match they had enjoyed a "good chat" and had spent time together at the match function enjoying dinner and having one or two drinks. He said the incident had not been mentioned at all and that both he and Groom were the type of people to have discussed it with each other if either had considered anything untoward had occurred.

This therefore concluded the Player's evidence.

Submissions as to whether to uphold the complaint

14. The Disciplinary Officer confirmed that in his view the Player's conduct constituted foul play, meriting a red card. He said that it was quite apparent that there was no attempt by the Player use his arms and that it was clear that he had failed to bind.
15. He also stated that based upon the video footage the Judicial Officer was almost driven to conclude on the balance of probabilities that the Player had made contact with Groom's head. The Disciplinary Officer again referred to the footage at 1.18 which, he said, shows Groom's head recoiling before the rest of his body begins to shift backwards.
16. The Disciplinary Officer stated that in light of the guidance issued to referees at the beginning of the season with emphasis on penalising harshly unlawful contact with the head area of opponent players, this meant that had the referee observed the incident he would have been almost compelled to order the player off.

The Player's submissions in relation to liability

17. The Player stated that he had made an effort to undertake a legal clearout. He summarised the facts of the case and his thought process at the time of the incident. He said that Groom had been sealing himself low over the ball. He had looked to his left. There had been no contact with the head or neck of Groom and had any such contact had been made Groom would most certainly have mentioned it. There was absolutely no intent to commit an act of foul play and certainly no intent to attack the neck or head area. As far as he was concerned he had been performing a legitimate counter-ruck and to clearout Groom legally.

18. The Judicial Officer sought confirmation from the Player as to whether he considered that he had been at any disadvantage as a consequence of not being able to see the video during the course of this hearing and refer the Judicial Officer to aspects of it. The Player was quite clear that he did not regard himself as being at any disadvantage and had been satisfied with the manner in which the proceedings were being conducted.

Judicial Officer's findings as to liability and red card

19. Judicial Officer retired in private to consider his factual determinations. He reminded himself that in accordance with the Rules, all matters of evidence were to be determined on the balance of probabilities. He viewed the numerous angles of footage in real-time and in slow-motion. He reminded himself of all of the written evidence that he had received and the evidence which the Player had provided in a clear and straightforward manner.

20. Despite the Player's evidence, the Judicial Officer was nevertheless entirely satisfied from numerous match footage angles that some impact had been felt by Groom's head from the Player's shoulder immediately the Player charged into the ruck. The Judicial Officer was satisfied that the Player had not used his arms whilst entering the ruck area nor had he attempted to grasp the Player and accordingly this was an act of foul play contrary to Law 10.4(h).

21. The Judicial Officer considered that in light of the force used by the Player in charging to the ruck and that contact had been made with the head of Nic Groom that this act of foul play had merited a red card. Accordingly, the Citing Complaint would be upheld.

22. The Judicial Officer therefore reconvened the hearing and announced his decision to the parties.

Submissions as to sanction

23. The Judicial Officer explained to the Player that in accordance with the Rules, the determination as to whether to impose any suspension for the act of foul play would be dealt with in accordance with the three stage process set out under DR 7.8.32 to 7.8.35.

24. The first stage was to consider what is known as the "entry point" pursuant to 7.32 and that having applied the on field facts of the case to that entry point criteria, the Judicial Officer would determine whether the act of foul play merited a lower end, mid-range, or top end sanction in accordance with the World Rugby Sanctions for Foul Play found at Appendix 3 to the Rules.

25. For an act of foul play contrary to the Law 10.4(h) the sanctions are as follows:
- lower end 2 weeks
 - mid-range 6 weeks
 - top end 10+ weeks (maximum 52 weeks).
26. The Judicial Officer then explained that the second and third stages, respectively, would be to consider firstly any off field aggravating factors pursuant to DR 7.8.34 which might increase the sanction from the entry point figure before considering the existence of any off field mitigating factors as prescribed in 7.8.35 to potentially reduce any such sanction.
27. The Judicial Officer enquired of the Player as to whether he had before him a copy of DR 7.8. Unfortunately, he did not and so the hearing was paused. Mr McTiernan emailed him a copy of the Rules which he had the opportunity of considering before the matter proceeded further.
28. After the Player had received them, the Judicial Officer then invited the Disciplinary Officer to provide any submissions in relation to entry point.

Disciplinary Officer's submissions as to sanction

29. Mr McTiernan stated that it was not normally the position of EPCR to give an indication of what it regarded the appropriate entry point would be however in this case it was unusual and he considered that a low end entry point was appropriate.
30. He indicated that the tournament regarded the conduct as being reckless rather than intentional. The conduct had not been particularly grave. The contact had been made with the whole of the Player's shoulder and not the point of the shoulder. This was not a case involving provocation, retaliation or self-defence. There was no effect of The Player's actions on the victim. Similarly, there was no effect of the Player's actions in the match in the form of any retribution sought by the victim's team players or any breakdown in discipline generally. As to the vulnerability of the victim, the victim's head was exposed but he may have been anticipating some contact. In the view of the Disciplinary Officer this was not a case involving any premeditation. The Player's conduct had been completed and there were no other features in relation to or connected to the offending which were relevant.
31. As to the existence of aggravating factors, Mr McTiernan confirmed that so far he was aware there were none.
32. Turning to mitigating factors, Mr McTiernan volunteered that the Player had appeared unrepresented by a lawyer and had dealt with the case in a straightforward manner. He said that in light of his lack of representation the Judicial Officer may wish to consider whether it was appropriate to not allow him full credit in such circumstances because the issues in the case

and the manner in which such cases are to be dealt, without legal representation, are not easy to navigate.

The Player's submissions as to sanctions

33. The Player was invited by the Judicial Officer to comment upon the entry point criteria. The Player stated that whilst he was disappointed with the Judicial Officer's finding he nevertheless respected it and respected the process. He wanted to reiterate that there had been no malice or intent on his part. His conduct, if anything, had been reckless and he said that notwithstanding Nic Groom had not mentioned the incident to him he would nevertheless send an email of apology to Nic Groom as a consequence of what had happened.
34. The Player confirmed that there were no off field aggravating factors relevant to him.
35. Turning to mitigating factors, the Player confirmed that he was 32 years of age. He had played for Natal Sharks in Durban, South Africa, for 9 years before moving to France where he had played Toulon, Montpellier and Stade Français. In his career he had only received two yellow cards. None of these were for violence and he was not a dirty player. He said that he respected the values in the game.
36. As far as his playing career was concerned he explained that he had toured with the South African Springboks on two occasions but had not achieved a full cap.
37. Turning to his future playing schedule, there were two games in the first two weeks of August 2017 as meaningful warm-up games prior to the start of the French Top ¼ season due to commence on 20th August 2018.

Decision as to sanction

38. The Judicial Officer retired to consider sanction and in order to do so had regard to firstly the entry point criteria as set out under DR 7.8.32.
39. The Judicial Officer's findings were as follows:
 - a + b. Whether the offending was intentional, deliberate or reckless

The Judicial Officer concluded that the Player had intended to charge illegally towards Nic Groom in this passage of play because there had been no attempt on his part to use his arms or hands to bind or grasp upon to Groom. However, the Judicial Officer was satisfied that the contact between the Player's head and Groom's head was reckless rather than intentional.
 - c. The gravity of the Player's actions in relation to the offending.

The Judicial Officer concluded that the Player's actions were moderately grave insofar as the Player had used considerable force to remove Groom from the ruck. On the balance of probabilities, however, despite the force, the blow which had been occasioned to Groom's head was not sufficiently forceful for him to have needed any treatment or prevented him from immediately continuing the particular passage of play. He had not shown any signs of discomfort or pain from the contact.

- d. The nature of the actions, the manner in which the offence was committed including part of the body used.

The Judicial Officer noted that the whole of the Player's shoulder had been engaged in trying to charge into Groom removing him from the ruck area as opposed to the point of the shoulder.

- e, f + g. This was not a case involving provocation, retaliation or self-defence.

- h. There was no effect of the Player's actions on the victim. It was apparent that he had not tried to draw the referees' attention to the incident. He had immediately got on with the match.

- i. The effect of the Player's actions on the match.

There was no evidence of any effect of the Player's actions on the match in terms of any retribution sought by the victim or his team, no crowd reaction and no deterioration in discipline by any other party.

- j. The vulnerability of the victim, including part of the victim's body involved/affected, the position of the victim and his ability to defend himself.

The Judicial Officer noted that whilst the victim's head had been engaged in the contact, thankfully the contact did not appear to be particularly severe and the Judicial Officer concluded that the victim player might have expected to have been counter-rucked at that particular time and therefore braced for some form of impact. He should not have anticipated any contact with his head, however.

- k. The level of participation in the offending and the level of premeditation.

The Judicial Officer concluded that this was not a case where there was any premeditation.

- l. The conduct was completed not attempted.

m. There were no other features of the Player's conduct in relation to or connected with the offending.

40. The Judicial Officer concluded that taking all these matters into account this was a case which merited a low entry point suspension of two weeks.

Aggravating Factors

41. This was not a case where there were any off field aggravating factors such as the Player's status generally as an offender against the laws of the game, the need for a deterrent to combat a pattern of offending in the game or any other matter.

Mitigating Factors

42. As to mitigating factors, the Judicial Officer concluded that the Player's excellent record over many years was to his credit. The Judicial Officer also took into account the straightforward manner in which the Player had dealt with the process today. He had been entirely cooperative and had assisted the process notwithstanding he was without legal representation. His conduct therefore prior to at the hearing had been very good.

43. The Player had also demonstrated remorse for his conduct by indicating that he would send an apology to Nic Broom notwithstanding he had not believed he had committed any act of foul play.

44. The Judicial Officer reminded himself that pursuant to DR 7.8.36, the maximum discount off the entry point which permissible is 50% and that he had to start from 0% and establish how far the Player's mitigation worked up towards 50%.

45. The Judicial Officer was aware, however, notwithstanding the Player's own significant personal mitigation in terms of his conduct at the hearing and an unblemished lengthy career both in South Africa and in Europe, he would not be entitled to full mitigation as a consequence of his failure to admit that he had committed an act of foul play when this was quite apparent from the video footage which evidenced the fact that he had not used his arms or hand in an attempt to bind or grasp when charging into the ruck.

46. Accordingly, the Judicial Officer concluded that the appropriate amount of discount would be 30% from the entry point which therefore reduced the sanction from 2 to 1.4 weeks.

47. The Judicial Officer noted that in accordance with DR 7.8.38, if the period of suspension to be imposed would ordinarily amount to fraction of a week or a number of days the period of suspension must be rounded up to the next whole number of weeks. Accordingly, the period of suspension would remain at two weeks.

48. Applying the principles of the rules that one week equates to one match, the Player would be suspended from the Game of Rugby Union up to and including Sunday, 13th August 2017 so that he is free to play on Monday, 14th August 2017.

49. The Judicial Officer also considered whether this was a case to which DR 7.8.37 would apply namely where there have been off field mitigating factors and without such a reduction the sanction will be wholly disproportionate to the level and type of offending. The Judicial Officer concluded that a two weeks sanction for a dangerous charge impacting upon the head of an opponent would not fall into that category and accordingly 7.8.37 was not engaged.

50. The Judicial Officer reconvened the hearing and announced his decision to the parties.

Appeal

51. The Player was reminded of his right to appeal in accordance with the Rules.

Date: 01 June 2017

Simon Thomas
Judicial Officer