

**DECISION OF THE INDEPENDENT JUDICIAL OFFICER  
The European Rugby Challenge Cup, Season 2016/2017**

**Held at by telephone conference call on 22 December at 9.30am ("the Hearing")**

In respect of:

**Nans Ducuing ("the Player")**

and

An Ordering Off for a breach of Law 10.4(e) of the Laws of the Game, namely "Dangerous Tackling" in the European Rugby Challenge Cup Round 4 Match between Bordeaux-Begles and Exeter Chiefs played at the Stade Jacques Chaban Delmas on 17 December 2016 ("the Match").

Judicial Officer appointed to hear the case:

Rod McKenzie (Scotland) ("the Judicial Officer")

**Decision of the Judicial Officer:**

(i) The Judicial Officer after Hearing submissions from the Player and the Disciplinary Officer, amended the Law Reference of the alleged offence from Law 10.4(e), to Law 10.4(i), namely that a Player must not tackle nor tap, push or pull the foot or feet of an opponent jumping for the ball in a lineout or in open play.

(ii) The Player is suspended from taking part in the game of rugby up and to including midnight on 1 January 2017. The Player is free to resume playing rugby on and from 2 January 2017

**Introduction**

The Judicial Officer was appointed by Professor Lorne D Crerar, Chairman of the European Rugby Independent Disciplinary Panel pursuant to the Disciplinary Rules in the Participation Agreement of the European Rugby Challenge Cup 2016/2017.

## **The Parties at the Hearing**

Present at the Hearing in addition to the Judicial Officer were the following persons:

- The Player
- M. Olivier Brouzet, Chief Executive Officer of Bordeaux-Begles
- Mr Liam McTiernan, EPCR Disciplinary Officer
- Mr Danny Rumble, EPCR Regulations & Compliance Executive
- Ms Jennifer Rae – Clerk to the Disciplinary Panel

At the commencement of the Hearing, the Judicial Officer noted the identities of all present and narrated the contents of Red Card report reminding the Player that he had been ordered off in the contravention of Law 10.4(e).

The Judicial Officer reminded all parties that the EPRC Disciplinary Rules found in the Participation Agreement of the Challenge Cup 2016/2017 contained the procedure which would be adopted in this matter. The Judicial Officer outlined the procedure to be followed to determine the matter. The Player and all present agreed to proceeding on that basis.

The Judicial Officer established what written and video evidence was placed before him prior to the Hearing and enquired as to whether all present had received the same in good time. The Judicial Officer then enquired as to whether any additional such evidence was to be presented. Parties confirmed that had received all evidence and there was no further evidence they wished to refer to other than the oral evidence to be given at the Hearing.

The written and video evidence for consideration comprised of the following:

- Letter from Liam McTiernan to Professor Lorne Crerar, dated 11<sup>th</sup> December 2016;
- Red Card Report issued by John Lacey (Referee), pertaining to an act of Foul Play by Nans Ducuing of Bordeaux-Begles;
- Statement of the television match official, Brian MacNeice;
- Statement of the assistant referee, Richard Kerr;
- Statement of the assistant referee, Stuart Gaffikin;
- Statement of Olly Woodburn, Exeter Chiefs No.11;
- Statement of Adrian Harris, Head of Sports Medicine at Exeter Chiefs
- Match Footage of the Incident
- Email from M Brouzet to the Clerk of the Panel dated 19 December 2016
- Email from Player to the Judicial Officer dated 20 December 2016.

The Judicial Officer noted the terms of the Player's responses to the Letter convening the Hearing in the email to the Clerk of the Discipline Panel and to the Judicial Officer, although not in the form as required by the standing directions, were that the Player accepted that Foul Play took place and he accepted that the Foul Play would have warranted a red card. The Judicial Officers asked whether that was still the Player's position and the Player confirmed that it was.

In those circumstances, the Judicial Officer advised the Player that the purpose of the Hearing was to determine what sanction, if any, was to be imposed upon the Player.

In reaching his decision the Judicial Officer took full account of all of the evidence before him, both in written form and oral, and the submissions, written and oral, made on behalf of the Disciplinary Officer and the Player. Only the evidence and those submissions relevant to the Judicial Officer's decision are referred to in this written decision.

## **Evidence Supporting the Ordering Off**

### **Video Evidence**

The relevant excerpts from video of the Match were viewed at the Hearing. Video of the incident was provided in the form of a section of the broadcast footage.

### **Match Official Reports**

The Referee's report of the incident specifies the nature of the offence as being "dangerous tackling (Law 10.4 (e))". The Referee's narrative of the incident is:-

*"Player chasing kick not in realistic position to catch ball resulting in a dangerous tackle to Exeter Player and to land in a dangerous position on his head and neck."*

Assistant Referee 1 Report states:

"I was the AR on the far side and saw the incident from a distance. I obviously knew that Johnny and Stuart had seen it and that it was going to be checked by the TMO. I didn't give any information at the time as I knew it was being dealt with. I agreed with the red card.

Assistant Referee 2 Report states:

*"Following a kick by Exeter, I flagged for an incident of foul play. Once the play was stopped, the referee John Lacey called me into the field of play to receive my description of the incident. I reported that I had seen Exeter 11 and Bordeaux 14 challenging for the ball in the air. However, Bordeaux 14 was not in a realistic position to challenge for the ball and the resulting collision in the air led to Exeter 11 landing dangerously on his head and neck.*

*Following my discussion with the referee, John Lacey asked the TMO for the incident to be played on the big screen and after viewing same, he issued a red card to Bordeaux 14.*

The TMO report in relation to the incident states:

*"After a kick by Exeter the Exeter 11 and Bordeaux 14 challenged for the ball in the air. The AR1 flagged the incident and the referee stopped play. Following a consultation between the Referee and AR1, the referee asked me to show the incident on the screen. The incident was shown on screen from a number of angles. Having reviewed all of the angles the referee communicated that in his view the Bordeaux 14 was not in a realistic position to challenge for the ball, had made contact with the Exeter 11 in the air resulting in the Exeter Player falling dangerously to the ground and landing on his head/neck area. He indicated that he was going to issue a red card. I told the referee that I agreed with this. A red card was then issued to Bordeaux 14.*

### **Evidence from Olly Woodburn the Victim Player**

Mr Woodburn's email of 19 December 2016 states:

*"My memory from the incident is that I was chasing a high ball and then I jumped up to compete for it and as I was at the height of my jump I took a hit to my lower body which sent me into a spin. I then met the ground with the top of my back and head. It was initially a shock but I hadn't lost consciousness. I was told to lay (sic) still on my back whilst the medical team went through their assessment. After the match as the teams were shaking hand he (Mr Ducuing) came up to me and asked how I was. There was a language gap but I could tell he apologised. I haven't sustained any serious injuries and I will be going into the club later to receive another medical assessment."*

## **Evidence from Dr Adrian Harris, Head of Sport Medicine**

Dr Harris's email states:

*"I assessed Ollie on the pitch on Saturday. His assessment was entirely normal and he was uninjured."*

## **Evidence from the Player**

The Player explained that the sun, which was very bright on the day because of an exceptionally clear sky, was low in the sky at the time of the incident and that as the ball was kicked he was looking directly into the sun. He was accordingly unable to properly see the opposing Exeter player who would compete for the ball or the flight of the ball. The Player explained that at the time he could not see the ball in the sun and that he was trying to judge where the ball would come down so that he could compete to catch it. The Player knew that the Exeter kicker would follow-up the kick and that there was high potential for contact between him and the following-up kicker.

The Player acknowledged that he arrived later than the Exeter kicker who was in the air catching the ball and that his, that is the Player's, head and upper body struck the lower part of the Exeter player when he was in the air causing the Exeter player to rotate in the air and fall to the ground, landing on his neck and upper body.

The Player was adamant that he had not tried to tackle the Exeter player. His intention had been at all times to jump and to compete for the falling ball against the Exeter kicker.

## **Video of the Incident**

Close examination of the video confirmed the Player's explanation of what happened in that at all material times the Player is looking towards the position of the ball and that the sun is low in the sky and directly 'in his face'. This would have impeded the Player's ability both to see the Exeter player in the air and locate the ball coming down. However whilst it would have impeded it was not such as to wholly prevent the Player from seeing the relative positions of himself and the Exeter player. As the Player acknowledged, when he attempted to jump and reach for the falling ball he knew the Exeter player was there before him, that the Exeter player was very likely to achieve possession of the ball by catching it and that if he collided

with the Exeter player in the air that would cause the Exeter player to move in the air with the potential to put him at risk of injury.

## **Submissions**

The Judicial Officer advised Mr McTiernan and the Player that the Foul Play would, in his preliminary opinion, be more appropriately characterised under Law 10.4(i) since there was no tackle apparent from the video or any of the written or oral evidence and explained that if the Judicial Officer was minded to amend the provision of the Laws which classified the offending this may change the level of sanctioning imposed to a higher sanction. The Judicial Officer advised that the Player explanation of the incident was not that he had been trying to complete a tackle, but that he had been trying to catch the ball. The Judicial Officer invited submissions on what law the Foul Play should be categorised under in terms of the Law of the Game together with any other submissions either party wished to make.

Mr McTiernan explained that the tournament did not disagree with the Player's submission that this was reckless rather than intentional Foul Play and he was not seeking to persuade the Judicial Officer otherwise. He advised that he favoured an amendment of the categorisation of the act of Foul Play to 10.4(i); however, he would leave this matter with the Judicial Officer to consider more fully.

Mr Brouzet and on behalf of the Player, also left it to the Judicial Officer to decide which was most appropriate but reiterated that, whilst the Foul Play was admitted, it was not intentional and that the Player had not meant to cause injury. He again explained that the Player had only been trying to catch the ball.

## **Discussion and Decision as to Disposal**

This is an incident in which the contact of the Player with his opponent was reckless and not intentional.

The question of which Foul Play Law best characterised the Foul Play was discussed at the Hearing. Since there was no tackle or attempt at a tackle it is not considered that Law 10.4(e) was appropriate. The facts of the matter are consistent with offending in terms of Law 10.4(i) and not Law 10.4(e) and the 'charge' was amended accordingly. Mr Brouzet then confirmed that the position of the Player had not changed in light of the amended 'charge'; he accepted that he had committed an act of Foul Play which warranted a red card.

The Judicial Officer was satisfied that this is a case of low end offending, where there was no intention on the part of the Player to commit an act of Foul Play or to act in a way which would constitute Foul Play. The Player's actions were careless and fell within the rugby definition of reckless. Fortunately there was no significant injury suffered by the opposing Player who was able to play on but who had been vulnerable at the time of the offending and the match was impacted only by reference to the sending off of the Player. The Player's actions were complete and there was no issue of self-defence, provocation or retaliation. None of the other factors relating to the characterisation of the seriousness of the offending were considered relevant.

Low end offending for Law 10.4(i); the entry point is three weeks. The Player has a completely clean disciplinary record, had admitted the offending from the outset, had expressed remorse and had enquired after the wellbeing of the opposing Player. In all of the circumstances he is entitled to mitigation of 50%. That takes the sanction to a suspension period of 1.5 weeks which must, on the basis of the current Disciplinary Rules, be rounded up to two weeks.

The Player provided oral details of his fixturing commitments and confirmed that he was fit to play. If he was not suspended he would have participated in fixtures in the Top 14 competition in France during the weekends beginning Friday 23 December and Friday 29 December.

To ensure a period of two weeks suspension, which covers two competitive matches, the Player is suspended up to and including midnight on 1 January 2017. This will effectively include the Top 14 fixtures for Bordeaux-Begles against Pau on 23 December 2016 and Lyon on Friday 30 December 2016.

The Judicial Officer reminded the parties that the Disciplinary Rules afforded them the right to appeal his decision.

**Rod McKenzie**  
**Judicial Officer**  
**1 February 2017**