

EPCR SHORT JUDGMENT FORM

Match	Bath Rugby	Vs	Toulouse
Club's Country	France	Competition	Heineken Champions Cup
Date of match	13 October 2018	Match venue	Recreation Ground, Bath
Rules to apply	EPCR Disciplinary Rules 2018/19		

PARTICULARS OF OFFENCE

Player's surname	Pointud	Date of birth	18 January 1988
Forename(s)	Lucas	Plea	Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name	Toulouse		
SELECT: Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>			
Offence	9.12 – striking with the shoulder		
Summary of Sanction	4 weeks		

HEARING DETAILS

Hearing date	17 October 2018	Hearing venue	Sheraton Paris Airport Hotel
Chairman/JO	Pamela Woodman	Panel member 1	Marcello D'Orey
Panel member 2	John Greenwood	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):

Other attendees:

Régis Sonnes, coach of Toulouse

Maite Ganzin, as interpreter (independent)
Pierre Poiroux, as interpreter (Toulouse)
Mike Hamlin, Chairman of the EPCR Disciplinary Panel (as observer only)

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

1. Notice of hearing issued (in e-mail format) to the Player and the Disciplinary Officer on 16 October 2018;
2. Citing commissioner report issued by Eugene Ryan ("CC") of Ireland, the citing commissioner appointed to the Match, dated 14 October 2018;
3. Letter from the Disciplinary Officer to Mike Hamlin, Chairman of the EPCR Disciplinary Panel, dated 15 October 2018, making a citing complaint against the Player;
4. EPCR disciplinary rules for season 2018/19 ("Rules"), such Rules being set out in schedule 4 to the European Rugby 2018/19 participation agreement;
5. E-mail from the Disciplinary Officer on 16 October 2018, providing copies of the documents referred to in points 6. to 11. below, together with links to video clips and the Rules;
6. E-mail statement from Andrew Brace ("Referee") of Ireland, the referee of the Match, dated 15 October 2018;
7. E-mail statement from Eddie Hogan O'Connell ("AR1") of Ireland, one of the assistant referees for the Match, dated 15 October 2018;
8. E-mail statement from John Lacey ("AR2") of Ireland, one of the assistant referees for the Match, dated 15 October 2018;
9. E-mail statement from Simon McDowell ("TMO") of Ireland, the television match official for the Match, dated 15 October 2018;
10. Handwritten statement from Nathan Catt ("B1"), the player playing number 1 for Bath Rugby in the Match;
11. E-mail statement (supplementing the handwritten statement) from B1 dated 15 October 2018;
12. Video clips; and
13. Player's responses to the standing directions (sent by Jean-Luc Brumont on behalf of the Player) on 16 October 2018 (in French).

The following had been sent to Jean-Luc Brumont of Toulouse a number of hours prior to the Hearing but had not been received by those from Toulouse in the room:

14. Disciplinary Officer's responses to the standing directions on 17 October 2018, providing copies of the documents referred to in points 15. to 17. below, together with a link to the "2018/19 EPCR Coaches Presentation";
15. E-mail from Joel Judge entitled "EPCR Refereeing Guidelines – Season 2018/2019" dated 8 October 2018;
16. Decision of the appeal committee in the case of Jerry Flannery on 3 March 2010; and
17. Decision of the independent judicial officer in the case of Daniel Leo on 2 May 2013.

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

Law 9.12 is in the following terms:

"A player must not physically or verbally abuse anyone. Physical abuse includes, but is not limited to, biting, punching, contact with the eye or eye area, striking with any part of the arm (including stiff-arm tackles), shoulder, head or knee(s), stamping, trampling, tripping or kicking."

The report from the CC related to an alleged incident, which occurred at "Match Time 49.24" when the score was Bath Rugby 20 – Toulouse 12, and was in the following terms:

"At 49.12 in the second half, Toulouse were attacking inside the Bath 22m line when B7 tackles T15 to the ground. The players were joined by T16 and a ruck is formed. At this time, T1 (Lucas Pointud) is standing astride of a Bath player on his own side of the ruck. B1 (Nathan Catt) is seen to join at the side of the ruck opposite T1. T1 is seen to shout in the direction of Referee Brace, who is approx 2m away. T1 then steps back from the ruck and positions himself by spreading his legs by placing his left leg back behind his body and his right leg in the advanced position. He is then seen to propel himself head first into the opposing B1. T1's left arm is behind his body and his right arm is extended out. Neither arm attempts to grasp his opponent. The head of T1 then makes initial contact under the neck/chest area of B1 and the back of the neck/upper shoulders of T1 then make contact with the face/nose/jaw area of B1 who is then knocked back with force and falls to the ground, whilst gesticulating and complaining to Referee Brace. B1 then gets to his feet. I have carefully examined the actions of T1 Toulouse and I consider that these were reckless and dangerous and posed a significant risk of serious injury to B1. Consequently, I am of the opinion that these actions merited a Red Card and accordingly, I cite T1 (Lucas Pointud) for striking with the head to the chest of B1, initially and secondly striking the face/head area of B1 with the back of his neck/shoulders contrary to Law 9.12."

In the section of his report entitled "Brief Report of Discussion with Match Officials", the CC stated:

"No discussion with MO's as the incident wasn't detected at the time. The matter was referred to Citing Commissioner by Bath Rugby team management."

The report from the Referee was in the following terms:

"Regarding the Lucas Pointud charge into the breakdown, I did not see this live as my focus was on the Toulouse player on the ground not rolling away which I was penalising."

The reports from AR1 and AR2 confirmed that neither of them saw the alleged incident in live play during the Match.

The report from the TMO was in the following terms:

"I saw Toulousain L Pointud entering the ruck and making contact with his opponent with his head. I was not certain where the contact from the head of L Pointud strikes his opponent. It appeared to be in the chest area. There was no obvious injury to the Bath player. I did not refer this as foul play to the referee."

The video evidence was viewed on a number of occasions throughout the Hearing. The Disciplinary Committee noted that the CC's description in his report from "At 49.12 in the second half,..." to "Neither arm attempts to grasp his opponent" was consistent with what they saw in the video. In addition (and with the benefit of having received submissions from the Disciplinary Officer and from or on behalf of the Player), the Disciplinary Committee noted that the video evidence also showed the following:

1. B1 was on his feet, with his body touching or very close to that of the Toulouse player on the ground. He was looking down towards the ground, attempting to get the ball, and then moved upwards such that there became a gap between the back of the Toulouse player on the ground and the chest of B1 but with B1 still grasping the shirt of the Toulouse player.
2. The Player had stepped back from the ruck and then moved forwards towards the ruck (when the gap below B1 appeared) in the direction of B1. In doing so the Player had moved into a crouched position, propelled himself forward with force and, after making initial contact with B1, straightened his legs in a driving motion, such that his shoulders-hips-knees-ankles were in a relatively straight line and only the tips of his toes remained in contact with the ground. The Player was not supporting his own bodyweight at that stage.
3. The left upper shoulder/back area of the Player appeared to make contact with the head/face area of B1.
4. B1's head moved backwards with force immediately on contact and B1 appeared to gesticulate to the Referee.
5. At the point when the Player made contact with B1, Bath number 7 was lying at the bottom of the ruck with his feet on the floor and knees bent to approximately a 75 degree angle which were pointing straight down the pitch towards the Bath attacking tryline.
6. The Player appeared to make an effort not to step on Bath number 7.

ESSENTIAL ELEMENTS OF OTHER EVIDENCE (e.g. medical reports)

The (original followed by supplementary) statements of B1 were in the following terms:

"I vaguely remember during the game being part of a ruck and being cleared out with some force. I seem to remember the initial contact being with my chest and forcing me backwards – clearing me out of the ruck."

"As per my original statement, I remember being part of a ruck and receiving a clear out with some force. I do not specifically remember taking an impact to the head during any part of the game.

However after reviewing the footage I can see the Toulouse loosehead clears me out, and his head is pretty close to my face. If there was contact made to my head I was unaware of it but this maybe due to the adrenaline of the game.

Apologies it's vague but i struggle to recall incidents in games that I have played in. I did not remember the incident until prompted by the footage of the incident."

The Disciplinary Officer took the Disciplinary Committee through his view of the video evidence which was substantially the same as that set out in the CC's report, save that his submission was that the initial contact was between the left shoulder of the Player and the head of B1, causing B1's head to pop up - rather than (as referred to in the CC's report) the initial contact being between the head of the Player and the chest of B1. The Disciplinary Officer submitted that the Player must have been aware that he was going to strike B1, which was not lawful. The Disciplinary Officer referred to the EPCR "COACHES PRESENTATION 2018-19", which on slide 5 entitled "KEY AREA 1 – FOUL PLAY" states:

"THE BALL CARRIER AND THE TACKLER ARE RESPONSIBLE FOR THE OPPONENT'S SAFETY

➤ BALL CARRIER

Forearm/Elbow contact to the Throat - Neck - Head = RED CARD

➤ TACKLER

If the tackler's shoulder is in direct contact with the Throat - Neck - Head of the ball carrier = RED CARD"

The Disciplinary Officer noted that the Player was responsible for the Player's safety. He also noted that the same guidance had been given to the referees, citing commissioners and judicial panel for the EPCR tournaments and, while it was only guidance, it was persuasive. Taking the guidance into account, the Disciplinary Officer submitted that the only sensible analysis was that the Player's conduct warranted a red card. There was a significant risk of causing a head injury, which was exactly the sort of contact which World Rugby was seeking to outlaw. The Player, nonetheless, took the risk. In response to a question, the Disciplinary Officer noted that, where there was only a minimal or glancing blow to the head, this guidance would not automatically envisage the grant of a red card, but contact made with more than that level of force would likely do so.

SUMMARY OF PLAYER'S EVIDENCE

The Player did not accept that he had committed any act of foul play and, accordingly, that there was no act of foul play for which a red card would have been warranted (or a yellow card or penalty kick for that matter).

The Player's target was not B1 but was rather the player playing number 9 for Bath rugby ("B9") who had his hands on the ball. The Player needed to push back B1 in order to get to B9. It was normal to clear out players from rucks and it was necessary to use intensity (force) to do this. The Player was looking for the gate, the technique being to go into the space targeting the hips of the opposition player and to win the contact. When B1 moved upwards, such that there was a gap between the back of the Toulouse player on the ground and the chest of B1, the gate opened to allow him to go under B1 and clear him out.

The Player attempted to go below B1 and was on a flat level. His head moved downwards and he was not attempting to make any "front-to-front" contact. In making contact, he moved in an upwards direction because he was trying to stay away from the Bath player on the ground (Bath number 7) and was losing his balance. B1 was not in a strong position and so was easy to clean out.

The Player accepted that he had made contact with B1 and that his head may have touched the mid-chest of B1 but he was not sure. The name "FIDUCIAL" on the back of the Player's shirt could still be seen when he made contact.

The Player did not raise his left arm because he had had three surgeries on it which meant that he could not raise it above shoulder height. His arms were positioned for grasping the second player, B9. He had not been seeking to grasp B1.

The alleged incident was not detected by the Referee, AR1 or AR2 on the pitch and the TMO saw something but did not refer it to the Referee.

B1 was not injured. Both the Player and B1 were doing their respective jobs at the ruck. This was high level rugby.

FINDINGS OF FACT

The Disciplinary Committee:

1. Accepted that the Player's ultimate aim was to target B9 who had his hands on the ball, but noted that B1 was in his way and so he was required to consider B1's safety and owed B1 a duty of care;
2. Accepted that the Player had no intention of causing any injury to B1 and noted that no injury was in fact caused to B1;
3. Did not give substantial weight to the statements from B1, given that B1 himself stated "If there was contact made to my head I was unaware of it but this maybe due to the adrenaline of the game" and, as seen in the video evidence, B1 had immediately appeared to gesticulate to the Referee regarding the contact made by the Player;
4. Noted that, while the "EPCR COACHES PRESENTATION 2018-19" was only guidance, it was consistent with World Rugby's policy objectives around player welfare and it was intended and expected that all referees, citing commissioners and judicial officers in the EPCR tournaments would adhere to it and take it into account in their respective decision-making with regard to whether or not the red card threshold had been met and more generally with regard to the safety of a player's opponent;
5. Found that the Player knew or should have known that there was a significant risk of committing an act of foul play which had the potential to cause serious injury by making contact with B1 in the way in which he did (as seen in the video evidence and described above) and without binding (or attempting to bind) on B1 or any other player in the ruck at the time;
6. Noted that it was not clear from the video evidence as to whether or not the head of the Player had made more than glancing contact with B1; and
7. Found, on the balance of probabilities, that the upper left shoulder/back area of the Player made direct contact to the head/face of B1 with force causing B1's head to move backwards.

DECISION

Breach admitted ☐ Proven ☒ Not proven ☐ Other disposal (please state below) ☐

Based on the findings of fact set out above, the Disciplinary Committee found that the Player had committed an act of foul play contrary to law 9.12 which would have warranted a red card.

Taking into account points 6 and 7 above and in accordance with clause 9.8 of the Rules, the Disciplinary Committee amended the specific offence (in terms of law 9.12) which the Player was found to have contravened - from striking with the head to striking with the shoulder. In doing so, the Disciplinary Committee was cognisant of the fact that the entry point suspensions for lower end, mid-range and top end categorisations of seriousness of offending for a strike with the shoulder were lower than the equivalent entry point suspensions for striking with the head, and so it did not consider that any injustice was caused to the Player in making the amendment. The Disciplinary Committee had considered amending the offence to a contravention of law 9.20 (*dangerous play in a ruck or maul*) but determined that it was more appropriate in the circumstances to retain law 9.12 as the applicable law contravened, primarily because the submissions made by (or on behalf of) the Player and the Disciplinary Officer had been made relative to law 9.12.

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 checked="" type="checkbox"/>
State reasons	
The Disciplinary Committee accepted that the Player was attempting to target B9 but that he had made contact with B1 in doing so and that he knew or should have known that in charging into the ruck in the way in which he did, there was a risk of committing an act of foul play.	
Gravity of player's actions – R 7.8.32 (c)	
The Player's actions were grave in that they had the potential to cause significant injury to another player in the ruck.	
Nature of actions – R 7.8.32 (d)	
The Disciplinary Committee had found that the Player had stepped back from the ruck and then propelled himself forward into the ruck towards B1 with force in an upwards direction and, on the balance of probabilities, had struck B1 on the head/face area.	
Existence of provocation – R 7.8.32 (e)	
There was none.	
Whether player retaliated – R 7.8.32 (f)	
The Player did not retaliate.	
Self-defence – R 7.8.32 (g)	
The Player was not acting in self-defence.	
Effect on victim – R 7.8.32 (h)	
It was very fortunate that there was no effect on B1.	
Effect on match – R 7.8.32 (i)	
There was no effect on the Match.	
Vulnerability of victim – R 7.8.32 (j)	
B1 was extremely vulnerable as he was in the ruck, looking down towards the Toulouse player on the ground and would not have been anticipating to be struck on the head/face area in that position. He was not braced for contact but, even if he had been so braced, that would not have justified the commission of the act of foul play.	
Level of participation/premeditation – R 7.8.32 (k)	
The Player fully participated and there was no other player involved in the act of foul play. There was no premeditation.	
Conduct completed/attempted – R 7.8.32 (l)	
The conduct was completed.	
Other features of player's conduct – R 7.8.32 (m)	
There were no other features of the Player's conduct which were relevant.	
<p>In addition to assessing the features set out above, the Disciplinary Committee (in determining entry point) was bound to take into account the direction from World Rugby (contained in appendix 1 to regulation 17 – World Rugby Sanctions for Foul Play) that "any act of foul play which results in contact with the head shall result in at least a mid-range sanction". This was a significant and, in this particular case, determining factor in reaching a decision as to the assessment of seriousness of the Player's conduct.</p>	

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>
		X	6		

*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)
<p>The Player confirmed that he had not previously been cited.</p> <p>The Disciplinary Committee was advised that the Player had received:</p> <ol style="list-style-type: none"> 1. In 2009, a 60 day sanction following the issue of a red card; and 2. In season 2012/2013, a 10 day sanction. <p>Given that a period of approximately 6 years had elapsed since the Player had received his last sanction, and also due to the fact that at that time he was still an amateur player, the Disciplinary Committee did not consider that the Player had the status generally as an offender against the laws of the game of rugby union.</p>
Need for deterrence – R 7.8.34 (b)
This was not applicable in this case.
Any other off-field aggravating factors – R 7.8.34 (c)
There were none.

Number of additional weeks: 0

RELEVANT OFF-FIELD MITIGATING FACTORS

Acknowledgement of guilt and timing – R 7.8.35(a)	Player's disciplinary record/good character – R7.8.35 (b)
The Player did not accept that he had committed any act of foul play and so, on that basis, did not acknowledge guilt.	<p>As set out above, the Player did not have an unblemished disciplinary record. However, in light of the period elapsed since his last sanction (approximately 6 years) and the length of that sanction (10 days), the Disciplinary Committee decided, in this particular case, that his good disciplinary record over the last 6 years was relevant as a ground for reducing the period of sanction.</p> <p>In addition, the Player confirmed that he currently volunteers coaching rugby to adults in the village where he lives and had previously coached younger players.</p>

Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
The Player has been playing senior rugby, including professionally, for a number of years and so this was not applicable. Season 2018/2019 was his 6 th season of being a professional rugby player.	The conduct of the Player, his representative and his interpreter throughout the Hearing was impeccable and exemplary. They remained courteous and polite throughout.
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)
The Player did not accept that he had committed any act of foul play and so, on that basis, did not express remorse.	None.

Number of weeks deducted: 2

Summary of reason for number of weeks deducted:
In considering any reduction from the entry point suspension (as permitted in terms of clause 7.8.36 of the Rules), the Disciplinary Committee was required to start at 0% and work up from there. The Player had not accepted that he had committed any act of foul play and so had not acknowledged guilt or expressed remorse. However, the Disciplinary Committee was satisfied that other mitigating factors were present and so applied a reduction of 2 weeks, giving a total sanction of 4 weeks.

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	4 Weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	At the conclusion of the Hearing	
Sanction concludes	Midnight on Sunday 25 November 2018	
Free to play	Monday 26 November 2018	

Signature (JO or Chairman)	<i>Pamela Woodman</i>	Date	18 October 2018
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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