

EPCR SHORT JUDGMENT FORM

Match	Bath	Vs	Toulouse
Club's Country	France	Competition	European Rugby Championship Cup
Date of match	13.10.18	Match venue	The Recreation Ground, Bath
Rules to apply	EPCR Disciplinary Rules 2018/19		

PARTICULARS OF OFFENCE

Player's surname	Kaino	Date of birth	06.04.83
Forename(s)	Jerome	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	5 weeks' suspension (MR entry point 6 weeks, no aggravation, 1 week mitigation)		

HEARING DETAILS

Hearing date	17.10.18	Hearing venue	Sheraton Hotel, CDG airport, Paris
Chairman/JO	Samantha Hillas	Panel member 1	Anthony Wheat
Panel member 2	Marcello d'Orey	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:

Regis Sonnes (Toulouse)	Pierre Poiroux (Toulouse) Maite Ganzin (Independent interpreter) Mike Hamlin (EPCR – observing)
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List of documents/materials provided to player in advance of hearing:

<ol style="list-style-type: none"> 1. Citing Commissioner report 14.10.18 – Eugene Ryan 2. Yellow Card report 15.10.18 – Andrew Brace 3. Email Johnny Lacey (AR1) 15.10.18 4. Email Eddie Hogan O'Connell (AR2) 15.10.18 5. Email Simon McDowell (TMO) 15.10.18 6. Statement Jamie Roberts (undated) 7. Email Jean-Luc Brumont (on behalf of the Player in response to the standing directions) 16.10.18 8. Emailed submissions Liam McTiernan 16.10.18 also attaching:- <ol style="list-style-type: none"> (a) Training presentation arising out of the pre-season match officials conference in Marcoussis 01.10.18-03.10.18, circulated to all EPCR clubs on 08.10.18 (b) <i>Flannery</i> decision (HHJ Blackett) – hearing 03.03.10 (c) <i>Leo</i> decision (Summers) – hearing 02.05.13 9. Match footage
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SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/FOOTAGE

The following is taken from the citing report:

"At 38.28 in the first half, Bath were attacking on the half way line. Bath No.12 (Jamie Roberts) collects the ball from a pass and takes it into contact. He is tackled by Toulouse No. 8 (Jerome Kaino). Both players collided in an upright stance with both players slightly bent forward from the vertical. Kaino attempts to grasp Roberts but his point of contact with his right shoulder is high. After the collision Jamie Roberts is wrestled to the ground by Kaino. Roberts stays down, lying on his left side and in a dazed state. He is immediately tended to by Bath medical staff and is removed from the pitch and did not return to the game. I have carefully examined the actions of T8. I obtained all camera angles that were available afterwards in the TV van but camera angles on Kaino's right and the actions of his right shoulder and arm were not available. Because the initial point of contact, albeit high, was inconclusive, I decided to interview Roberts after the game. I also obtained a written and signed statement from Roberts. In his statement, Jamie Roberts stated "I can remember play coming from a left-hand side ruck and Bath No.10 passing the ball to me to carry. As I received the ball I felt a shoulder contact to my jaw. The next thing I remember is lying on my side on the floor with both medics around me. The Doctor then told me I was going to be permanently removed due to my symptoms". I am of the opinion that the upright tackle of Kaino was high and dangerous and posed a significant risk of serious injury to No. 12 Bath, Jamie Roberts. Consequently, based on the video evidence that was available to me and also the concise statement of Roberts, I am of the opinion that these actions merited a Red Card and accordingly, I Cite Toulouse No. 8 (Jerome Kaino) for striking with the shoulder to the jaw of No. 12 Bath, contrary to Law 9.12."

The citing report further stated (under the heading 'Brief Report of Discussion with Match Officials') *"Referee Brace awarded a YC after consultation with TMO McDowell. Referee Brace stated to me afterwards that he felt the tackle of Kaino was high but that he was not sure where the initial point of contact was but that it warranted a YC."*

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

1. There was no updating medical evidence available. The Panel were informed that J Roberts had temporarily lost consciousness as a result of the impact and that he met the criteria for immediate and permanent removal from the field of play.
2. The statement of J Roberts confirmed that *"...As I received the ball I felt a shoulder contact to my jaw. The next thing I remember is lying on the floor with both medics around me. The Dr then told me I was going to be permanently removed due to my symptoms."*
3. The Panel viewed the match footage. The tackle is clearly visible but from limited angles. The exact point of contact was not visible as there was no view from the far side of the tackle. The footage shows J Roberts 'crumpling' at the point of contact, his head immediately starting to wobble and him then sinking to the ground, where he remained prone before receiving medical attention.

SUMMARY OF PLAYER'S EVIDENCE

- He was heading into the tackle with a view to wrapping the ball as well as the player
- He cannot recall any contact with J Roberts' head or jaw. If there had been, J Roberts' head would have 'snapped back'
- It all happened very quickly
- He wanted to wrap the ball – that's all he can really remember from the incident
- He cannot recollect exactly the position of the ball. J Roberts naturally carries the ball pretty high, he knows as he has played against him many times
- His instinct is not to lead with shoulder or go for head
- It was not the best execution of a tackle, his body position was slightly high but from experience a chest to chest tackle is more effective to wrap the ball
- During the tackle, his arms come up because of the impact of the tackle
- He realised J Roberts had been injured when he stayed down after the tackle
- He does not know why J Roberts says he hit his jaw. It did not feel like a jaw: it was not that bony. He does not want to discredit what J Roberts says but from his perception, he did not hit him in the jaw

FINDINGS OF FACT

The Panel reminded itself that the standard of proof to be applied in this case is the balance of probabilities.

The Panel considered the totality of the evidence set out in the preceding paragraphs in order to reach conclusions as to the mechanism leading to J Roberts' injury. The Panel were mindful that the match footage is clear that the incident involved only J Roberts and the Player and that no other players were involved in the tackle.

Firstly, as to which part of J Roberts' upper body was involved, although the match footage is not conclusive in this regard:

- (a) J Roberts' statement was clear that the contact was with his jaw
- (b) Although the Player disagreed with J Roberts' statement, he did not require J Roberts' to attend the hearing so that he could challenge his account
- (c) J Roberts' head did not 'snap back' upon contact, but it is clear that, immediately upon contact, his head appeared loose on his shoulders and he crumpled to the ground
- (d) J Roberts was rendered temporarily unconscious as a result of the blow.

The Panel considered whether J Roberts' injury could have occurred as he hit the ground, but it is clear from the match footage (see (c) above) that there was an immediate impact upon J Roberts at the point of the tackle and, furthermore, it is also clear from the match footage that J Roberts did not hit his head on the ground or on any other part of the Player's body as he was taken to ground. As set out above, no other player was involved. The Panel therefore find that it was J Roberts' jaw that was struck.

Secondly, as to which part of the Player's body was involved, whilst the citing refers to the Player's shoulder, the Panel considered all other options. The match footage excludes a strike to J Roberts' jaw by either of the Player's arms. The match footage is also clear that there was no clash of heads, as the match footage shows the Player's head clearly visible at all times. Furthermore, the Player did not posit that the incident involved anything other than his shoulder and the Player's left shoulder was also visible throughout on the match footage. In all the circumstances, taking into account the totality of the evidence and on the balance of probabilities, the Panel find that the Player's right shoulder struck J Roberts' jaw.

The Panel's findings are therefore:-

1. That the Player's right shoulder struck J Roberts' jaw.
2. That this was an act of foul play.
3. The Panel accept the Player's account that this was not an intentional act. The Player was in an upright position, his knees were barely flexed, there was no flexion at the waist and his shoulders were at the height of the victim player's jaw. The Panel took the view that it was reckless.
4. That it passed the red card test, in line with the training presentation emanating from the Marcoussis conference. Toulouse did not challenge the submission that this has been circulated to all EPCR clubs.

DECISION

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

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 Panel accepted the Player did not intend to make contact with J Roberts' jaw. He was in an upright position at the tackle, intending a chest on chest contact. A Player tackling in such an upright position always runs the risk of committing an act of foul play and causing injury to the tacklee, but this was not intentional on the part of the Player		
Gravity of player's actions – R 7.8.32 (c)		
The tackle injured J Roberts to such an extent that he was immediately and permanently removed from the field of play		
Nature of actions – R 7.8.32 (d)		
A high tackle in which the Player's shoulder connected with J Roberts' jaw		
Existence of provocation – R 7.8.32 (e)		
N/A		
Whether player retaliated – R 7.8.32 (f)		
N/A		
Self-defence – R 7.8.32 (g)		
N/A		
Effect on victim – R 7.8.32 (h)		
Momentarily rendered unconscious and had to be removed from the field of play. J Roberts did not return to the game and will, in line with protocols, have a phased return		
Effect on match – R 7.8.32 (i)		
None		
Vulnerability of victim – R 7.8.32 (j)		
Contact with the head		
Level of participation/premeditation – R 7.8.32 (k)		
Not premeditated		
Conduct completed/attempted – R 7.8.32 (l)		
Completed		
Other features of player's conduct – R 7.8.32 (m)		
N/A		

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>

<input type="checkbox"/>	<input checked="" type="checkbox"/>	6	<input type="checkbox"/>
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*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
N/A

ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS
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Player's status as an offender of the Laws of the Game – R 7.8.34 (a)
The Player does not have a clean disciplinary record, but this was not considered to be an aggravating feature
Need for deterrence – R 7.8.34 (b)
Following World Rugby guidance, all acts of foul play involving the head of the victim player are considered to be at least a mid-range offence
Any other off-field aggravating factors – R 7.8.34 (c)
None

Number of additional weeks:

RELEVANT OFF-FIELD MITIGATING FACTORS
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Acknowledgement of guilt and timing – R 7.8.35(a)	Player's disciplinary record/good character – R7.8.35 (b)
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The Player did not accept he committed an act of foul play	The Player received a red card in 2005 for a high tackle and in 2016 for a strike
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
The player is aged 35 and extremely experienced, having played for the All Blacks 60 to 70 times	Exemplary
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)
After the incident, the Player tapped J Roberts on the thigh and said he hoped he was OK, but there was no acknowledgement that his foul play caused the injury	N/A

Number of weeks deducted: 1

Summary of reason for number of weeks deducted:
The Player's refusal to accept this was an act of foul play, together with his disciplinary record meant the Panel found it difficult to mitigate much, if at all, from the sanction. The Player's conduct at the hearing was exemplary however and he attempted to assist the Panel as much as possible. For that reason, the Panel felt able to deduct one week from the six-week sanction.

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	5 Weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	14.10.18	
Sanction concludes	02.12.18	
Free to play	03.12.18	

Signature (JO or Chairman)	<u>SAMANTHA HILLAS</u>	Date	<u>18.10.18</u>
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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