

## DISCIPLINARY DECISION



Match	Leinster Rugby v Edinburgh Rugby		
Player's Club	Edinburgh Rugby	Competition	Guinness PRO14
Date of match	22 September 2018	Match venue	RDS, Dublin
Rules to apply	Guinness Pro14 Disciplinary Rules		

PARTICULARS OF OFFENCE			
Player's surname	Schoeman		
Forename(s)	Pierre		
Referee Name	Dan Jones (WRU)	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted Qualified
Offence	9.12 – A player must not physically or verbally abuse anyone	SELECT: Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other <input type="checkbox"/>	If "Other" selected, please specify:
Summary of Sanction	4 weeks		

HEARING DETAILS			
Hearing date	26 September 2018	Hearing venue	Hutchinson Thomas, Heath
Chairman/JO	Simon Thomas (Wales – Solicitor)		
Other Members of Disciplinary Committee	Roger Morris (Wales – Solicitor) Nigel Williams (Wales – Ex-International Referee)		
Appearance Player – by video conference	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
Player's Representative(s)	Jonny Petrie, Managing Director, Edinburgh Rugby Matt Cornwell, Head of Rugby Operations, Edinburgh Rugby Bruce Caldwell, Solicitor	Disciplinary Officer and/or other attendees	Amy Monaghan, PRO14 Rugby
List of documents/materials provided to Player in advance of hearing	<ul style="list-style-type: none"> <li>- Referee Report</li> <li>- TMO Report</li> <li>- Statement from Dan Leavy, Leinster Rugby No. 20</li> <li>- Statement from Professor John Ryan, Leinster Team Doctor</li> <li>- Hawkeye footage of incident with all available angles (full speed, 50% speed, 25% speed)</li> </ul>		

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

Pierre Schoeman ("the Player") had been ordered from the field by the referee, Mr Dan Jones (Welsh Rugby Union) in the 71st minute of the Match for an act of foul play contrary to Law 9.12 of the Laws of Rugby Union which provides "*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 referee’s report confirmed that the ordering off had occurred following a viewing on the stadium screen as he had not viewed the incident in live play.

#### Referee Evidence

A narrative of the referee’s report stated: *“No. 17 Edinburgh was in possession of the ball. When carrying into contact, No. 17 led with the elbow and made contact at force with the head area of an opponent.”*

#### Match Footage

The Match footage of the incident was of good quality via Hawkeye system and was shown at full speed, half speed and one-quarter speed.

From various camera angles, it depicted the following:

At a ruck approximately 10 yards inside the Leinster 22-metre line, Edinburgh are in possession of the ball. The ball is passed out of the back of the ruck to the Player who receives the ball approximately two metres inside the Edinburgh 22-metre line and 15 metres in from his left touchline. As he receives the ball in both hands, he transfers the ball into his right hand, steps off his right foot and braces for the impact of a tackle from Leinster No. 20 (Daniel Leavy) who has approached him very quickly from an onside defensive position.

As Leavy approaches the Player, the Player having transferred the ball to his right hand, raises his left arm and hand and begins to outstretch it towards Leavy. Initially, the left hand can be seen raised higher than his left elbow. As Leavy continues to approach, Leavy’s knees are bent and he also braces for impact raising his two arms in front of him in an effort to envelope the Player. The Match footage clearly showed that the Player’s left forearm comes into contact with the left side of the jaw of Leavy at the point of impact.

The Player’s momentum and the impact between his left arm and Leavy causes Leavy to be knocked back onto the floor without any obvious attempt to break his fall. The Player also loses his balance as a consequence of the impact and goes to ground whereupon he is enveloped by another Leinster player. The ball is further recycled into the next phase of play.

As Leavy falls, the Match footage also evidences some contact between the back of the head of Leavy and the lower leg of one of his teammates which was a consequence of him being knocked backwards by the impact from the Player.

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

## TMO Evidence

The additional evidence presented included the Television Match Official report of Simon McDowell which provided no detail as to the incident and merely described that the Player had been responsible for *“striking an opponent”*.

### Daniel Leavy (Leinster No. 20)

There was a statement from Mr Leavy which confirmed the following:

*“This is my recollection of the incident against Edinburgh on 22 September 2018.*

*A few minutes after I came on, I was defending in our own 22. The ball was passed to an Edinburgh player and I tried to get off our defensive line as quickly as possible to make a tackle. I entered the tackle area a little high and felt a blow to my jaw area. At the time, I was not aware of which part of the ball carrier’s body hit me. I was then removed from the field of play to undergo an HIA assessment”.*

### Professor John Ryan

A statement from Professor John M Ryan, the Leinster Rugby team doctor read as follows:

*“Daniel Leavy sustained a concussion following a collision with an opponent during the Leinster v Edinburgh match at the RDS on Saturday, 22 September 2018.*

*He sustained a blow to the head during the collision and was removed for a head injury assessment (HIA). He had an abnormal HIA1, so he was deemed unfit to return to play. A HIA2 was performed after the Match. A concussion was confirmed based on abnormal modes.*

*He was given standard head injury advice and will be further assessed today with a HIA3”.*

## **SUMMARY OF PLAYER’S EVIDENCE**

Prior to the hearing, and in accordance with the obligation under the Rules, the Player had responded to the standing directions as follows:

“Guinness PRO 14 Disciplinary Hearing – Wednesday 26th September 2018

Response of Pierre Schoeman, Edinburgh Rugby

(a) whether you are the Player who was shown the red card;

I am.

(b) whether you will argue any preliminary matters, and if so what they are (in summary);

I will not.

(c) whether you accept that the Official Report(s) is/are (a) true and accurate account(s) of the incidents that resulted in the showing of the red card and the facts surrounding the incident;

I respectfully do not. My explanation is set out below.

(d) whether you accept that you committed an act or acts of Foul Play as set out in the Official Report(s);

I do not accept it is as set out in the Official Reports. They say my actions were a strike and leading with the elbow. I respectfully disagree. I did not physically abuse my opponent in terms of law 9.12 as reported to you. I believe this should be recategorized as a poor hand off in terms of law 9.24.

(e) whether you accept that that/those act(s) warranted a red card;

I do accept I made contact with the head and accept that a red card once issued is difficult to argue against and have decided not to do so. I respect the referee's red card but ask that the committee carefully consider and accept my explanation and re-categorise this to an offence under law 9.24.

(f) whether you will try to show that the referee's decision to show you a red card was wrong;

I will show that the exact reasons offered by the referee are wrong, to ensure that you can properly understand what happened and apply the sanctioning regime correctly.

(g) if you do not accept one or more of the propositions in paragraphs (c), (d) (e) and (f), above, why you do not accept it/them (in summary), and what evidence (and/or authorities) you will rely on to support your position (any written evidence and/or authorities must be attached to the written statement when sent and the names of any witnesses to be called must be set out in the statement); and

I wish to start out by explaining that my response to the red card is that I acknowledge that contact was made in the course of the incident, with contact being made on L20's lower left jaw, but I did not lead with the elbow as alleged and I did not use my elbow to strike that player. I would never, ever, attempt to abuse an opposition player in that way.

I understand that the law that I have been sent off under is "physical abuse" and as part of that "striking". I can promise this committee that my actions were not intended to abuse an opponent.

I recognise fully that contact with the head is very much against the laws of the game and that we as players must take our responsibilities properly, and not risk opponent's injury, but in this situation, I think it is clear from what I was doing and from the video angles that I was not pointing and leading with my elbow. I was trying to fend and brace. It was essentially an attempt to hand off.

You can see from the video clip, that when the referee is sending me off, he uses his own arm to illustrate what he has concluded has happened – he is gesturing to suggest I very much led with the elbow and I assure the panel, I did not.

I think it can be seen much better now, after the event, that my action is not to strike an opponent with my arm, but to engage in an attempt to legitimately fend an oncoming, rushing, tackler. A tackler who is in a really bad position. He is not bent at the waist as he should be.

The tackler, L20 is on me in an instant and I've switched the ball from catching in on my left side to tucking it under my right arm. I've used my left arm to then prepare for contact from L20.

L20's tackle position is very poor. He is upright, and his head is in the wrong position. He should be bent at the waist and aiming to tackle me around my waist and lower body. His head is closer to me than any other part of his body (this you see on the video). I just know that I have to put my hand out and try to contact with his open shoulder (the side I am attempting to go around). My arm is not rigid or stiff as it would be for a strike.

My elbow is not leading. My outstretched hand is. My belief is that my contact with L20 was as one – across his upper left shoulder and down across his chest. Yes, I accept that in the instant of the initial collision I have made contact with his lower left jaw area, but it is not with a leading elbow. It is with the softer upper part of my left forearm and it is fleeting contact.

It is important that I stress that he came up to make the tackle very quickly. He is on me in an instant. Initially my eyes have been on the ball – to catch it – and then in an instant I see he is on me and I use my footwork to move away from him and as described above I put the ball into my right hand, away from him.

You can see from the video that my left arm folds with L20 making contact, but it should do so and it is natural for that to happen as I have genuinely, in no way, led with a rigid upper arm and elbow; it's a case that I either go in towards the tackler, who has come at me at real speed (he was a replacement 7) and I've braced for contact having aimed at his left shoulder as the place to make contact, my brace is focussed on contacting his upper left shoulder with my hand and lower forearm, and my arm folds in, helping to reduce the force of L20 contacting with me, and I then take the hit with my left arm moving in and back and down. That can be clearly seen on the video.

I then accept that I push him away but that doesn't involve striking him with a leading elbow. That push is with my forearm.

For me to have led with my elbow my hand would have had to have been far closer to my chest and I don't see that on the video, nor is it my honest and genuine recollection. My forearm and hand and wrist were outstretched. Not fully – if they were I'd have seriously risked injury. It's not possible to go with a straight left arm into that type of contact even if I had time to do that, which I don't think I did give how quick he came up on me.

I couldn't have just wrapped my left hand and arm across my front, on to the ball, and braced for contact, because the force would have been stronger. I'd have had to take the hit from L20 on my body / upper body and I'd have had to have used my left side and arm to hit through any attempted tackle. I think that would have been worse.

I genuinely think that my action of leading with my forearm towards his open-side shoulder was appropriate as it would have allowed me to fend and try to not be wrapped in the tackle. If I am wrapped I don't go forward. I also get stopped from releasing quick ball. I also allow him to complete a bad upright tackle or we risk having a worse collision.

I am not trying to bring my arm up to strike him. I am bringing my left arm up to use my hand and upper forearm (wrist area) to first take his contact and then secondly to push. I believe that is seen in the video and not what the referee has described.

I know contact was made by the L20 player's head – their lower left jaw – but I believe that the contact was the secondary to what I did, which was to brace, and that the contact was secondary to initial contact with the upper left shoulder of L20.

I have been asked what else could I do in this situation and I think that is very hard to answer except for saying I do regret that contact was made with the head, but that if a player is in a poor tackle position and if he is going to rush on to the tackle, I can attempt to protect myself in the tackle and I cannot and never would attempt to protect myself by inflicting my elbow upon them in the way alleged.

I can't go any lower with my braced fend, but you should see on the video that my left elbow does quickly drop, before being part of the arm that extends.

If my arm is outstretched and rigid I don't complete the brace and fend, I spear him with my arm and I probably injure myself. I have to have an arm that is ready for contact and takes the contact and bends and then allows me to push off after that initial contact, which is what I do.

I am not trying to stab or jab with my elbow. I don't stab or jab with my elbow.

Contact with his chin is light in comparison to the contact made with his upper body. It is neither intended nor that reckless because I did not intend to hit his head, nor do I think it was that reckless because I had to brace for contact and the safest place to try to do that was on his outside (left) shoulder. I am attacking, and I am trying to go outside, it was not a move to go inside.

If I'd wrapped my left arm across my body and hit with arm pinned to my side and my body, with my body weight and strength across that player, I think his position in the tackle, which is really poor, means there could have been contact with his head and it could have been a bigger collision.

I also wish to bring to the Committee's attention that L20's head makes significant accidental contact with the leg of L4 when he is grounded. I believe that the video therefore opens up the question of whether it was my contact or that of his head hitting his player's leg that caused an injury.

(h)                      who will be attending the hearing and in what capacity.

I will.

Jonny Petrie, Managing Director, Edinburgh Rugby

Matt Cornwell, Head of Rugby Operations

Bruce Caldwell, legal representative".

The Player was then invited to give his evidence in response to the evidence presented by the Tournament's Disciplinary Officer.

The Player explained that his aim in the passage of play which was the subject of the ordering off could be described as follows:

In receiving the ball from the scrum half in an attacking position, his intention was to keep the tackler inside him (i.e. to the Player's left) which would have enabled him, whilst holding the ball in his right hand, to have either offloaded the ball in the tackle or if after using some "fancy footwork" and had beaten the tackler, then he might have drawn in towards him the Leinster fourth or fifth defender which would have put his team at a significant advantage having committed so many defenders to him. He said that his intention was to affect a "fend on the outside shoulder". He described in clear detail and demonstrated visually to the panel, how this would be achieved. He described how his left hand would be open and outstretched and that his left arm would be bent as this was the safe way of achieving the fend so that, in the same way that he would bench press in the gym, the forward pushing motion of the open hand would hopefully push away the tackler.

He then described how his team had undertaken a lot of video analysis of the Leinster players and he described how they were regarded as being exceptionally good at tackling. They would tackle with "low chops and leg chops". He said that he therefore felt the need to try and beat the tackler with some footwork and aim to get free of the tackler or at least beyond the contact.

He said that the incident happened very quickly. Firstly, prior to taking the ball, he had visually scanned the defensive line. His attention was then turned to catching the ball and once this was done, he would look up again.

He described how Daniel Leavy of Leinster was shooting up from the defensive line very quickly and more aggressively than the others. He said that Leavy was already on him much quicker and faster than the others and he therefore needed to execute, and open-hand fend.

He described how one should not execute an open-hand fend with a straight arm due to risk of injury to oneself.

The panel's attention was then focused upon the reverse angles as shown at 1m:05s and 1m:06s from the Hawkeye Match footage.

The footage at 1m:05s demonstrated that prior to contact the Player's hand had been open and was not clenched. The Player also demonstrated that his hand was leading and that his arm or elbow were not.

The panel was invited to comment that they could see what was being described to them.

The Chairman put to the Player that at 1m:06s, the Player's fingers appeared to be curled rather than straight. The Player accepted this was the case.

The Player agreed that both his arm and his elbow could be seen in the Match footage being lower than the level of his shoulder. The Player was asked about why his fingers closed, and he said that he needed to adapt because Leavy had rushed out. It would have been his intention to try and grasp on Leavy's left shoulder, but he did not wish to make any contact with Leavy's neck or head.

The Player then commented about how Leavy's tackle technique was not as he had expected. He described how Leavy's was higher than he should have been, and his head was also on the wrong side.

The Player also illustrated how upon the initial contact between his arm and Leavy, his arm was pushed back towards his chest.

As to the point of contact between he and Leavy, the Player said that he had not realised at the moment that his arm area had made contact with Leavy's chin.

At the conclusion of the Player's evidence in chief, Mr Petrie summarised what the Player had said.

The summary was that at all times, the Player's hand was leading into contact, not the arm. He confirmed that the hand had been open, but then began to close. The attempt was to impact upon Leavy's left shoulder. The Player's elbow was below the Player's shoulder line. The elbow retracts and was not driven through. The panel's attention was also drawn to the manner in which Leavy fell. It was suggested that he had taken steps to break his fall, but that when he fell, the back of his head could be seen coming into contact with Leavy's teammate's leg and that the manner in which the fingers of both hands then extended was consistent (according to the Scottish Rugby Union team doctor who had been spoken to by Edinburgh Rugby) that the concussive injury may well have occurred at that stage, rather than at the point of impact by the Player with the chin.

The Player concluded his evidence by confirming that at the final whistle, he having been ordered off, he spoke to the other players from Leinster to congratulate them on their performance. He gave evidence that he had apologised to Mr Leavy for what had occurred, and Mr Leavy had commented that he regarded the ordering off as “a bit harsh”.

Mr Caldwell, on behalf of the Player, asked for permission to deal with other aspects of the Player’s background at this stage of the proceedings. Whilst this was not conventional practice as the panel were concerned with fact-finding at this stage, the panel nevertheless acceded to this request.

The Player confirmed that he had been playing rugby since the age of six and had captained the school’s first team. He had played provincially at age 16 and 17. In 2012, he had been the provincial first team captain. He had joined the Bulls for 5 years and had been their captain. He had played at all levels including junior rugby, varsity, Currie Cup and Vodacom Cup.

He was 24 years of age.

#### Evidence of Mr Matt Cornwall

Mr Cornwall spoke very highly of him. He had been recruited in 2017 and statistically was regarded as one of the best performing props in world rugby. His conduct on and off the field was exemplary. He had settled in extremely well with Edinburgh Rugby and was an example to all young players.

#### Evidence of Mr Petrie

Mr Petrie also commented that he demonstrated positive good character and was extremely polite and respectful to team officials alike. He was also very popular with the supporters.

In concluding the Player’s evidence, the Player confirmed that he respected the referee’s authority and did not challenge that his conduct had merited a red card and he (and Edinburgh Rugby) accepted that in the game of rugby there is a responsibility to protect the tackler.

Mr Petrie also mentioned that they had other clips available of other instances involving players leading with the elbow, but they did not wish the panel to consider them as part of their formal representations.

#### Player’s Submissions as to Disposal

At this stage in the proceedings, the evidence having been heard, the Chairman invited the Player’s legal representative, Mr Caldwell to make submissions on the Player’s behalf.

Mr Caldwell started by reiterating the Player’s position that he did not dispute that he had committed an act of foul play, nor did he seek to challenge the decision of the referee to issue a red card. He did say, however, that in accordance with DR 7.2.1, the Committee had a discretion to conclude that the reasons for the referee’s decision were nevertheless in error and if (as he suggested was the case) the referee had mis-described and mis-categorised the foul play, by reference to the Laws, then the Player could be sanctioned in accordance with the correct law which he had contravened. In this case, he submitted that

the Player had contravened Law 9.24 of the Laws of Rugby Union which confirms that a Player does not commit an act of foul play if he hands off another player unless he does so with excessive force.

Mr Caldow said that the Player accepted that a suspension was warranted in this case and that he was therefore not suggesting that the red card was sufficient punishment in itself.

He then went on to submit in detail why the act of foul play had been mis-categorised. He reiterated the Player's evidence that the intention clearly was to hand off the tackler.

He submitted that there had to be an acceptance that in rugby there must be an opportunity for the attacker to meet the oncoming defender and try to prevent the tackle. It was accepted that in this instance the Player's arm had come into contact with the tackler's chin. However, he said, his actions could not properly be regarded as physical abuse as reported by the referee, but rather, they were something else.

He submitted that the evidence supports the conclusion that this event was better recognised as a hand-off with excessive force.

He submitted that to categorise the incident as a strike was wrong, because striking somebody connotes "a violent act" and "aggression in its intent".

He reminded the panel that the tackler in this instance had come in quickly and high. The tackler approached the tackle area so quickly that the Player had had to play the tackler and he rhetorically asked what could the Player have done differently?

He said that if the Player had taken an alternative course by having dropped his left shoulder into the oncoming tackler, that would have been more dangerous.

He suggested that had the tackler been marginally higher or the Player had been marginally lower, then there would have been no contact with the head.

He commented that there had been no intention to assault or abuse an opponent and his actions were marginally foul play at most.

He also described the Player's actions as having fleeting contact with the jaw and that this contact was not the only explanation for the concussion which had since been diagnosed.

He referred to the contact to the back of the head and also confirmed that there was a strong evidential basis for suggesting that the Player's actions had not caused the concussion.

Mr Caldow continued by saying that the facts of the case fit more naturally with an act contrary to Law 9.24 and that as there were no World Rugby fixed entry point suspensions for 9.24 acts of foul play, the Committee should use its discretion.

He said that in exercising its discretion, the panel should consider a starting point of two weeks.

If, however, the Committee was against him in his findings and a strike had been found as a fact, then the Committee should take into account that it was not a strike with a leading elbow. It was more with the soft part of the upper forearm.

#### Player's Submissions as to Sanction

(i) Entry point.

He said the Committee had the discretion in such circumstances to consider it as a low-end, mid-range or top-end entry point.

Mr Caldwell commented that whilst the sanction table states that where there is a strike to the head of an opponent, the Committee "*shall impose at least a mid-range entry point sanction*", the wording nevertheless provided the Committee with a discretion to apply low-end entry point if the facts fitted more appropriately. He said that the Disciplinary Rules in other areas he used the word "must" whereas the words in the sanctions table say "shall". So, there is an important difference. It is therefore a direction rather than a mandatory requirement.

He then took the Disciplinary Committee through the entry point criteria under DR 7.6.30 which relate to the entry point. The salient points that he referred to include the fact that there clearly was no intent to commit any act of foul play and that the incident was an accident or marginally reckless. The injury could be explained by the other Leinster player. He described how the defender was very active in the incident.

He submitted that there was overwhelming weight in favour of applying a low-end entry point.

(ii) Aggravating Factors

Insofar as other matters relating to sanction are concerned, Mr Caldwell confirmed that there were no aggravating factors present in this case as described under R 76.32.

He commented that whilst the Player had one previous disciplinary offence against him, a suspension of six weeks whilst playing for the Bulls last season, it could not be properly said that he was a person with a status as an offender against the Laws of the Game.

(iii) Mitigating Factors

Turning to the existence of mitigating factors, Mr Caldwell confirmed that the Player was entitled to a greater number of them. Firstly, as far as presence and timing of culpability was concerned, not only had the Player himself apologised and acknowledged his wrongdoing, the Edinburgh head coach, Mr Cockerill, also "didn't play his cards close to his chest" (i.e. he had publicly acknowledged the red card was justified).

Whilst it was accepted the Player had a previous suspension, he had a very good character, and this was also illustrated by the fact that he had captained a great number of his teams. He also referred to the character evidence given today by Mr Cornwell and Mr Petrie.

Mr Caldow confirmed that the Player was somebody both youthful and with inexperience compared to most front-row players and his conduct prior to the hearing had been exemplary. He had demonstrated a very good and responsible demeanour and given fulsome answers.

He also had expressed remorse to Mr Leavy directly at the Match.

Mr Caldow concluded that all mitigating factors were therefore available to him.

Having concluded his remarks, the Chairman asked Mr Caldow what the previous suspension was for. Mr Caldow confirmed that it had been for a bite. The Player spoke about the incident.

Before retiring to consider their decision, the Chairman asked Mr Caldow whether he was aware of any previous case (either at first instance or appeal) where a rugby disciplinary panel had departed from the directive of World Rugby in Regulation 17 that where there had been a strike to the head of a player the panel could consider a low-end entry point. Mr Caldow said that he was unaware of such a case.

Finally, the Chairman invited the Player to make any concluding remarks. The Player thanked the panel and said that there was nothing that he wanted to add.

## FINDINGS OF FACT

The Committee reminded itself that, in accordance with the Rules, findings of fact were to be considered based upon the balance of probabilities.

In terms of the findings of fact, the principal factual issue which appeared to be in dispute as between the Player and the referee's report was the suggestion that the Player had struck the opponent with the elbow.

The Committee was satisfied based upon all that it had seen and heard and after very careful review of all of the Hawkeye footage in slow-motion and real time that on the balance of probabilities, the Player's elbow had not struck the opponent, but the forearm had been the point of contact to Mr Leavy's chin.

The Committee was also satisfied that the Player had given an honest and truthful account as to his intentions which were to effect a hand-off or fend to the left shoulder of Mr Leavy so as to remain on the "outside" of Mr Leavy to present his teammates with a better attacking opportunity as the play progressed.

The Committee was also satisfied that Mr Leavy had approached the Player very quickly and that the Player had initially extended his right hand so that it was open, but that the Player’s left hand never made contact with Mr Leavy and that the contact had been between the Player’s forearm and Leavy’s chin and upper body.

The Committee also took into account that the Player had not presented any medical evidence to support the proposition that the concussion suffered by Mr Leavy had been caused by his own teammate. The evidence from Mr Leavy was that the impact had been to his chin and he made no mention of any impact to the back of his head. Furthermore, this had not been mentioned by the Leinster team doctor. On the balance of probabilities, the Committee concludes the concussion had been caused by the heavy blow to his chin.

In terms of categorisation of the act of foul play, the Committee had considered carefully the representations of Mr Caldwell as to whether the actions of the Player more closely constituted physical abuse (a strike with the arm) or a hand-off with excessive force.

As to whether the actions more closely constituted a hand-off with excessive force, the Committee took into account that at no stage did it appear the Player’s hand had actually made contact with Mr Leavy and, therefore, no hand-off had been completed. Accordingly, whilst the Player may have been attempting a “hand-off”, this had not been a hand-off with excessive force.

The Committee also concluded that physical abuse in the form of strikes to an opponent can take various forms including unintentional strikes of varying seriousness.

Accordingly, the Committee were of the view that the act of foul play was more closely represented by a finding that the Player had struck the opponent and therefore the categorisation pursuant to Law 9.12 was correct.

The Committee then went on to consider the sanctioning process in accordance with the Rules.

The sanctioning process is a three-stage process. The first stage involves an assessment of the seriousness of the incident by reference to the “on-field factors”. The second stage is to consider the existence of any off-field aggravating factors. The third stage is to consider the existence of any mitigating factors. The Committee’s conclusions appear below.

**DECISION**

Breach admitted <input checked="" type="checkbox"/> 9.12 found	Proven <input checked="" type="checkbox"/> Not proven <input type="checkbox"/> Other disposal (please state) <input type="checkbox"/>
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## SANCTIONING PROCESS

### ASSESSMENT OF SERIOUSNESS

Assessment of Intent—R 17.19.2(a)-(b) (or equivalent Tournament rule)
Intentional/deliberate <input type="checkbox"/> Reckless <input checked="" type="checkbox"/>
State Reasons
The Committee was perfectly satisfied that the Player had not intended to strike the opponent with his forearm; however, the Committee was satisfied that the Player was aware or reasonably ought to have been aware that in attempting to effect the fend that contact may have been made between his forearm and the head of the opponent. Such actions high upon the body of an opponent at speed have inherit risks.
Gravity of player’s actions – R 17.19.2(c) (or equivalent Tournament rule)
The Committee did not regard the Player’s actions as being particularly grave. The incident had occurred very quickly. Mr Leavy had approached the tackle area very quickly, leaving the Player with very little time to react.
Nature of actions – R 17.19.2(d) (or equivalent Tournament rule)
The Committee concluded that contrary to the referee’s report, the Player’s forearm had come into contact with Mr Leavy’s chin, rather than his elbow.
Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule)
There was none.
Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule)
This was not applicable.
Self-defence – R 17.19.2(g) (or equivalent Tournament rule)
This was not applicable.
Effect on victim – R 17.19.2(h) (or equivalent Tournament rule)
The Committee was satisfied on the balance of probabilities, having considered the available direct evidence from the Player, Mr Leavy and from the Leinster team doctor, that the act of foul play had caused Mr Leavy to suffer a concussion.
Effect on match – R 17.19.2(i) (or equivalent Tournament rule)
The Committee was aware that Mr Leavy had had to be substituted, but the Player himself had been removed from the Match having been ordered off albeit towards the end of the game.
Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule)
The Committee concluded Mr Leavy had not been particularly vulnerable inasmuch as he was the tackler and was likely to have been anticipating a heavy impact with a large front-row player in possession of the ball. That said, would not have anticipated a blow to his jaw.
Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule)
Whilst the Player had obviously participated in the act of foul play, the Committee was satisfied there had been no premeditation in the act of foul play.
Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule)

The Committee concluded that the strike had been completed.
Other features of player's conduct –R 17.19.2(m) (or equivalent Tournament rule)
There was no other feature of relevance.

At this stage, the Committee concluded whether it had the power to consider a low-end entry point in circumstances where the strike had been to Mr Leavy's head.

The Committee concluded that contrary to Mr Caldow's assertion that it had a discretion to consider a low entry point, it believed the purpose of the amendment to the Regulations' sanction table as described, was to ensure that any strikes to the head of an opponent required disciplinary panels to impose at least a mid-range entry point and that there was no discretion on their part to do otherwise.

Accordingly, the Committee concluded that it was bound, in accordance with the Rules, to impose at least a mid-range entry point. Based upon the facts of this case, the Committee concluded the correct entry point was mid-range.

**ASSESSMENT OF SERIOUSNESS CONTINUED**

Entry point		
<u>Top end * Weeks</u> <input type="checkbox"/>	<u>Mid-range Weeks</u> <input checked="" type="checkbox"/> 6 weeks	<u>Low-end Weeks</u> <input type="checkbox"/>

\*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 17.19.4(a) (or equivalent Tournament rule)
Not applicable. The Player's single previous transgression for a serious act of foul play did not provide him with a "status" as an offender against the Laws of the Game.
Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule)
Not applicable.

Any other off-field aggravating factors– R 17.19.4(c) (or equivalent Tournament rule)

Not applicable.

Number of additional weeks:

Nil

## RELEVANT OFF-FIELD MITIGATING FACTORS

Acknowledgement of guilt and timing – R 17.19.5(a) (or equivalent Tournament rule)	Player’s disciplinary record/good character – R 17.19.5(b) (or equivalent Tournament rule)
To the credit of the Player, he had, from the outset, indicated that he accepted that he had committed an act of foul play which had merited a red card and had also at this hearing accepted that the red card had merited a suspension.	The Player did not present with an unblemished record, having pleaded guilty last year to an act of foul play involving a bite to an opponent.
Youth and inexperience of player– R 17.19.5(c) (or equivalent Tournament rule)	Conduct prior to and at hearing – R 17.19.5(d) (or equivalent Tournament rule)
At 24, the Player was still relatively youthful although he was gaining in experience.	The Player had conducted himself in a most respectful manner towards all participants in the hearing including the panel and had cooperated fully in the disciplinary process throughout.
Remorse and timing of remorse– R 17.19.5(e) (or equivalent Tournament rule)	Other off-field mitigation – R 17.19.5(f) (or equivalent Tournament rule)
The Player’s evidence, accepted by the Committee, was that he had apologised in person to Mr Leavy immediately after the Match and this personal, timely apology, was to his significant credit.	The Committee concluded that the Player was very highly regarded by Edinburgh Rugby and generally demonstrated the kind of values and behaviour off the field which were to his credit.

Number of weeks deducted: Two

Summary of reason for number of weeks deducted:

The Committee reminded itself that when applying mitigation, one starts at zero and works up to a maximum of 50%. In this instance, the Player’s recent suspension for an act of biting prevented him from full mitigation of 50%.

## SANCTION

**NOTE:** PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 17.14.5(f) (or equivalent Tournament rule)

Total sanction	4 weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	22 September 2018	
Sanction concludes	Midnight on 21 October 2018 so that the Player is free to play on Monday, 22 October 2018.	
Matches/tournaments included in sanction	4	

Costs	No order.
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Signature (JO or Chairman)	Simon Thomas	Date	01/10/2018
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**NOTE:** YOU HAVE 48 HOURS FROM NOTIFICATION OF THE DECISION OF THE CHAIRMAN/JO TO LODGE AN APPEAL WITH THE TOURNAMENT DIRECTOR –R 17.22.2(a) (or equivalent Tournament rule) (see Page 6)

[Standard Appeal Directions to appear on this page]