

EPCR SHORT JUDGMENT FORM

Match	Perpignan	Vs	Sale Sharks
Club's Country	France	Competition	European Rugby Challenge Cup
Date of match	12 October 2018	Match venue	Stade Aime Giral, Perpignan
Rules to apply	EPCR Disciplinary Rules 2018/19		

PARTICULARS OF OFFENCE

Player's surname	Leiatua	Date of birth	
Forename(s)	Manu	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Perpignan		
SELECT: Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other (specify) <input type="checkbox"/>			
Offence	9.12 – striking with any part of the arm (including stiff arm tackles)		
Summary of Sanction	3 weeks		

HEARING DETAILS

Hearing date	17 October 2018	Hearing venue	Sheraton Paris Airport Hotel
Chairman/JO	Pamela Woodman	Panel member 1	Donal Courtney
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:

Mr Becque, retired lawyer	Maite Ganzin, as interpreter (independent) Mike Hamlin, Chairman of the EPCR Disciplinary Panel (as observer only)
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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. Match official report by Joy Neville ("**Referee**") of Ireland dated 12 October 2018 in respect of the red card issued to the Player during the Match;
3. Handwritten statement from the player wearing number 2 for Sale Sharks in the Match, Rob Webber ("**S2**");
4. Handwritten statement from Dr Imran Ahmed, club doctor for Sale Sharks ("**Doctor**");
5. EPCR disciplinary rules for season 2018/19 ("**Rules**"), such Rules being set out in schedule 4 to the European Rugby 2018/19 participation agreement;
6. E-mail from the Disciplinary Officer on 16 October 2018, providing further copies of the documents referred to in points 3. and 4. above, copies of the documents referred to in points 7. to 9. below, and links to the video clips and the Rules;
7. E-mail statement from Nigel Correll ("**AR1**") of Ireland, one of the assistant referees for the Match, dated 15 October 2018;
8. E-mail statement from Sean Gallagher ("**AR2**") of Ireland, one of the assistant referees for the Match, dated 15 October 2018;
9. E-mail statement from Leo Colgan ("**TMO**") of Ireland, the television match official for the Match, dated 15 October 2018; and
10. Video clips via a Google Drive link.

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

The Referee's report related to an incident, which occurred in the 19th minute of the first half of the Match when the score was Perpignan 7 – Sale Sharks 7, and was in the following terms:

"No 2 Perpignan led with his forearm and made direct contact with sale player in the throat"

AR1 confirmed that he did not see the incident in live play.

AR2's statement was in the following terms:

"I didn't see the incident live. The television match official brought it to the referee's attention after the ball had been kicked to touch. The referee reviewed the footage on the screen. She described that Perpignan 2 had led with the forearm and made direct and forceful contact to the throat of Sale 2. The referee decided that the offence merited a red card and I agreed with this sanction."

The TMO's statement was in the following terms:

"I saw the incident live and I considered it serious foul play involving the Perpignan No. 2 leading with the forearm and making direct contact with the throat of the opposing player. I brought it to the attention of the referee. We reviewed the incident using several camera angles and Joy led the conversation as per agreed protocol. She described the incident as I had seen it and advised that she was going to give the player a red card. I agreed with the decision."

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 video evidence was viewed on a number of occasions. In the opinion of the Disciplinary Committee, this showed the following:

1. Perpignan no.9 passed the ball from the back of a breakdown to his right to the Player, who was waiting for the ball (i.e. not running with any pace on to it) and who caught the ball cleanly with both hands.
2. The Player then looked forward (the ball still in both hands), appeared to see Perpignan no.5 directly in line with him, stepped off his left leg to move to his right, took a few steps to the right diagonally forwards, and then stepped again to change direction to move in a forward direction towards S2.
3. In changing direction, the Player pushed off on his right leg with his body generally left side-on to S2 and with his feet generally pointed towards the touchline rather than in a forward direction.
4. As the Player pushed off his right leg, he moved the ball to his right arm and both of his legs were bent.
5. As the Player approached S2, he raised his left forearm from approximately his waist height to above the level of his own shoulder line. There was a gap between his body and his forearm as his left upper arm was raised in an upwards direction.
6. As the Player made contact with S2, there appeared to be approximately a 90 degree angle at his left elbow.
7. The initial contact appeared to be between the left forearm of the Player (rather than the point of his elbow) and the throat of S2. It was not clear if it was only the forearm or also, as claimed by S2 in his statement, the Player's elbow which made contact with the throat of S2 during the course of the incident.
8. In addition to the momentum of the situation (including the attempted tackle by Perpignan no.5), the Player appeared to use his left arm to try to push S2 away.
9. Thereafter, S2 was seen to grasp his throat and gesture to the referee.
10. The contact by the Player to S2 occurred before Perpignan no.5 made any contact with the Player and when the Player's left forearm was already in a raised position above the line of his own shoulder in the direction of the throat of S2.
11. At the point when the Player made contact with S2, S2 was in a slightly crouched position with an angle of approximately 110 degrees at his knees and his back at an angle of approximately 45 degrees to the horizontal. He appeared to brace himself for contact and his arms were low at around the waist height of the Player. S2's head was higher than that of the Player.

The stills from the video evidence (in the schedule to this decision) show the relative body positions of the Player and S2.

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

The statement from S2 with regard to the alleged incident was in the following terms:

"I WENT TO TACKLE THE PLAYER. AS I DID SO HIS ELBOW STRUCK ME IN THE THROAT. CAUSING PAIN. THE PAIN WAS SEVERE FOR THE SHORT TERM. NO PAIN POST GAME.
AT 20 MINS OF 1ST HALF."

The statement from the Doctor was in the following terms:

"I witnessed a blow to Sale Sharks 2 on the throat with elbow by player Perpignan 2.

This is very concerning as a blow to the throat can lead to potentially life threatening airway loss

I assessed Sale 2 on field.

He seemed well, but we monitored him for the rest of the game as a delayed reaction can occur"

The Disciplinary Officer referred to the EPCR "COACHES PRESENTATION 2018-19", which on slide 5 entitled "KEY AREA 1 – FOUL PLAY" stated:

"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"

He noted that these guidelines indicated that a red card was to be issued where the forearm or elbow of a ball carrier made contact with the throat, neck or head of an opponent.

The Disciplinary Officer also referred the Disciplinary Committee to the note contained in appendix 1 to World Rugby regulation 17 – World Rugby Sanctions for Foul Play – which stated that "any act of foul play which results in contact with the head shall result in at least a mid-range sanction". He submitted that it was a matter of interpretation if the neck and throat constitute the head for the purpose of applying this note but that the word "head" in the note should be considered to be shorthand for all three parts. In addition, he submitted that it was hard to strike the throat without striking at least part of the head.

In response to a question, the Disciplinary Officer submitted that, if there was an inconsistency between the definition of the head given in the decision of the appeal committee in the Francois Steyn case (heard on 1 February 2017) and the new guidelines and note in the World Rugby sanctions table, the new guidelines and World Rugby note should take precedence.

The Disciplinary Officer submitted that there was the potential for serious, if not catastrophic, injury as a result of a strike to the throat. Therefore, even if the Disciplinary Committee disagreed that the neck and throat formed part of the head (for the purposes of the World Rugby note), striking the throat with the forearm (as had happened in this case) warranted a more serious entry point. He submitted that a mid-range entry point would be appropriate in this particular case given that no injury was actually caused, albeit S2 suffered pain.

SUMMARY OF PLAYER'S EVIDENCE

The Player did not provide any responses to the standing directions in advance of the Hearing.

The Player confirmed that he accepted the red card and that he would not be seeking to contest it.

There had not been any prior incidents during the Match between the two teams. The Referee (who was beside the action) did not see the incident and it was reported to her by the TMO. The Referee watched the video a number of times before making a decision, which suggested that the situation was not clear and obvious. AR1 and AR2 also did not see the incident in live play.

The Player's conduct was not intentional or deliberate, but might be argued to be reckless in that he did not anticipate what would happen and that he did not keep control of his action through to the end. The Player did not at any point target S2's throat. He did not recall making any contact with his elbow.

The Player was carrying the ball under his right arm and he drove forward with his left arm to push forward. In doing so, the Player was complying with the law not to make contact with his shoulder. He had wanted to contact S2 low and then spin out of the tackle. He was aware of Sale no.5 approaching to tackle him.

The initial contact on S2 was to S2's shoulder but the Player also accepted that he had made contact with the throat of S2. This was partly because of the stance of S2. S2 was preparing to tackle the Player and, because S2 was standing in an upright position, the Player's elbow/forearm may have slid into S2's throat as S2 straightened. It might be said that S2 was preparing for a high tackle, but that was not what happened in fact. Had S2 adopted a conventional tackling position, the incident would not have happened.

The Disciplinary Committee was referred to a previous case involving a match between Perpignan and Stade Francais in which Sergio Parisse had been shown a red card for hitting the throat of an opponent but that action had been found to be non-intentional and so no sanction was given. The Player's representative acknowledged that the Disciplinary Committee did not have to follow previous cases.

The Player's representative was aware of the note in World Rugby's sanctions table regarding acts of foul play which resulted in contact with the head.

The Player had apologised to S2 after the Match.

FINDINGS OF FACT

The Disciplinary Committee:

1. Noted that the Player had accepted the issue of the red card to him and had not sought to contest it; and
2. Found, on the balance of probabilities, that the Player had made direct contact with his forearm (as stated in the Referee's report), and not with his elbow (as stated in S2's report), to the throat and neck of S2, contrary to law 9.12.

DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/> Not proven <input type="checkbox"/> Other disposal (please state below) <input type="checkbox"/>
	<ol style="list-style-type: none"> 1. In determining the appropriate entry point, it was relevant for the Disciplinary Committee to consider whether or not 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" ("World Rugby Direction") was applicable in the particular circumstances of this case and so if the World Rugby Direction would <u>automatically</u> require the Disciplinary Committee to determine an entry point of <u>at least</u> mid-range. 2. The written decision of the appeal committee in the Francois Steyn case (heard on 1 February 2017) related to an incident arising out of the European Champions Cup match between Leinster Rugby and Montpellier Herault Rugby on 13 January 2017. The appeal committee noted that the first instance committee defined the "head" as "the upper part of the body which contains and protects

the brain and sensory organs of eyes, mouth, nose and ears and as the mandible protects the mouth, it should be included in the definition of 'head'."

3. The appeal committee in the Steyn case went on to say: "It was not suggested that the Disciplinary Committee were in any way in error in including the 'lower jaw' in the area of a person's anatomy comprising their head. The implicit evidential finding that a person's neck is anatomically separate from their head is also not challenged and is consistent with the understanding of the members of the Appeal Committee, albeit that none of its members are medically qualified."
4. The EPCR "COACHES PRESENTATION 2018-19" on slide 5 entitled "KEY AREA 1 – FOUL PLAY" refers to contact to the "Throat - Neck - Head". This implied and suggested that the "throat", "neck" and "head" were accepted to be anatomically different parts of the human body. This was consistent with the view of the appeal committee (as referred to in point 3 above) and the view of the Disciplinary Committee in this case.
5. In determining the seriousness of the offending, the Disciplinary Committee in this case had cause to consider what comprised the throat and neck of a person. Again, while none of the members of the Disciplinary Committee is medically qualified, it considered that the following definitions were appropriate in a rugby context:

"throat" – the part of the neck which begins at the back of the mouth and acts as the passageway for air, food and liquid, and assists in forming speech, and includes (but is not limited to) the larynx (or voice box), the trachea (or wind pipe) and a portion of the oesophagus (or food pipe / gullet); and

"neck" - the part of the body joining the head to the shoulders, and includes (but is not limited to) bones (including the cervical vertebrae of the spine), muscles, nerves, blood vessels, glands, parts of the lymphatic system and skin.
6. The Disciplinary Committee noted that the throat and neck did not benefit from having the protection of a skull and were, in a similar way to the head and brain, particularly vulnerable areas (containing important structures and vessels) which, if struck or were otherwise subject to movement in an unnatural plane or into an unnatural position, had the potential to result in serious, or catastrophic, injury.
7. The Disciplinary Committee noted that World Rugby's policy objectives in introducing the World Rugby Direction were, generally, to improve player welfare and, more specifically, to seek to protect players from the risk of injury, in particular concussive injuries.
8. However, the Disciplinary Committee found that, if there was no (or only glancing) contact with the head (even if there was substantial contact with the throat or neck), the World Rugby Direction would not be applicable. If World Rugby had intended the World Rugby Direction to apply to contact with the throat and neck (as well as contact with the head), the Disciplinary Committee considered that it would have included reference to them specifically.
9. In the particular circumstances of this case (where there was, at most, glancing contact with the head), the Disciplinary Committee decided that it was not automatically required to assess the Player's conduct as being (at least) at the mid-range on the scale of seriousness, as a result of the World Rugby Direction.
10. However, even if the World Rugby Direction was not applicable in a particular case, that did not in any way preclude or prevent a disciplinary committee from categorising an act of foul play as being at the mid-range or top end of the scale of seriousness after assessing the seriousness by reference to the features set out in clause 7.8.32 of the Rules (and dealt with in the "SANCTIONING PROCESS" section below).
11. The Disciplinary Committee also considered that it was required to take account of the policy objectives behind the World Rugby Direction in considering any strike to the throat and/or neck.

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 did not deliberately target the throat and neck of S2 in committing the act of foul play contrary to law 9.12.	
Gravity of player's actions – R 7.8.32 (c)	
The Player's actions were extremely grave in that he made direct contact with the throat and neck of S2 with his forearm at speed and with force. As noted above, the throat and neck are particularly vulnerable areas of the body and any strike to those areas is serious.	
Nature of actions – R 7.8.32 (d)	
The Player led into the contact situation with his left forearm extended in front of his body such that it struck S2.	
Existence of provocation – R 7.8.32 (e)	
There was no provocation.	
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 S2 was not injured but he did complain of short term pain. S2 continued to play on and was replaced later on in the Match but it was understood not to be as a result of the incident.	
Effect on match – R 7.8.32 (i)	
There was no effect on the Match, other than that Perpignan were reduced to 14 men. In the Disciplinary Committee's view, this was not relevant to the assessment of the seriousness of the offending for the purposes of determining sanction.	
Vulnerability of victim – R 7.8.32 (j)	
S2 was not in a vulnerable position before the Player struck him with his forearm but, in striking S2 in the throat and neck, S2 became extremely vulnerable as a result.	
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.	

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)
This was not applicable in this case.
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 – R 7.8.35 (b)
The Player accepted the red card at the earliest opportunity and did not seek to contest it.	The Player had an excellent (clean) disciplinary record.
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. The Player was originally from Samoa and had played for Samoa and New Zealand as a young player. This season was his 5 th year in France.	The conduct of the Player and his representative 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 apologised to S2 after the Match.	None.

Number of weeks deducted: 3

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. There were significant mitigating factors in this case, not least the Player's early acceptance of the red card, his good disciplinary record and his excellent conduct at the Hearing, and so the Disciplinary Committee was satisfied that it was appropriate in this particular case to apply a reduction of 50% (i.e. 3 weeks), giving a total sanction of 3 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	3 Weeks	Sending off sufficient <input type="checkbox"/>
Sanction commences	At the conclusion of the hearing	
Sanction concludes	Midnight on Sunday 4 November 2018	
Free to play	Monday 5 November 2018	

ORDER FOR COSTS**Application for order for costs – R 7.8.45 to R 7.8.51**

The Disciplinary Officer made an application for an order for a contribution to costs of 750 euros.

There was no submission or objection made by or on behalf of the Player to such an order being granted.

Accordingly, the Disciplinary Committee ordered the Player to pay 750 euros as a contribution to costs of proceedings, as provided for in terms of clause 7.8.45 of the Rules.

Signature (JO or Chairman)	<i>Pamela Woodman</i>	Date	20 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



