

## EPCR SHORT JUDGMENT FORM

Match	Castres Olympique	Vs	Munster Rugby
Club's Country	France	Competition	Heineken Champions Cup
Date of match	15 December 2018	Match venue	Stade Pierre Fabre, Castres
Rules to apply	EPCR Disciplinary Rules 2018/19		

### PARTICULARS OF OFFENCE

Player's surname	Kockott	Date of birth	25. 06. 1986
Forename(s)	Rory	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Castres Olympique		
SELECT: Red card <input type="checkbox"/>	Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	9.12 – contact with the eye or eye area		
Summary of Sanction	3 weeks		

### HEARING DETAILS

Hearing date	19 December 2018	Hearing venue	Sheraton Paris Airport Hotel
Chairman/JO	Pamela Woodman (Scotland)	Panel member 1	Antony Davies (England)
Panel member 2	Leon Lloyd (England)	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:

Clement Germain, avocat	Matthias Rolland, director at Castres Olympique Maria Gyolcsos, EPCR – technical assistance
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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 17 December 2018;
2. Citing commissioner report issued by Chris Catling ("CC") of England, the citing commissioner appointed to the Match, dated 16 December 2018;
3. Letter from the Disciplinary Officer to Mike Hamlin, Chairman of the EPCR Disciplinary Panel, dated 17 December 2018, making a citing complaint against the Player;
4. E-mail from the Disciplinary Officer on 17 October 2018, providing copies of the documents referred to in points 5. to 10. below, together with links to video clips;
5. E-mail statement from Wayne Barnes ("Referee") of England, the referee of the Match, dated 17 December 2018;
6. E-mail statement from Matthew Carley ("AR1") of England, one of the assistant referees for the Match, dated 17 December 2018;
7. E-mail statement from Rowan Kitt ("TMO") of England, the television match official for the Match, dated 17 December 2018;
8. E-mail statement from Dr Jamie Kearns ("Munster Doctor"), Head of Medical for Munster Rugby, dated 17 December 2018;
9. Video clips of the alleged incident in the Match provided by the Disciplinary Officer;
10. Interview with Chris Cloete ("M7"), who was playing number 7 for Munster Rugby, recorded after the Match;
11. Video clip and still provided by the Player's Representative of an incident involving Hayden Triggs in a match between Leinster and Montpellier Hérault during European Rugby season 2016-17;
12. EPCR disciplinary rules for season 2018/19 ("Rules"), such Rules being set out in schedule 4 to the European Rugby 2018/19 participation agreement;
13. Player's responses to the standing directions (sent by the Player's Representative on behalf of the Player) on 18 December 2018;
14. Statement from Dr Laurence Rosier dated 18 December 2018;
15. Disciplinary Officer's responses to the standing directions on 19 December 2018, including copies of the documents referred to in points 16. to 20. below;
16. Decision of the appeal committee in the case of Jerry Flannery on 3 March 2010;
17. Decision of the appeal committee in the case of Alan Quinlan on 20 May 2009;
18. Decision of the disciplinary committee in the case of Dylan Hartley on 24 April 2007;
19. Memorandum from World Rugby dated 5 January 2017 regarding the definition of the eye area; and
20. 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 in the 21<sup>st</sup> minute of the Match when the score was Castres Olympique 3 - Munster Rugby 6, and was in the following terms:

"Castres field a high ball and are turned over at the subsequent ruck. Immediately the Castres 9 gets in on the Munster ball carrier and strips the ball. Munster 7 tackles the Castres 9 whilst being on the ball and attempting to wrestle the ball off the Castres player. The Munster 7 pulls the ball and the Castres player to ground pulling him over his body and to ground. As the players go to ground the Castres 9 reaches out to push the Munster player in the face - having reached out and not really made contact initially with his first attempt, for his second attempt to make contact with the Munster player the hand clearly goes towards the Munster's player's face. Contact is made with the eye and the Castres's player's finger is bent into the eye. The Munster player looks up to try to appeal to the officials that contact has been made to his eye. He does not react to the Castres player."

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

"The incident was reported to the officials on the pitch a few minutes after it had happened and a break in play (but after many phases after it happened). As the officials were not aware of the incident the referee indicated to the Munster players the citing commissioner would look at this post the match. We discussed post match and agreed it would depend on evidence I would be able to get"

The CC also indicated in his report that M7 "was uninjured by the contact with the eye and played on".

The statement from the Referee was in the following terms:

"With regard to the citing of Kockott, none of the match officials saw the incident as alleged.

Following the awarding of the try at 23,45, the Munster captain (Munster 6) said that he had been told that one of his players had been gouged. He said the incident had occurred at 22,49. I asked which player and he confirmed that Munster 7 had been gouged and it had been committed by Castres 9. I told him that it had been marked and the citing officer would then look at the matter following the game."

AR1 confirmed that he had nothing to add to the information provided by the Referee.

The TMO confirmed that he did not see the alleged incident.

Definitions of "eye" and "eye area" ("**World Rugby Definitions**") are given in appendix 1 to regulation 17 – World Rugby Sanctions for Foul Play and are as follows:

"The "eye" involves all tissues including the eye lids within and covering the orbital cavity and the "eye area" is anywhere in close proximity to the eye."

The video evidence was viewed on a number of occasions throughout the Hearing. The Disciplinary Committee noted that the video evidence showed the following:

1. As the Player and M7 came to the ground, the Player had both hands on the ball and M7 appeared to be trying to remove the Player's left hand from the ball, using his own left hand. M7 was on the wrong side of the breakdown.
2. The Player appeared to use his right arm to push the M7. It was not clear exactly where contact was made but was lower than the eye or eye area of M7. M7 is propped up at this time with his left forearm on the ground and his left upper arm at right angles to the ground.

3. The Player then appeared to move his right hand to hold the ball and push out with his left hand and arm towards M7.
4. At this stage, the left arm of M7 was not in contact with the Player or the ball and could be seen laid out relatively straight on the ground with his left hand lying in an upwards direction relative to his shoulder approximately in line with the Player's head.
5. The Player appeared to target the face of M7 with his left hand, rather than the chest or shoulders of M7. The Player and M7 were not lying with their heads level to each other and so this required the Player to push or make a motion which was not straight from his left shoulder forwards but rather upwards from his shoulder level.
6. With the creasing of the flesh on M7's face, it appeared that the Player was squeezing his thumb and fingers around the face of M7. The Player's left thumb being hooked under the left hand side of M7's jaw and with his fingers spread out. It was not clear whether the Player's first and second fingers were on the right eyelid of M7 or on his right brow bone and so it would be necessary to consider other evidence in that respect.

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

The statement from the Munster Doctor was in the following terms:

"Chris did not require medical treatment on the pitch or after the game."

M7's statement confirmed, in summary, that:

1. The Player was responsible and the Player's fingers made contact with M7's eyes.
2. The Player's fingers brushed through and passed over his eyes.
3. There was not much pressure applied and it was not applied for long.
4. He did not suffer any injury as a result of the contact.
5. He reacted to the touch judge to see if he saw anything but didn't react towards the Player.
6. There was no incident prior to the turnover which might have caused this
7. The incident occurred in the first half of the Match.

The recording of M7's statement came to an abrupt end and it was explained by the Disciplinary Officer that this was because the CC had received a call which interrupted it.

The statement from Dr Laurence Rosier was in the following terms:

"I undersigned Dr Laurence ROSIER, attest to have never worked for the Castres Olympique rugby club or Pierre Fabre industry and to haven't conflict of interests with them.

I agree to say the gesture of Rory KOCKOTT doesn't have to be interpreted as an eye-gouging. For me the position of this player during the tackle doesn't permit to aim for eyes of his opponent.

The action of hand-off is oriented against the shoulder with an unintentional sliding on the face and the eyes of his adversary.

Furthermore, the way Rory KOCKOTT does this gesture doesn't present some danger for eyes of the opponent, because it's a sliding and not a press in movement.

I beg you to believe my sincerity."

## SUMMARY OF PLAYER'S EVIDENCE

In the responses to the standing directions provided by the Player, the Player accepted that he had "committed an act of foul play" and "that this act deserve a sanction". He also "attached a statement signed by doctor Laurence Rosier eye surgeon mentioning that my gesture doesn't have to be interpreted as an eye-gouging."

It was clarified during the Hearing that the Player accepted that he had made contact with the eye area of M7 but not with his eye (as per the World Rugby Definitions).

In summary, the following submissions were made by or on behalf of the Player (including those made in response to questions from the Disciplinary Committee):

1. The Player had no intention to make contact with the eye or ocular zone of M7.
2. M7 was not asked by the CC whether the contact was with the eye or the eye area of M7 and so there was no direct evidence from M7 on that point.
3. The Player pushed M7 to "get him out of the way". He wanted to push M7 away to get the penalty (which was ultimately awarded in favour of his team).
4. In everyday life, a person's hands are regularly in a bent position.
5. The Player thought that he had made contact with the chin of M7 and then rose up. He did not think that he had made contact with the eyelid of M7. He accepted that there had been contact with the eye area of M7 but that his fingers had passed over M7's eye. He felt the jaw and hair of M7 but at no time did he feel a soft area or vulnerable zone. He did not put his fingers into the eye of M7. There was no eye "gouging".
6. There was no direct push to the face of M7, it was a sliding of the hand.
7. There was an absence of force, as was confirmed by M7 in his interview.
8. No medical treatment was required by M7.
9. The Player was extremely remorseful. This sort of conduct was not part of what would be expected of a professional player.
10. The Player and M7 went to the same school and had spent time together off the field. He had apologised to M7 after the Match and contacted him again after M7 was back in Munster.
11. A statement had been provided from a famous Bordeaux eye surgeon, Dr Laurence Rosier, which stated "gesture doesn't present some danger for eyes of the opponent, because it's a sliding and not a press in movement". It was acknowledged that Dr Rosier was not an expert on rugby matters.
12. This was an extremely intense game with a lot of hard contact. Munster needed to win to achieve a better position regarding the play offs.
13. The Player had been with Castres Olympique since 2011 and was contracted until 2021.
14. The Player was an example to others of humility and hard work and taught what was needed to be a good professional.
15. The Hayden Triggs video clip was provided as a precedent regarding the categorisation of the seriousness of offending in relation to contact with the eye area.

## FINDINGS OF FACT

The Disciplinary Committee:

1. Noted that the Player had accepted that he had committed an act of foul play which would have warranted a red card;
2. Was, on the balance of probabilities:
  - a. Not satisfied that the Player had made any significant contact with the eye of M7, other than potentially glancing contact (in light of the evidence from M7 and no clear view of contact with the eye itself on the video clips);
  - b. Satisfied that the Player had made contact with the eye area of M7;
  - c. Satisfied that the Player had intentionally contacted the face of M7 but not the eye area of M7;
3. Upheld the citing complaint against the Player for contact with the eye area contrary to law 9.12; and
4. Did not attach significant weight to the statement from Dr Rosier given that she appeared to be making statements regarding the actions of the Player from a rugby perspective, rather than a medical perspective.

## DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/> Not proven <input type="checkbox"/> Other disposal (please state below) <input type="checkbox"/>

## SANCTIONING PROCESS

## ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 7.8.32 (a)-(b)
<b>PLEASE TICK APPROPRIATE BOX</b> Intentional/deliberate <input type="checkbox"/> Reckless <input checked="" type="checkbox"/>
State reasons
Whilst the Disciplinary Committee was satisfied, on the balance of probabilities, that the Player had targeted M7's face and so, in that respect, his conduct was intentional, the Player's conduct in relation to the act of foul play itself (i.e. contact with the eye area) was reckless, rather than intentional. The Player knew or should have known that, by making contact with the face of M7, there was a significant risk of making contact with the eye area of M7.
Gravity of player's actions – R 7.8.32 (c)
The eyes and eye area are particularly vulnerable and sensitive parts of the body and targeting them is abhorrent on a rugby field. There was the potential for significant injury or damage. Therefore, the Player's actions were particularly serious.
Nature of actions – R 7.8.32 (d)
The Player made direct contact with the eye area of M7. There was no legitimate reason for the Player to make contact with the eye area of M7.
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)
There was no effect on M7. M7 did not suffer any injury as a result of the act of foul play.
Effect on match – R 7.8.32 (i)
There was no effect on the Match.
Vulnerability of victim – R 7.8.32 (j)
M7 was off his feet and trapped at the bottom of the ruck and so was somewhat vulnerable. He became substantially more vulnerable as a result of contact being made with his eye area while he was not able to remove himself or get away from the contact.
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>
<input type="checkbox"/>		<input type="checkbox"/>		X	4

\*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)
A note of the Player's disciplinary record was provided to the Disciplinary Committee. It detailed the following:  Season 2014-2015 – accumulation of yellow cards in the Top 14 – 1 match sanction August 2016 – red card for "Brutalité (Marcher sur un adversaire)" - stamping/trampling on an opponent – 2 weeks sanction August 2018 – red card for "Indiscipline (Nervosité)" – explained to mean "anger" – 1 week sanction  Despite the most recent sanction being in season 2018-2019, it was for 1 week and the other sanctions were relatively low level sanctions. Accordingly, the Disciplinary Committee decided that, in the particular circumstances of this case, it was not going to treat the Player's disciplinary record as an aggravating factor.
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 accepted the citing complaint at the earliest opportunity and did not seek to contest it.	As noted above, the Player does not have a good disciplinary record, including having received another sanction in the current season 2018-2019 of 1 week. Therefore, this was not a relevant mitigating factor.
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
The Player was an experienced player.	The conduct of the Player and his team 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 Disciplinary Committee accepted that the Player had apologised to M7. He also expressed his remorse during the Hearing.	None.

Number of weeks deducted: 1

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 to a maximum of 50%. The Player did not have a good disciplinary record. The proximity of the Player's last disciplinary sanction to the current case was significant. Whilst the Disciplinary Committee had decided not to treat his disciplinary record as an aggravating factor, it required to be taken into account when considering mitigating factors (or lack of them). As noted above, the Disciplinary Committee was satisfied that other mitigating factors were present and so applied a reduction of 25% (i.e. 1 week), 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 6 January 2019	
Free to play	Monday 7 January 2019	

**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)	Pamela Woodman	Date	20 December 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