

## EPCR SHORT JUDGMENT FORM

|                |                                        |             |                              |
|----------------|----------------------------------------|-------------|------------------------------|
| Match          | SU Agen                                | Vs          | Edinburgh Rugby              |
| Club's Country | Scotland                               | Competition | European Rugby Challenge Cup |
| Date of match  | 15 November 2019                       | Match venue | Stade Armandie, Agen, France |
| Rules to apply | <b>EPCR Disciplinary Rules 2019/20</b> |             |                              |

### PARTICULARS OF OFFENCE

|                                           |                                                                                     |      |                                                                                    |
|-------------------------------------------|-------------------------------------------------------------------------------------|------|------------------------------------------------------------------------------------|
| Player's surname                          | Haining                                                                             |      |                                                                                    |
| Forename(s)                               | Nick                                                                                | Plea | Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/> |
| Club name                                 | Edinburgh Rugby                                                                     |      |                                                                                    |
| SELECT: Red card <input type="checkbox"/> | Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/> |      |                                                                                    |
| Offence                                   | Dangerous play in a ruck contrary to Law 9.20(b)                                    |      |                                                                                    |
| Summary of Sanction                       | Suspension of two weeks, i.e. up to and including Sunday, 1 December 2019           |      |                                                                                    |

### HEARING DETAILS

|                   |                                                                     |                      |                                                                     |
|-------------------|---------------------------------------------------------------------|----------------------|---------------------------------------------------------------------|
| Hearing date      | 20 November 2019                                                    | Hearing venue        | Bird & Bird LLP London EC4A 1JP                                     |
| Chairman/JO       | Simon Thomas (Wales)                                                | Panel member 1       | Donal Courtney (Ireland)                                            |
| Panel member 2    | Mitchell Read (England)                                             | Disciplinary Officer | Liam McTiernan                                                      |
| Appearance Player | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Appearance Club      | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |

Player's Representative(s):

Other attendees:

Graham Horsman, Senior Solicitor of Harper Macleod LLP.

Liam McTiernan, Disciplinary Officer, EPCR.  
Maria Gyolcsos, Governance and Regulations Executive, EPCR.

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

1. Notice of hearing.
2. Citing Commissioner's report.
3. Match officials' statements.
4. Statement from Agen team doctor.

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

The hearing was convened by Mr Mike Hamlin, the EPCR Independent Judicial Panel Chairman, pursuant to the Disciplinary Rules of the EPCR Champions Cup and Challenge Cup 2019/2020 tournament ("the Rules") following a citing report lodged by John Byett of England on 17<sup>th</sup> November 2019, referred to below.

#### Citing Report

The citing report alleged that in the 33rd minute of the first half of the match played between SU Agen and Edinburgh Rugby at Stade Armandie, Agen, France on Friday, 15<sup>th</sup> November 2019, Nick Haining of Edinburgh ("the Player") had committed an act of foul play contrary to Law 9.12 of the Laws of the Game of rugby union, in that he had physically abused another player, in particular had struck an opponent with his head whilst driving into a ruck.

The citing report alleged that the Player had driven forward into a ruck making contact with Agen 10 ("AG10/Thomas Vincent") "head on head". It stated that the Player's right arm had attempted to wrap in the contact, but failed. It was alleged following the contact AG10 staggered back and went to ground. The game continued, but AG10 received treatment and left the field for a head injury assessment which, after consulting the match doctor, he failed.

## The Hearing

At the outset of the hearing, the Chairman outlined the procedure to be followed and explained that the hearing was governed by the Rules. It was further explained that the Player would be asked to confirm whether he admitted or denied the alleged act of foul play as set out in the Citing Complaint and if so, whether he accepted the foul play warranted a red card. If these were admitted, the panel would consider the evidence presented by the Disciplinary Officer and from the Player, and following submissions from them it would determine what sanction (if any) ought to be imposed following the three-stage process set out under Rules 7.8.32 to 7.8.36.

The Chairman also explained that in the event the Player denied committing an act of foul play, or accepted that he had committed an act of foul play, but that it had not warranted a red card, then the burden of proof was on the Disciplinary Officer (pursuant to Rule 7.8.11) to satisfy the panel that the citing complaint ought to be upheld. If the Disciplinary Officer failed to discharge this burden, then that would be the end to the hearing with no finding against the Player as to liability or sanction. If, on the other hand, the panel upheld the citing, then it would proceed to determine sanction in accordance with the provisions referred to above.

## Preliminary Matters

Prior to the hearing there had been an exchange of emails and documents from both the Player's representative and from the Disciplinary Officer. This was in compliance with Appendix 6 of the Rules which requires players and the Disciplinary Officer to set out their respective positions in advance of the hearing to assist the panel and all other parties to understand how they intended to present their case.

From this exchange, the panel was helpfully advised that the Player accepted that he had committed an act of foul play which merited a red card. His position, however, was that whilst this conduct could be classified as a "strike" contrary to Law 9.12, his conduct should be considered as an act of foul play contrary to Law 9.20 – i.e. "dangerous play in a ruck or maul" and in particular Law 9.20(b) "a player must not make contact with an opponent above the line of the shoulders".

It was an agreed position as between the Disciplinary Officer and the Player that there was insufficient evidence to demonstrate the contact had been "head on head" and that the likely contact had been the Player's shoulder on AG10's head. Furthermore, that any contact with AG10's head had been secondary contact rather than primary contact with the Player (i.e. it had occurred after the Player's shoulder had made contact with Agen 10's shoulder).

The Chairman therefore confirmed that the evidence surrounding the complaint would be considered following which the panel would hear submissions from both parties in respect of the correct classification of the act of foul play (i.e. Law 9.12 or 9.20)

## The Evidence

### (i) Match Footage

The match footage was not of good quality and was of limited assistance. This was due to the single camera angle available being "side-on" to the ruck and depicting a lateral view of the passage of play.

It showed a ruck having formed about five metres inside the Agen half, 15 metres in from the far touchline (from the camera angle).

At the ruck, there appeared to be two Agen players bound in, on their feet. The ball was at the rear of the ruck on the Agen side at the feet of Agen 10. Behind AG10 was Agen 9 in the scrum-half position.

The Player is seen crouching, directly in front of the ruck. As the ball is picked up at the base of the ruck by Agen 9, the Player drives in a low position into Agen 10 (Thomas Vincent) and forces him backwards and upright. Agen 10 staggers back one pace and turns before falling to the ground.

The impact by the Player onto Vincent appears, from the movement of Vincent's head, to indicate some contact to the head was made.

In driving into the ruck, the Player can be seen making an attempt to bind on to Vincent by grasping Vincent's left arm with his right hand. However, in the process of driving through the ruck, the Player loses his footing and releases his attempted grip on Vincent placing his right hand to the ground to break his fall.

The other evidence presented by the Disciplinary Officer in support of the complaint included the following:

(ii) Referee and assistant Referee's reports

Neither the Referee, nor the Assistant Referee on the near (camera angle) side, had observed the incident and so were unable to offer any assistance.

However, the Assistant Referee on the far side, Jonny Erskine, had provided an email which stated as follows:

*"I was assistant referee on the far side of pitch from the available camera angle.*

*I did see the incident during live play, and from my angle, believed that the Edinburgh player made a genuine attempt to wrap as he entered the breakdown. From my viewing angle, I did not see this clear out action to be an act of foul play at the time."*

(iii) Medical Evidence

A statement had been received from the Agen team doctor who stated on Monday, 18<sup>th</sup> November 2019, he had seen Thomas Vincent. He said that he had neck pain during the weekend after the match, had headaches and low energy. An appointment with a neurologist for a third stage head injury assessment (HIA3) was awaited. The doctor said that the AG10 "did not remember the action".

This concluded the evidence presented by the Disciplinary Officer.

Player's Case

The Chairman invited the Player to give his evidence. He did so by reference to the match footage and stood at the large screen explaining and illustrating what had occurred.

The Player described that prior to the incident, he had come out of the tackle zone and had retreated less than two metres from the ruck. He said that he had "eyes on 10." He was asked by the panel about his strategy as far as this ruck was concerned. He said that he wanted to pursue a counter ruck. He noted where the ball was and as he was considering driving into the ruck he was looking for a gap (entry point) so that he could position his body in and underneath an opposing player. He described how he had achieved a good, low body height before driving into the ruck as he had observed Agen 10 raising his head thus creating a gap into which he could attack. He said that his intention was to effect a cleanout by wrapping Agen 10 and then proceeding with a leg drive whilst maintaining his footing.

He described how Agen 10's body position changed at a critical moment and that as he saw Agen 10's head come up, although it was a small movement, he immediately thought that that would be his "entry point." He described how he had led into the ruck with his left shoulder into AG10's right shoulder. As he drove forward, he tripped over a player lying on the ground.

He said that although he had tried to wrap his arms around Agen 10, he was unable to sustain that because he tripped. He said that he had not realised there had been any contact between himself and Agen 10's head. He said that he felt his left shoulder onto Agen 10's right shoulder.

He said that as the ball had been moved away from the ruck and play had continued during the course of his movement, he went back into the defensive line immediately following the incident.

The Player was asked by the panel whether he would have driven into the ruck whether or not a "gap" had appeared. The Player was quite adamant that he would not have done so without such a gap. He described how to do so would have been dangerous. He said that when he observed the gap, that was his "cue".

He was asked whether he had had any contact with Agen 10 regarding the incident immediately after the match, but he said that he had not. This, he explained, was because he had had no idea his actions had caused Agen 10 to leave the field of play, and the first that he became aware of any incident was on the Monday morning following the match when his team manager sent him a text message indicating that he had been cited.

He was asked whether he had noted the incident during his post-match review. He said that the text message about his citing had taken place on the Monday morning before the any review had taken place.

### Other Evidence on behalf of the Player

The other evidence presented on behalf of the Player was a statement obtained by Edinburgh Rugby directly from Agen 10. The Disciplinary Officer expressed concern about the apparent willingness of Agen 10 to provide a statement to Edinburgh Rugby when his requests had been to no avail. The Disciplinary Officer asked that this displeasure be noted by the panel, but the Disciplinary Officer did not consider it was something which reflected on the Player.

The statement from Thomas Vincent said that he remembered the incident and remembered moving his body and head up and then down just before the contact from Edinburgh 8. He described that Edinburgh 8 had made contact with his shoulder and not with Edinburgh 8's head. He also expressed the view that he did not think the contact with Edinburgh 8 had been foul play. He also confirmed that as at Tuesday, 19<sup>th</sup> November 2019, he could not remember why he failed the HIA and that he had not yet returned to training.

This, therefore, concluded the evidence surrounding the incident.

### Submissions as to Law 9.12 / Law 9.20

On the basis the Player accepted that his actions constituted acts of foul play which could have been a strike or dangerous play in a ruck, the Chairman considered it was appropriate to invite the Player's representative and the Disciplinary Officer to make submissions in respect of the appropriate classification of the law which had been contravened and also to make submissions in respect of the entry point.

Rule 9.8 permits disciplinary panels to amend offences prior to or at any stage at a hearing unless having regard to the circumstances of the case, such amendment cannot be made without causing injustice. In this instance, however, the Player was actively seeking the Law to be amended and the Disciplinary office had been on notice of the issue and raised no objection.

As stated above. Law 9.12 prohibits the striking of opponents with, inter alia, a shoulder.

Law 9.20 prohibits dangerous play in a ruck or maul, and Law 9.20(b) states "a player must not make contact with an opponent above the line of the shoulders".

Mr Horsman suggested that the panel ought to be satisfied that the Player's conduct was less a strike as one would commonly understand it, but was more akin to dangerous play in a ruck. It was clear from the video footage, and from the statement provided by the assistant referee on the far side, that the Player had genuinely attempted to bind onto Agen 10, and that it was only as a consequence of tripping over another player that he lost that binding.

Mr Horseman accepted that in entering the ruck, the Player made contact with his opponent above the line of the shoulders (as a consequence of his shoulder making secondary contact with Agen 10's head) and therefore, the matter fell squarely within Law 9.20(b).

In response, the Disciplinary Officer indicated that it was nevertheless open for the panel to consider it a strike and left it within the panel's discretion without advocating one way or the other.

## **SUBMISSIONS AS TO SANCTION**

### Disciplinary Officer's Submissions as to Sanction

The Disciplinary Officer then made representations in respect of the entry point checklist found at Rule 7.8.32 as follows:

- a. He did not suggest that the offending was deliberate.
- b. He considered that the offending was reckless in that the Player ought to have known that by entering the ruck in the manner that he did, there was a risk that he could have committed a dangerous act of foul play by connecting the Agen player's head.
- c. Insofar as the gravity of the Player's actions was concerned, the contact had been made with the victim player's

head which the game of rugby takes very seriously.

- d. It was accepted that this had not been head-on-head contact and that the Player's shoulder had connected with AG10's head.
- e., f., & g. This was not a case involving any provocation, retaliation or self-defence.
- h. The Player's actions on the victim had been significant in that he had been removed from the match and had failed a head injury assessment. He was awaiting further medical assessment to establish whether he could play this coming weekend.
- i. There was no significant effect of the Player's actions on the match.
- j. The Player had been vulnerable in that the head is a vulnerable part of the body.
- k. This was not a case where the offending had arisen from any premeditation.
- i. The conduct had been completed.
- m. There were no other features of the Player's conduct in relation to the offending which was of relevance.

In connection with off-field aggravating factors, the Disciplinary Officer did not suggest that any existed, and insofar as mitigating factors were concerned, he would leave this to the Player's representative to make submissions.

#### Player's submissions as to Sanction

- a&b. Mr Horsman submitted that the Player's actions were reckless rather than intentional.
- c. This was not a grave act of foul play.
- d. The part of the Player's body which had been involved in the offending had been his shoulder, not his head
- e.f&g Mr Horsman agreed with the Disciplinary Officer that this was not a case in which provocation, retaliation or self-defence was relevant.
- h. As far as effect of the Player's actions on the victim was concerned, it was acknowledged that the victim had failed the HIA, but the existing medical evidence should not indicate that his incapacity was likely to be long-lasting; rather AG10 was simply awaiting an examination by the neurologist under the HIA3 return play protocol.
- i. There was no significant effect on the match.
- j. As far as the vulnerability of the victim was concerned, Mr Horsman pointed out that Agen 10 was playing an active part in the ruck and would have been aware that a "clear-out" was to be expected and therefore should have braced for that possibility.
- k. As far as participation in the offending was concerned, the Player was the only individual involved and was not part of any joint enterprise. There was no premeditation.
- l. The conduct of the Player had been completed.
- m. There were no other features relevant to the offending.

In his concluding submissions, on entry point, Mr Horsman submitted that, notwithstanding the provisions of Appendix 3 of the Rules which starts with the following "*Note: Any act of foul play which results in contact with the head shall result in at least a mid range sanction*", in this instance because the act of foul play resulting in contact with the head had been of a secondary nature (i.e. the initial contact had not been between the Player and the victim player's head), then it was open to the panel to find that the application of a low-end entry point sanction was within their powers.

The Chairman put to Mr Horsman that the note to Appendix 3 of the Rules did not expressly distinguish between primary or

secondary contact to the head. Mr Horsman accepted that. The Chairman asked Mr Horsman whether he relied upon any authority for his proposition that secondary contact with the head could give the panel the freedom to consider a low-end entry point, but he said he was unaware of any.

## FINDINGS OF FACT AND CLASSIFICATION OF FOUL PLAY

The panel therefore retired in private to consider its decision and concluded that the factual issues of the case were largely agreed between the Disciplinary Officer and the Player.

The panel also considered that the Player had been honest and a reliable witness:

### Findings of Fact

The panel's findings were as follows:

- i. In deciding whether to drive into the ruck, the Player had noticed an opportunity when he observed Agen 10's head begin to raise up from the ruck
- ii. Upon seeing this, the Player made a split- second decision to drive into the gap so as to get his shoulder underneath Agen 10 to drive him up and back.
- iii. However, as he drove in, Agen 10 lowered his height rather than continue to raise his height which had affected the point of impact and had resulted in contact between the Player's shoulder and Agen 10's shoulder and then head.
- iv. The Player had attempted to bind onto Agen 10 as he drove into the ruck and was partially successful in doing so, however, he lost his footing and lost his bind.
- v. The Player had acted recklessly and dangerously in his actions and whilst his conduct had constituted foul play meriting a red card, the Player had not intended to make contact with Agen 10 above the line of the shoulders.
- vi. As a result of the foul play, Agen 10 had suffered a head injury and had failed the HIA which resulted in his removal from the game. He continued to suffer symptoms over the weekend and was awaiting further examination to determine when he could return to play.

### Classification of Law

The panel agreed with the Player that the act of foul play under Law 9.20(b) was most appropriate than a striking of an opponent (law 9.12) to this act of foul play.

This was because the Player had (i) made a genuine attempt to execute a counter-ruck (ii) he had positioned himself into a low body position to do so (iii) he had waited for an opportunity to drive in and under AG10 (iv) he had attempted to bind onto AG10 and had been partially successful (v) the initial contact between he and AG10 had been shoulder to shoulder (v) the contact between his shoulder and AG10s head had been secondary

However, forceful contact had been made by the Player's shoulder to the head of AG10. Therefore Law 9.20(b) had been contravened.

## DECISION

|                   |                                                                                                                                  |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Breach admitted X | 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                                                                                                                                                                                                                                    |
| The Player had attempted a legitimate counter-ruck but in doing so had acted recklessly by attempting to dive into the ruck when he ought to have been aware of a real risk of making contact with the opponent above the line of the shoulders. |
| Gravity of player's actions – R 7.8.32 (c)                                                                                                                                                                                                       |
| The actions were moderately grave. The contact with AG10 had been with force and to his head, albeit it was secondary contact                                                                                                                    |
| Nature of actions – R 7.8.32 (d)                                                                                                                                                                                                                 |
| The Player had made contact with AG10's head with his shoulder                                                                                                                                                                                   |
| Existence of provocation – R 7.8.32 (e)                                                                                                                                                                                                          |
| None                                                                                                                                                                                                                                             |
| Whether player retaliated – R 7.8.32 (f)                                                                                                                                                                                                         |
| None                                                                                                                                                                                                                                             |
| Self-defence – R 7.8.32 (g)                                                                                                                                                                                                                      |
| None                                                                                                                                                                                                                                             |
| Effect on victim – R 7.8.32 (h)                                                                                                                                                                                                                  |
| He had been removed from the match, had suffered a head injury as referred to in the medical evidence                                                                                                                                            |
| Effect on match – R 7.8.32 (i)                                                                                                                                                                                                                   |
| AG10 had been removed from the match and so his team had been deprived of their first choice outside half for half of the match                                                                                                                  |
| Vulnerability of victim – R 7.8.32 (j)                                                                                                                                                                                                           |
| AG10 was vulnerable in that whilst he ought to have anticipated a counter-ruck his head was vulnerable and he had no opportunity to protect himself                                                                                              |
| Level of participation/premeditation – R 7.8.32 (k)                                                                                                                                                                                              |
| None                                                                                                                                                                                                                                             |
| Conduct completed/attempted – R 7.8.32 (l)                                                                                                                                                                                                       |
| Completed                                                                                                                                                                                                                                        |
| Other features of player's conduct – R 7.8.32 (m)                                                                                                                                                                                                |

None

**ASSESSMENT OF SERIOUSNESS CONTINUED**

| Entry point                                      |                                    |                                                 |
|--------------------------------------------------|------------------------------------|-------------------------------------------------|
| <u>Top end*Weeks</u><br><input type="checkbox"/> | <u>Mid-rangeWeeks</u><br>X 4 weeks | <u>Low-endWeeks</u><br><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

**ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS**

Player's status as an offender of the Laws of the Game – R 7.8.34 (a)  
None

Need for deterrence – R 7.8.34 (b)  
None

Any other off-field aggravating factors – R 7.8.34 (c)  
None

Number of additional weeks:

**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 had admitted responsibility at the earliest opportunity                                 | The Player had an unblemished 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 was not an especially experienced professional rugby player at this level               | This had been excellent                           |
| Remorse and timing of remorse – R 7.8.35 (e)                                                       | Other off-field mitigation – R 7.8.35 (f)         |
| The Player had exchanged messages with AG10 after learning of the incident which was to his credit | None                                              |

Number of weeks deducted:

|                                                                                        |
|----------------------------------------------------------------------------------------|
| Summary of reason for number of weeks deducted:                                        |
| 2 weeks deducted.                                                                      |
| The Player was entitled to the maximum mitigation (i.e. 50%) permitted under the Rules |

### 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 (weeks) | 2                                                  | Sending off sufficient <input type="checkbox"/> |           |
| Sanction commences     | 17 November 2019                                   | Costs                                           | 750 Euros |
| Sanction concludes     | Midnight on Sunday, 1 <sup>st</sup> December 2019. |                                                 |           |
| Free to play           | Monday 2 December 2019                             |                                                 |           |

|                               |              |      |                  |
|-------------------------------|--------------|------|------------------|
| Signature<br>(JO or Chairman) | Simon Thomas | Date | 25 November 2019 |
|-------------------------------|--------------|------|------------------|

**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