

EPCR SHORT JUDGMENT FORM

Match	Calvisano	Vs	Cardiff Blues
Club's Country	Wales	Competition	EPCR
Date of match	16 November 2019	Match venue	Calvisano
Rules to apply	EPCR Disciplinary Rules 2019/20		

PARTICULARS OF OFFENCE

Player's surname	Millard	Date of birth	
Forename(s)	Harri	Plea	Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name	Cardiff Blues		
SELECT: Red card <input type="checkbox"/>	Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	9.11 Players must not do anything that is reckless or dangers to others		
Summary of Sanction	Citing dismissed		

HEARING DETAILS

Hearing date	20 November 2019	Hearing venue	Bird & Bird, London
Chairman/JO	Samantha Hillas (Eng)	Panel member 1	Donal Courtney (Ire)
Panel member 2	Yannick Jauzion (Fr)	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:

Richard Locke – solicitor for the Player	Gafyn Cooper – Rugby Operations Manager, Cardiff Blues Maria Gyolcsols – EPCR disciplinary secretary
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List of documents/materials provided to player in advance of hearing:

- Citing Report Mihai Irimia 18.11.19
- Statement from Craig Maxwell-Keys, Match Referee 18.11.19
- Statement from Adam Leal, Assistant Referee 18.11.19
- Statement from Phil Watters, Assistant Referee 18.11.19
- Photograph of Kayle van Zyl, Calvisano player
- Audio recording of an interview with Kayle van Zyl, Calvisano player

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

The following is taken from the citing report:

"At 05:56 running time in the second half, Cardiff Blues were attacking in the close proximity of Calvisano's 22m line. Cardiff No. 9 collects the ball from a 22m mid-line ruck, opens to Cardiff No. 10, who passes the ball to Cardiff No. 15. A tackle is made by Calvisano No. 15 - Kayle Van Zyl, against Cardiff No. 15, both players going to ground. The legs of Calvisano No. 15 seem to be a little trapped under the tackled player, with his upper body slightly lifted and trying to move away/get up from the tackle area. Cardiff No. 11 - Harri Millard stops running towards Calvisano's 22m line and turns back to the tackle area. Having a clear line of site towards the tackle zone, Cardiff No. 11 comes into the tackle area by lifting his right foot over Calvisano No. 15. His right boot hits the face of Calvisano No. 15, who's head violently swings back and reaches the ground. Calvisano No. 15 is then seen as he reaches with his left hand towards the area where he was hit and then gets up and resumes play. No medical assistance was required, at this point...I am of the opinion that Cardiff's No. 11 chose to make an unnecessary technical movement, taking into consideration the available space and the fact that he was in a good position to join the tackle area legally, without taking the unnecessary & significant risk of hitting & injuring the players on the ground, by lifting his right foot in that energetic manner, resulting in hitting the tackler in the head. Also, after going to ground, the position & level of Calvisano No. 15 doesn't change significantly, as to generate an issue of calibration for Cardiff's No. 11 action in terms of taking all precautions in his movement as to avoid contact with the tackler's head.

Consequently, based on the video evidence that was available to me and also the concise statement of Kayle Van Zyl, I am of the opinion that these actions merited a Red Card and accordingly, I cite Cardiff No. 11 (Harri Millard) for actions that resulted in contact between his foot and Calvisano's No. 15 head, contrary to Law 9.11."

The Panel viewed the footage provided which shows the incident from two opposite angles. The footage reflects the factual description of the incident set out in the citing report, namely that the frame at 10 seconds shows the Player with his back to the camera coming into the ruck relatively side-on. The Player steps over the legs of his teammate who has been tackled to the ground and plants his foot square, so as to enter 'through the gate'. The frame at 11 seconds shows that as the Player is stepping over, Calvisano No.15 lifts his head, the Player's boot connects and the Calvisano No.15's head recoils. At 12 seconds, the left hand of the Calvisano player come up to his face. At 13 seconds, the Calvisano player rolls on to his left elbow to prop himself up. He then rolls away towards the direction of play with his hands on his face and gets onto his hands and knees.

Very brief statements were provided by the referee (Craig Maxwell-Keys), AR1 (Adam Leal) and AR2 (Phil Watters). None of them saw the incident live or had anything further to add to the citing report.

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

There was no medical evidence.

The Panel viewed a photograph of Calvisano No.15's injury. It looks like a graze caused by a stud and is located on the far side of his left cheek, close to his ear.

The Panel also listened to an audio file which was the citing commissioner's short interview with Calvisano No.15. This was transcribed in the citing commissioner's report as follows: *"I was defending, made a tackle, went over to their side and I just felt a boot against my head. I couldn't say whether it was a swinging leg or not, but I just felt a boot on the left side of my face and a scratch. I felt there was some blood, but I carried on playing. I felt like something that swung, I didn't feel too much pressure, but we were all moving, so I couldn't really tell. I went down and I was down for maybe 5 seconds, I felt the blood but I carried on playing."*

SUMMARY OF PLAYER'S EVIDENCE

The Player talked the Panel through the video footage. Explaining why he lifted his leg, he said that he was readjusting his position to come back through the gate and to step over the players on the ground. He saw the tackled (Cardiff) player and as a result of that, he lifted his leg up and over. He said that the contact with the Calvisano player was accidental. He confirmed he was sorry for the contact but reiterated that it was entirely accidental. It was further submitted on the Player's behalf that the referee was positioned close to the incident but recalled nothing of note, nor was there any reaction from any other player at the time.

FINDINGS OF FACT

The Player does not accept that he committed the act of foul play set out in the citing report and does not accept that it warranted a red card. Accordingly, and pursuant to clause 7.8.11 of the Disciplinary Rules, Mr McTiernan has the burden of proving that the Player committed the act of foul play.

The Panel were mindful that charge against the Player is that he acted contrary to 9.11, namely that players must not do anything that is reckless or dangerous to others. The charge was not that the Player was in breach of 9.12 i.e. physical abuse including kicking. In the Panel's view, there is nothing in the citing report to suggest that it was alleged the Player acted intentionally. This was clarified in the submissions on behalf of the EPCR that, essentially, given the evidence of the player and the contents of the citing report, the issue for determination by the Panel was whether the Player's actions were reckless or whether the incident referred to in the citing report was accidental.

The Panel were referred to two relevant cases: *Flannery* 3 March 2010 (a Six Nations appeal decision) and *Leo* 2 May 2013 (a first instance Amlin Challenge Cup decision). In *Flannery*, the appeal panel said at paragraph 13 of the judgment:

"The Law relating to kicking an opponent (Law 10(4)(c)) does not include a requirement for mens rea. It simply prohibits a player from kicking an opponent. However, when a Disciplinary Committee considers whether to sanction a player for an act of foul play an assessment of his intent at the time of the offending is important. If the act is entirely accidental then no offence has been committed and there is no sanction. If the act was not accidental the Disciplinary Committee must decide whether it was intentional (that is deliberate) or reckless. There is no separate classification of intent under the description of carelessness – an act which is careless and mistimed (to use the description of the offence used by Mr Barriscale) may be reckless in the context of rugby. That is, by being careless in mistiming his kick, the player may have known or should have known that there was a risk of committing an act of foul play. It would be a matter for the Disciplinary Committee to decide whether a careless act amounted to recklessness or was merely accidental within the context of rugby."

In *Leo*, the independent judicial officer said at paragraph 21:

"The Disciplinary Officer referred to the standard of proof the Judicial Officer would have to be satisfied of if he was to uphold the citing. In his view the critical issue was whether the contact was accidental which he noted was not defined in the DR. However in his view it was essentially doing an act where a player does not know and it cannot be said that he should have known (i.e. it was reasonable for him not to have known) that there was a risk of foul play occurring."

Upon viewing the video footage, the transcript of the interview with the injured player, considering the contents of the citing report, hearing submissions from Mr McTiernan and Mr Locke and hearing the evidence of the Player, the Panel finds as follows:-

1. The Panel agrees there is no suggestion of an intentional act on the part of the Player.
2. The video footage supports the evidence from and submissions on behalf of the Player that by taking a step over, he was attempting to achieve three things:
 - a. as he was entering the ruck relatively side-on, he wanted to ensure that his position was adjusted so that he entered 'through the gate';
 - b. to ensure that he did not stand on either of the players on the ground; and
 - c. to ensure his foot was firmly placed to brace himself for challenge in the ruck.
3. The step over was in one fluid motion which took a split second in a fast-moving game.
4. As the Player was stepping over, the Calvisano player lifted his head;
5. A combination of those factors resulted in a glancing blow from the Player's boot to the side of the Calvisano No.15's face.
6. The Panel do not find that the action was reckless, in that the Player did not and could not know that the Calvisano player would lift his head at exactly the same time as he was stepping over.
7. The incident occurred accidentally.

As a result of the Panel's finding that this was an accident, there is no foul play and the citing is dismissed.

DECISION

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

**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 type="checkbox"/>
State reasons
Gravity of player's actions – R 7.8.32 (c)
Nature of actions – R 7.8.32 (d)
Existence of provocation – R 7.8.32 (e)
Whether player retaliated – R 7.8.32 (f)
Self-defence – R 7.8.32 (g)
Effect on victim – R 7.8.32 (h)
Effect on match – R 7.8.32 (i)
Vulnerability of victim – R 7.8.32 (j)
Level of participation/premeditation – R 7.8.32 (k)
Conduct completed/attempted – R 7.8.32 (l)

Other features of player's conduct – R 7.8.32 (m)

ASSESSMENT OF SERIOUSNESS CONTINUED
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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"/>		<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
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Player's status as an offender of the Laws of the Game – R 7.8.34 (a)
Need for deterrence – R 7.8.34 (b)
Any other off-field aggravating factors – R 7.8.34 (c)

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Number of additional weeks:

RELEVANT OFF-FIELD MITIGATING FACTORS
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Acknowledgement of guilt and timing – R 7.8.35(a)	Player’s disciplinary record/good character – R7.8.35 (b)
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)

Number of weeks deducted:

Summary of reason for number of weeks deducted:

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)	0	Sending off sufficient <input type="checkbox"/>	
Sanction commences		Costs	
Sanction concludes			
Free to play			

Signature (JO or Chairman)	SAMANTHA HILLAS	Date	20 NOVEMBER 2019
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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