

DECISION OF THE INDEPENDENT JUDICIAL COMMITTEE

EPCR

Held at Bird & Bird LLP, London
Monday 30 December 2019

In respect of:

Steve Diamond, Director of Rugby, Sale Sharks (“**Mr Diamond**”)

and

a misconduct complaint (“the Complaint”) brought by Mr Liam McTiernan, the EPCR Disciplinary Officer (“the Disciplinary Officer”) alleging misconduct on the part of Mr Diamond following the match (“the Match”) played at AJ Bell Stadium between Sale Sharks and Exeter Chiefs on 8 December 2019.

Members of the Disciplinary Committee (“the Committee”)

Simon Thomas (Chairman) (Wales)
Jean-Noel Couraud (France)
Donal Courtney (Ireland)

Decision of the Committee:

- (i) Mr Diamond, having admitted the misconduct Complaint, is fined €3,000 in respect of his act of misconduct.
- (ii) Mr Diamond is ordered to pay costs in the sum of €750.

Introduction

The Complaint was made in accordance with the EPCR Disciplinary Rules 2019/20 (“the Rules”) and notified to the Chairman of the EPCR Disciplinary Panel by letter from the Disciplinary Officer dated 23 December 2019. The hearing was convened by a letter of the same date to Mr Diamond.

The terms of the Complaint were:

“The misconduct complaint against Mr Diamond is that after the Match he made comments to a media representative concerning the performance of the match officials in a way that (amongst other things) had the effect of insulting the team of match officials and suggesting that they would not be welcome to return to the club to referee in future. That constitutes misconduct because:

- (a) It was conduct, behaviour and/or statements that were unsporting and/or insulting and/or brought or had the potential to bring the sport of Rugby Union, the Tournament and/or EPCR into disrepute (which constitutes Misconduct under Clause 3.2 of the Disciplinary Rules);***
- (b) It was a breach of Clause 2.2 of the Media Rules (which constitutes Misconduct under Clauses 3.2 and 3.3.4 of the Disciplinary Rules);***
- (c) It involved making comments to representatives of the media that attacked, disparaged or criticised match officials) which constitutes Misconduct under Clause 3.3.15 of the Disciplinary Rules).***

Present at the hearing on 30 December 2019 in addition to the members of the Committee were:

Mr Diamond

Mr Liam McTiernan, Disciplinary Officer, EPCR

Preliminary matters and procedure

At the commencement of the hearing, the Chairman confirmed the identities of all present and established that Mr Diamond was before the Committee in relation to the Complaint. The Chairman confirmed the procedure to be followed under the EPCR Disciplinary Rules 2019/20. No objection to the composition of the Committee was raised.

There were no preliminary matters to be raised by any of the parties and the Chairman therefore narrated the misconduct complaint as set out above. The Chairman also established what evidence had been placed before the Committee prior to the hearing. Mr Diamond and Mr McTiernan confirmed that they had received the same.

Plea

Mr Diamond admitted the act of misconduct alleged against him in the Complaint.

The nature of the Complaint and evidence in support

The Complaint arose out of a media interview given by Mr Diamond following the Match in which he made the following comments having been asked about the performance of the match officials.

He said the following:

“I just said, “good game”, I just said, “you had a fantastic game and your touch judge has had a brilliant game”. Hopefully, that’ll go through to their assessors and we’ll never see the bastards again in Manchester. Joke! I just get this feeling these days that people want a little bit more character in the media room, not just yes and no questions. We are only having a bit of fun.”

Mr Diamond’s comments were broadcast in the media and were the subject of an article on the news website “<https://inews.co.uk>” on Sunday, 8 December 2019 timed at 8:55 pm.

Following the article being referred to the Disciplinary Officer, pursuant to the Disciplinary Officer's powers to conduct an investigation under Rule 3.6 of the Rules, the Disciplinary Officer wrote to Mr Diamond asking him to provide his explanation as to his comments and in particular to address the following matters:

- i. To confirm whether he made the comments attributed to him in the said news article, and if so, explain (a), the context in which he made them; and (b), what he meant by them.
- ii. To confirm whether he made other comments (publicly or otherwise) of a similar nature in relation to the performance of the match officials, and if so, to provide further details.
- iii. To give an account of any interactions he had with the match officials during or after the Match, including what was said, where these interactions took place, and who was present at the relevant times; and provide all other information and/or documents (including any audio and/or audio-video visual footage) that he held or has access to in connection with those matters.

Mr Diamond responded to Mr McTiernan's request on 13 December 2019. A summary of his response was that following a hard physical match, Exeter won the fixture and in the post-match television interview with BT Sports when asked about decisions the referee had made during the game, Mr Diamond declined to comment other than to say, "there is a correct process that I communicate my thoughts about on-field matters."

He stated that following this BT live televised interview, he then attended the "written press conference" which had several local media journalists present. He accepted that the italicised remarks referred to above and attributed to him were accurate, but he was at pains to point out that the context of those words were said in an attempt to be humorous and had been spoken in an affectionate manner.

He also commented that those present in the media room had laughed when he had said the words "never see the bastards back in Manchester" and the press conference continued.

His response to the Disciplinary Officer went on to say that immediately after this press conference, when the referee and the assistant referees were having dinner, he sat with them and politely asked a couple of questions of them regarding certain on-field decisions. He said the conversation was cordial and he had wished them a safe journey.

His written response to the Disciplinary Officer then said on Monday, 9 December 2019, he had to attend his brother's funeral in the south of England. He said that this was, understandably, a difficult period for him.

On Thursday, 12 December 2019 upon his return to Manchester following the funeral, he had had time to reflect on both the game and his comments referred to above and decided that it would be appropriate to write to Mr Joel Jutge, the EPCR Referee Manager to explain and apologise for his comments in case any offense had been caused.

He concluded his written response to the Disciplinary Officer by acknowledging that he had made an error by making the offending comments and that his use of the word "bastard" had many different connotations and that where he comes from in the "industrial north of England", this can be used in an affectionate manner. He reiterated that his comments intended no harm or malice to the match officials and that he would refrain in future from any such language.

Sanction

The function of the Committee was therefore to consider what sanction (if any) ought to be imposed which was appropriate to the misconduct and all the circumstances of the case.

The Rules in misconduct cases provide disciplinary committees with a wide range of sanctions and there is no specific guidance within the Rules to indicate how they should be applied.

The Committee invited further evidence from Mr Diamond in respect of his actions in order to determine the question of sanction. In doing so, he confirmed much of his previous written explanation.

Mr Diamond confirmed that his comments had genuinely been made tongue-in-cheek and reiterated that as soon as he had used the offending words, he had also stated that they had intended to be a joke. He then explained that following the press conference, he had sat with the match officials at the post-match dinner and their discussion had been very relaxed. There had been no mention of anything that had been said during the press conference. Mr Diamond then stated that the following day, he travelled to his brother's funeral and it was whilst he was away that he reflected on what he had said and the potential implications that it might have had in terms of causing offence to the match officials and to a wider audience.

He said he decided to contact the referee directly to extend an apology for any offence which might have been caused and in the first instance contacted Mr Judge expressing an apology and asking for Mr Raynal's contact details. Mr Judge provided those details and Mr Diamond sent an email to Mr Raynal directly apologising and explaining that no offence had been intended and that his comments had been in jest.

Mr Diamond was asked by the Chairman whether he was aware of the press reporting of his comments as being offensive before he made any contact with Mr Judge. Mr Diamond said that he had been unaware of any such press reports having been occupied with travelling to and attending his brother's funeral over the few days following the Match.

Similarly, Mr Diamond said that the apologies he had extended to Mr Judge and Mr Raynal had been made before he had become aware of any investigation by EPCR.

Mr Diamond also said that he had spoken to a referee colleague of his during the week following the match and that in addition to offering a direct apology to the match officials affected, he should consider offering a public apology at the next available opportunity when he was interviewed on television.

Mr Diamond adduced a video clip of his televised interview the following Saturday in which he expressed a public apology and indicated that his previous remarks had been intended to be humorous and that no offence had been intended.

As the Chairman had observed that this explanation made in this television interview had followed a direct question about his apparent dissatisfaction with Mr Raynal from the previous week, the Chairman asked whether his apology had been spontaneous in response to the question of whether he had invited the interviewer to give him the opportunity to make the apology.

In response, Mr Diamond said that as part of his duties, he is required to be interviewed by broadcast media both before and after the match and that he had requested an opportunity prior to those interviews to extend the apology. In other words, he had arranged for the interviewer to ask him about the previous week's refereeing.

In addition to the above, Mr Diamond also had produced to the Committee a statement from Mr Nigel Yates, a former RFU Premiership referee and a referee reviewer/coach in the Gallagher Premiership and for EPCR and World Rugby.

Mr Yates had made a statement confirming that he had attended the post-match media conference in which the misconduct had occurred and that he was able to confirm that Mr Diamond had commented that the referee had had a fantastic game and that the assistant referees had had a brilliant game. He said that these comments appeared to be tongue-in-cheek and that when he had said "hopefully this will go through to their assessors and we will never see the bastards again in Manchester", Mr Yates confirmed that Mr Diamond had been immediately at pains to point out that he was joking and only "having a bit of fun."

Mr Yates also stated that the remark was received by the attending journalists as humorous and that many of them had immediately laughed and that this laughter had been somewhat lasting.

He also commented about the character of Mr Diamond generally and offered the opinion that in his view when he had uttered the remarks, Mr Diamond had been more concerned with being entertaining than actually critical of the referees.

Mr Courtney asked Mr Diamond about the post-match process which coaches have with the EPCR referees' department and Mr Diamond said that this had been constructive with no suggestion that there was any complaint about the refereeing.

Submissions as to sanction

The Chairman reminded Mr Diamond and the Disciplinary Officer of the range of sanctions at its disposal under Rule 7.8.29 which were various and ranged from the lowest, such as a warning or reprimand, up to a suspension from participating in the game of Rugby Union.

The Chairman invited submissions from the Disciplinary Officer as to the appropriate level of sanction.

In response, this Disciplinary Officer acknowledged that Mr Diamond had been very proactive in dealing with his transgression upon his return from Manchester. He said that the word "bastard" has different connotations in Europe and that the French are often more offended by its use than, perhaps, would be the case in certain parts of the United Kingdom. He, however, acknowledged that Mr Diamond had been fully cooperative and open in terms of the process and that this was to his credit.

Insofar as sanction was concerned, Mr McTiernan considered that a caution/warning or reprimand might be appropriate together with a fine of between €5,000 and €10,000 to reflect the gravity of the matter and the circumstances of the case.

Mr Diamond's submissions as to sanction

Mr Diamond confirmed that he was 51 years of age and had been coaching for 17 years. He was a director of Sale Sharks and had grown up locally to Sale. He had played for the club in excess of 400 times. He said that the club prided itself on surviving on little resources compared to many other clubs and that it operated in a football dominated area. He also said that aside from working with the first team, the club also engaged with around 1,500 children locally and had the largest community department within England. He also said that he was immersed in the game of Rugby Union and in 2011 had been the international coach of the Russia national team which had appeared at the Rugby World Cup for the first time.

The Chairman asked Mr Diamond about his previous disciplinary record, the details of which had been provided to the Committee during the hearing. Mr Diamond acknowledged that he had appeared before disciplinary committees on four occasions since 2011, some of which had involved inappropriate behaviour towards or about referees, but that since his last transgression, he had undergone extensive media training and regularly takes advice before interviews pre- and post-match. He described himself as having a personality which was sometimes "tongue and cheek" and also "rash and brash". He said that on this occasion, he had been "caught out" and that it was not unusual for him to be targeted by journalists into making comments about match officials.

He said that insofar as the appropriate sanction was concerned, having reflected on his behaviour over the following day or so and taken remedial steps to apologise for what he had done, he hoped that a caution, reprimand or fine would be an appropriate sanction but that he had no observations on the level of sanction preferring to leave it to the Disciplinary Committee to impose whatever sanction they deemed appropriate which he said he would accept.

In response, Mr McTiernan confirmed that Mr Diamond is a valuable asset to the composition of the constituent teams of EPCR and does a lot for the tournament and can often be entertaining in the way that he approaches matters, but that it was to be hoped that if a modest sanction was imposed, he might be more careful in the manner in which he approached matters.

Mr McTiernan also commented that EPCR had a duty to protect its match officials from inappropriate comments.

Decision as to sanction

The Committee retired in private to consider its decision and carefully took into account the evidence and the submissions presented by both the Disciplinary Officer and Mr Diamond.

The Committee firstly considered the level of seriousness of the misconduct Mr Diamond had admitted.

The Committee was satisfied that Mr Diamond had made inappropriate and insulting remarks on the spur of the moment, but nevertheless, as they had been made in public and reported in the media, the incident was on its face serious.

That said, it was nevertheless important to consider the intention behind the comments and the Committee accepted that Mr Diamond had immediately said that his comments were intended to be a joke. Furthermore, the Committee accepted that within a couple of days of the comments being made, Mr Diamond had decided to take a proactive approach to apologise directly to the referee and the referee manager for any offence which may have been caused. The Committee noted that Mr Diamond had a very poor disciplinary record as a coach and had served several suspensions for misconduct which, in the view of the Committee, were aggravating features of the case.

The committee did, however, take into account mitigating factors on behalf of Mr Diamond which included his unprompted efforts to make apologies to the referee, the referee manager before he became aware that any disciplinary investigation was underway, and before he was aware of the adverse comment in the media. He also had cooperated fully with Disciplinary Officer's investigation and had made a full and frank admission at the hearing without seeking to minimise his conduct.

The Committee was of the view that the aggravating feature of the case, namely Mr Diamond's very poor disciplinary record was offset by the significant mitigating features.

Taking all these matters into account, the unanimous decision of the Committee was that pursuant to Rule 7.8.29, Mr Diamond would be fined a sum of €3,000 for his act of misconduct.

Mr Diamond would also be required to pay a sum of €750 in respect of the costs of the hearing.

The Committee reconvened to announce its decision as set out above.

Appeal

The parties were reminded of their right to appeal against this decision in accordance with Rule 8 of the Rules.

Dated the 31st day of December 2019.

Simon Thomas
Chairman