

EPCR SHORT JUDGMENT FORM

Match	WASPS	Vs	MUNSTER
Club's Country	England	Competition	Champions Cup
Date of match	12-12-2021	Match venue	Ricoh Arena
Rules to apply	EPCR Disciplinary Rules 2021/22		

PARTICULARS OF OFFENCE

Player's surname	Fenner Shields	Date of birth	02-04-1990
Forename(s)	Bradley (Brad) David	Plea	Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name	Wasps		
SELECT: Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other (specify) <input type="checkbox"/>			
Offence	9.13 – Dangerous Tackle		
Summary of Sanction	4 weeks (the disciplinary committee agree that one week of the sanction may be replaced by a «Coaching Intervention» that complies with the World Rugby Head Contact Process Coaching Intervention Programme).		

HEARING DETAILS

Hearing date	14-12-2021	Hearing venue	Multiple Zoom remote hearing
Chairman/JO	Marcello d'Orey	Panel member 1	Roger Morris
Panel member 2	Leon Loyd	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:

Celia Rooney – Legal Representative Dave Basset – Wasps Team Manager	Liam McTiernan Danny Rumble Maria Gyolcsos
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List of documents/materials provided to player in advance of hearing:

<ul style="list-style-type: none"> • Letter of complaint from Mr McTiernan to Mr Hamlin • Letter convening the hearing from Mr Hamlin to the Player • Match Official Red Card Report • Statement from Vincent Blasco Baque, assistant referee • Statement from Stephane Boyer, assistant referee • Statement from Denis Grenouillet, television match official • Statement from Dave Kilcoyne, Munster Rugby player • Statement from Dr Tadhg O'Sullivan, Munster Rugby medical staff • Link with the video footage of the relevant incident • The written submissions made on behalf of Mr Shields. • A brief written statement from Mr Shields. • The RFU judgment, regarding Mr Shields' yellow cards in September of this year, which is referred to in the written submissions. • An email from Mr Bassett to Mrs. Celia Rooney, which has a video clip of the incident (isolated in a shorter clip than the existing video footage) and a still photograph from a high, behind angle. • A list of Wasps 2021/22 Senior Fixtures, as referred to in Mr Shields' statement <p>At the start of the Hearing the Chair established that there was no objection to the composition of the Panel and that no preliminary points arose.</p> <p>The Player in his responses accepted that he was the Player involved in the alleged foul play.</p> <p>There was a dispute as to the summary of the incident in the Match Official Red Card Report and the player did not accept that there was foul play or that there was any contact to head/neck of the Munster player.</p>

In any event, it was submitted that the incident was not one which merited a red card, even if there was illegal contact, because there was no degree of force, and because there were mitigating factors.

It was noted that point 7.2.10 of the EPCR disciplinary rules states that *«If the Player does not accept that he should have been shown a red card, the burden will be on him to prove, on the balance of probabilities, that the referee's decision to show him a red card (including where that was the result of consultation with one or both assistant referees and/or the television match official) was wrong. »*

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

- 4 WASPS make an upright tackle with a shoulder contact direct to the throat on 1 Munster without wrap with right arm. The referee didn't see mitigating factor and the force of the contact brought him to a Red Card.
- The dangerous tackle was checked by a TMO call that the referee lead with the support from the TMO Denis Grenouillet to manage the TV angles.
- The assistant referee Stéphane Boyer informed by email that he did not see the incident and therefore not flagged. Following the video call and for him, also n°4 WASPS make an upright tackle with a shoulder contact direct to the throat on 1 Munster without wrap with right arm. He didn't see mitigating factor and the force of the contact.
- The assistant referee Vincent Blasco Baque informed by email that *«In live i did not flag and see the foul play. After the video the n°4 WASPS make an upright tackle with a shoulder contact direct to the throat on 1 Munster without wrap with right arm. I didn't see mitigating factor and the force of the contact. I recommended the red card».*
- The TMO informed by email that *«Romain call me to check for a potential foul play at 25.02. The number 4 of the Wasps team makes a tackle on the number 1 of the Munster team with the shoulder directly to the throat, there is no mitigating factor, red.»*

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

The Munster player and Dr Tadhg O'Sullivan, the Munster Rugby medical staff both confirmed there was no injury caused.

SUMMARY OF PLAYER'S EVIDENCE

In their written submissions and also in their oral submissions, the legal representative of the player explained that they did not accept the summary of the incident in the red card report, and that there is six effective findings that need to be addressed:

- There was an upright tackle – they do not accepted that there was an upright tackle.
- There was contact from the player shoulder – they addressed that there is no clear footage or evidence that show that there was a contact from the player shoulder. That only Mr. Poite saw the incident live, and that the TMO, and the two assistant referees didn't see the incident, and only saw it when Mr. Poite asked the TMO for the video images. And they could not have seen, because the footage is not clear that there was a contact from the player shoulder.
- That the contact was direct to the throat of the Munster player – they submitted that there is no footage or evidence that show that there was a direct contact to the throat of the Munster player. That only Mr. Poite saw the incident live, and that the TMO, and the two assistant referees didn't see the incident, and only saw it when Mr. Poite asked the TMO for the video images. And they could not have seen, because the footage is not clear that there was a contact from the player shoulder.
- There is contact without wrap of the right arm – they submitted that there is no footage or evidence that show that there is contact without wrap pf the right arm.
- Reliance on the force of the contact - the degree of danger was low, essentially because:
- This was not a case in which he approached from a distance. Rather, as set out above, the contact arose in circumstances where Munster 1 was expecting contact and not in an exposed position.
- Insofar as there was force in the collision, it was not 'high' force; additionally or alternatively, it effectively arose from the fact that Munster 1 was carrying hard and the Player did not or was not able to yield.
- As the Munster medical team (and Munster 1 himself) have confirmed, Munster 1 was not injured and indeed was able to play on in the Match.
- There is no mitigating factors - the referee and officials were wrong to conclude that there was no mitigation in this case. There are substantial mitigating factors, most notably:
- The conduct appears to have been inadvertent/involuntary and largely out of the Player's control where it arose as a result of the tackle from Wasps 7 and not in consequence of any tactical decision on the part of the Player. That changed not only Munster 1's line, but also the speed of the resulting collision. To use the language of World Rugby's Head Contact Process document, therefore, there was a "*late change in dynamics due to another player in the contact*".
- While the tackle was upright (and is conceded as such), the video clearly shows the Player bending his knees or attempting to do so. In all the circumstances (including the speed of the collision and the fact that it was unexpected), it was simply not possible for the Player to bend at the waist to further reduce his height. His attempt to do so in those circumstances is to his credit. Again, adopting the Head Contact Process language, there was limited time to adjust and the Player's adjustments were the best that he could manage in all the circumstances.

In his written submissions, the player states that having reviewed the footage and from his memory of the events, he believes that there was no head contact. He recognise that head contact includes contact with the neck/throat. He also wrote that if there was a head contact, that it was not intentional. He believes that the incident arose from a tackle made by his teammate, Thomas Young, who just before the contact, tackled the Munster player, and in doing that changed the Munster player's line quite considerably, effective knocking him into Mr. Shields. He thinks that the tackle also increased the speed at which they collided, and there may also have been a bit of bounce from the ball. He believes that it was the Munster player's shoulder that collides with his chin.

The Legal representative of the player submitted a video clip of the incident (isolated in a shorter clip than the existing video footage) and a still photograph from a high, behind angle.

The Player was invited to explain his actions and he did so by reference to the video footage shown.

- «When I made the tackle I didn't think straight away at all that I've done anything illegal or against the rules or and in breach of any sort of code of conduct of playing Rugby. »

- He believes 100% that his shoulder made contact with Munster player's shoulder/chest area and that's exactly what he felt, and it seems that way when looking at the footage.
- The bounce off or the force that was generated between both of them coming together and his head potentially moving backwards and a whiplash kind of effect makes it look slightly worse.
- If you take his teammate that tackled the Munster player out of the picture he would end up running completely straight inside my shoulder, and there's no doubt that he would be making a side on tackle.
- It is tough to change your line also while someone else's line has been changed by the effect of someone else tackle.
- He does not believe that there was any contact between his shoulder and the Munster player head/throat.

In answering questions from the panel, the Player made the following further comments:

- The player stated that he understand that in the footage shown to him looked like he was doing a high tackle, but from his images, and video, it was clear that it was not high.
- The player also stated that if Munster player had carried straight with nobody tackling him he would be on his inside shoulder, but the tackle made by number seven made the Munster player change his line, and all of a sudden he was potentially at a different angle to what he might have anticipated at the time.
- He does not believe that there was a direct contact with the Munster player head/neck/throat, and the fact that the tackle was not clearer was a consequence of the tackled made immediately before by Wasps number seven.
- He believes that his shoulder makes clear contact with Munster player chest shoulder area.

The Legal representative of the player said that they accepted that Mr. Poite's red card report is an honest and truthful account of what he saw and we can see why he thinks that, based on the filters that were shown, but having heard Mr Shields account of why that's not correct and we don't put Mr. Poite report any higher or take any further than that, so I don't think we would want to need to cross examine Mr. Poite.

Mr. Basset, the Wasps Team Manager stated that he does think it's extremely difficult to identify the point of contact and categorically say that it was the neck and the head region, he thinks that brad's account is an honest account.

The legal representative also stated that if the panel considers that there was contact, and in consequence, foul play, it should be addressed that there was no intention, that Mr. Shields is a senior player, with an exemplary disciplinary record, and that he would never do anything like that intentionally.

There was no malice or recklessness.

The situation was a result of the tackle made by Wasps number seven, and Mr. Shields having to adjust his body accordingly.

There was no injury to the Munster player, and that there is very difficult to tell from the footage that there is any high degree of impact between Mr. Shields and the Munster player.

There is also mitigating factors. There is evidence that the contact was inadvertent or involuntary arising from the tackle made by Wasps number seven.

There should also be taken in consideration that Mr. Shields knees were bended.

The team manager also stated that the fact that there was a tackle by Wasps number seven just before the incident, is clearly a mitigation factor.

Mr McTiernan pointed to the video angle that he said gave the best view of the incident and asked that it be frozen at which he considered the point of contact.

There were no further submissions relevant to the panel's determination of whether the red card issued by the referee was correctly issued. The panel therefore consulted in private so as to determine the first issue before them.

FINDINGS OF FACT

The panel considered the evidence and submissions and remind us that the burden of proof was on the player to establish on the balance of probabilities that the referee's decision to issue the red card for the shoulder charge had been wrong. Having done so, the Panel made the following findings:

- There was no evidence that showed that the contact was not made directly in the neck/throat area of the Munster player so as to contradict the referee's view of the incident or that on the balance of probability there was dangerous contact to the head/neck. There was no mitigating factor.
- There was a high degree of force in the collision.
- There was no mitigating factor.

The panel was unanimous that the Player had not proved to the requisite standard that the referee was wrong to issue the red card.

The Hearing was reconvened and the panel's decision given to the parties. The Hearing was now required to consider what sanction, if any, should be imposed to reflect the seriousness of the offence.

Mr. Liam McTiernan then made his submissions by reference to the criteria set out in Appendix 3 of the EPCR disciplinary rules to support his view that the Mid Entry classification was appropriate in this case. In terms of mitigation he suggested the Player was entitled to it. This was because the player had an unblemished disciplinary record and his conduct prior to and in the hearing.

The legal representative of the player and also the team manager made their submission and stated that the fact that the player had not accepted the red card, should not be considered against him, and that he should be entitled to 50% mitigating factor.

The legal representative also stated that the player and club were willing to participate in the World Rugby Head Contact Process Coaching Intervention Programme.

Players may apply under the Head Contact Process Coaching Intervention Programme to substitute the final week/match of a suspension with a Coaching Intervention that targets the specific technical issue that contributed to the act of foul play.

Access to the Head Contact Process Coaching Intervention Programme is discretionary and depends on approval from the Disciplinary Panel.

The Player and team manager accepted that they would be willing to apply for that programme, if the Disciplinary Committee approved it.

The panel again discussed matters in private. The panel was required to consider what further action should be taken as a result of the player being shown the red card in respect of a contravention of law 9.13 of the Appendix 3 of the EPCR disciplinary rules.

The Panel found, on the balance of probabilities, that:

1. The Player had not intended to make contact with the neck/throat of Munster number 1.
2. The Player knew or should have known that there was a significant risk of committing an act of foul play which had the potential to cause serious injury by trying to tackle in the way in which he did (as seen in the video evidence and described above).

3. There is no evidence that the player's shoulder did not made direct contact with Munster n. 1's neck/throat.
4. Although the act was not violent, it was a rugby action that was poorly executed.
5. The Munster player was vulnerable, and the act could have caused a serious injury because of the area of contact.
6. There was no provocation.
7. The player did not act in retaliation.
8. There was no consequence for the match.
9. There was no premeditation
10. The conduct was completed.
11. There was no injury to the Munster player.

There is a mandatory amendment to the Appendix 3 of the EPCR disciplinary rules, stating that any act of foul play which results in contact with the head and/or the neck shall result in at least a mid-range sanction.

The panel considered mitigating factors and noted that they should be awarded from bottom up to a maximum of 50% and that a panel should not start at 50% and take mitigation away. In the circumstance the panel considered that the Player had earned 40% mitigation.

DECISION

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

There was no evidence that the player targeted the neck/throat of the Munster player. This action was reckless and it carried the very clear risk that contact would be made with the head or neck of the Munster player. Whilst the panel accepted the player had not intended to make contact with the Munster player's throat, he had acted in a highly dangerous manner in relation to the risk of injury and in relation to potential to cause injury.

Gravity of player's actions – R 7.8.32 (c)
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Any contact with the neck area is serious.
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Nature of actions – R 7.8.32 (d)

Dangerous tackling.

Existence of provocation – R 7.8.32 (e)

N/A

Whether player retaliated – R 7.8.32 (f)
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N/A

Self-defence – R 7.8.32 (g)
N/A
Effect on victim – R 7.8.32 (h)
There was no injury, and the player didn't need any treatment.
Effect on match – R 7.8.32 (i)
No effect.
Vulnerability of victim – R 7.8.32 (j)
The Munster player was vulnerable, and the act could have caused a serious injury because of the area of contact.
Level of participation/premeditation – R 7.8.32 (k)
No premeditation
Conduct completed/attempted – R 7.8.32 (l)
Conduct completed
Other features of player's conduct – R 7.8.32 (m)
None

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 checked="" type="checkbox"/>	6	<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
N/A

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)
N/A	The player has a clean disciplinary record.
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
N/A	good
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)
N/A	None

Number of weeks deducted: 2

Summary of reason for number of weeks deducted:

The player has a clean disciplinary record and his conduct prior to and in the hearing was very good. The disciplinary committee approve the access to the coaching intervention programme as it is applicable to situations such as the one in this case, and the player and team have indicated that they accept and want to do that. In the event of the player receiving a confirmation of completion from World Rugby coaching intervention programme, the final specified match of the player's suspension (to be played on the 09th January 2022) will be substituted by the successful Coaching Intervention, without the need to reconvene this panel.

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)	4	Sending off sufficient <input type="checkbox"/>	
Sanction commences	12-12-2022	Costs	
Sanction concludes	Midnight on Sunday 09 th January 2022 (or midnight on Saturday 1 st January 2022 if the Player successfully completes the Head Contact Process Coaching Intervention)		
Free to play	Monday 10 th January 2022 (or Sunday 2 th January 2022 if the Player successfully completes the Head Contact Process Coaching Intervention)		

Signature (JO or Chairman)		Date	15-12-2021
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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