

EPCR SHORT JUDGMENT FORM

Match	Leinster	Vs	Bath Rugby
Club's Country	England	Competition	Heineken Champions Cup
Date of match	11 December 2021	Match venue	Aviva Stadium, Dublin
Rules to apply	EPCR Disciplinary Rules 2021/22		

PARTICULARS OF OFFENCE

Player's surname	Muir	Year of birth	1995
Forename(s)	William	Plea	Admitted <input type="checkbox"/> Not Admitted <input checked="" type="checkbox"/>
Club name			
SELECT: Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/>			
Offence	9.12 A player must not physically abuse anyone.		
Summary of Sanction	4 weeks (namely 4 meaningful matches)		

HEARING DETAILS

Hearing date	15 December 2021	Hearing venue	Zoom Call
Chairman/JO	Philippe Cavalieros (France)	Panel member 1	Val Toma (Romania)
Panel member 2	Chris Watts (Wales)	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:

Sam Jones (Counsel)
Alex Cohen (Chief Operating Officer at Bath Rugby)

Maria Gyorcsos (Governance & Relations Executive, EPCR)
Danny Rumble (Governance & regulations Manager, EPCR)

[For the avoidance of doubt references herein to the Player shall include submissions made on his behalf by Counsel]

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

- Disciplinary Officer's letter to the Chairman, EPCR Disciplinary Panel dated 12 December 2021
- Citing Report dated 11 December by JN Mark, Citing Commissioner (the "CC")
- Notice of Hearing sent by Mike Hamlin, Chairman, EPCR Disciplinary Panel, on 14 December 2021
- Video clip of the incident: https://drive.google.com/file/d/1hqioM1Wf4O_BdhvrfU6EcumLBa1UACli/view?usp=sharing.
- A video recording of an interview conducted by the CC with the Leinster player Josh van der Flier (the "Leinster Player"): <https://drive.google.com/file/d/1nWfs92vBWN5shLnsQHnhvv48iWFF-qOL/view?usp=sharing>
- Email Statement by Pierre Brousset (the "Referee") dated 13 December 2021
- Email Statement by Luc Ramos (AR1) dated 13 December 2021
- Email Statement by Flavien Hourquet (AR2) dated 13 December 2021
- Email Statement by Eric Gauzins (TMO) dated 13 December 2021
- Player's responses to the Standard Directions dated 15 December 2021
- Disciplinary Officer's directions statement dated 15 December 2021 and attachments, namely the *Flannery* and *Leo* cases.
- Statement by Katie Warriner, Performance Psychologist dated 12 December 2021
- Player's Schedule of games

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

The CC's report provides as follows:

"After a converted try, Bath restart the game with a kick from B10 which was aimed to land just beyond the Leinster 10m line. L7 (in red scrum cap) lifted L13 to receive the kick off, which B11 was also chasing. Having run beyond both Leinster players, B11 made to jump for the ball and using his right hand, jumps while pushing down on L7's head to gain leverage and height to challenge for the ball. (Law 9:15 "a player not in possession of the ball, must not hold, push, charge, or obstruct an opponent not in possession of the ball"). As B11 pushes down on L7's head, he pushes L7's scrum cap down towards L7's eyes and as B11 falls away, maintains contact with the scrum cap, pulling away across L7's face and in so doing, there was contact with L7's eye. L7 can be seen immediately holding his face and in the resultant break in play, gestured towards his eye and can be heard on the ref mic saying "he put his finger in my eye". Additional angles of the incident are on Sony Ci, including attempts to zoom in to show the point of contact. In a recorded statement made to me this morning, L7 confirmed to me that there had been contact with his eye, which initially frightened him as he didn't know what had happened and describes how his eyelid had been turned inside out or folded such that he could not see properly and which necessitated medical attention. He also confirmed that there was no visible injury and no impairment of his vision after receiving appropriate attention. I have accordingly cited Bath 11, Will Muir, for breach of Law 9:12 given the evidence of contact with the eye of L7, Josh Van Der Flier."

Unless otherwise indicated herein, from a factual standpoint, the Panel entirely concurs with the CC's analysis of the incident. Consequently, there is no need for the Panel to reiterate such sequence of events in the findings of facts below. However, and to the extent necessary, the Panel shall provide additional views below.

The Referees' reports all provide that the contact was accidental and that the challenge in the air was fair.

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

EPCR has provided a recording of an interview between the CC and the Leinster Player in which the Leinster Player essentially confirms that there was contact with his eyes and considers that the act was accidental.

Notwithstanding a request by EPCR to obtain a medical report for the Leinster Player, Leinster did not provide the same. Hence, there is no medical report available.

The Panel notes however that the Leinster Player was treated on-field immediately after the incident and was declared fit to play.

The Disciplinary Officer submitted that although all match officials concurred in finding that it was an accident, there is no evidence that they applied the proper test to reach such finding. Moreover, the Player bears some responsibility for his jump in the air and it is not just a question of where he put his hands. He has a duty of care towards the other players.

The Disciplinary Officer also submitted that the Player cannot at the same time admit that his hand served to maintain balance while claiming that he was not conscious of the fact that the same hand was making an illegal contact. Consequently, the Disciplinary Officer submitted that the Player's act was reckless and that it met the red card test because there was physical contact with the Leinster Player's eye, and that this created some fear for the Leinster Player.

SUMMARY OF THE PLAYER'S EVIDENCE

At the outset, the Player submitted that it is not often that match officials, including the TMO as well as the alleged victim player, all consider that the incident giving rise to a disciplinary procedure was accidental. Moreover, according to the Player, all of the evidence supports his assertions and the fact that his actions were in no way intentional.

Therefore the Player considered that the Panel ought to determine whether the Player's action were reckless or whether they amounted to an accident.

With respect to the incident, the Player explained that his intention was to jump and back the ball back in the air at restart. Once in the air, the Leinster 13 was lifted by the Leinster Player and won the battle in the air. The Player thereafter came to the ground. The Player also claimed to have been completely unaware of the incident until the next day. The Player further submitted that he was unaware that his hand came into contact with the Leinster Player's eye or eye area. He further submitted that his right hand had come into contact with the Leinster Player only for the purpose of counterbalancing his left hand which was chasing the ball, whilst in the air.

Upon questioning by the Panel, the Player also confirmed that had he been the victim of such incident, he would have also come to the conclusion that this was an accident.

Upon further questioning by the Panel, the Player also admitted that he bears some responsibility for his imbalance when jumping in the air, but that had it been a winning contest, things would have unfolded differently.

The Player further referred to the Leinster Player's interview in which the latter confirmed that it was a "pure accident". The Player then reiterated that he was unaware that he had put his hand on the Leinster Player, and that this hand coming into contact with the Leinster Player's head was only to find balance, and not to push down his opponent's head.

On the basis of the available evidence therefore, the Player submitted that he did not commit an act of foul play, which is the first question the Panel ought to consider.

The Player submitted that there is a noticeable difference between a player who knowingly puts his hand on an opponent's head and a player who is not aware of that fact. Moreover, the Player was not being reckless with respect to the contact with the eye area since he put his hand on the top of the Leinster Player's head.

FINDINGS OF FACT

On a preliminary basis, the Panel notes that the Player and the Disciplinary Officer are largely aligned on two issues.

First, they both consider that the act committed by the Player was not intentional.

Upon careful review of the footage and having taken account of all the available evidence, including the Player's own explanations, the Panel is also satisfied that there was no intention at all with respect to his hand coming in contact with the Leinster Player's eye.

Second, both sides are also aligned on the fact that (with regard to Rule 9.12) there was "contact with the eye(s)" as opposed to "contact with the eye area".

On the basis of the available evidence, notably the footage, as well as the Leinster Player's confirmation thereof, the Panel is also satisfied that there was contact with the eye rather than with the eye area, it being recalled that "[t]he 'eye' involves all tissues including the eyelids within and covering the orbital cavity and the 'eye area' is anywhere in close proximity to the 'eye' (Footnotes 3&4, Rule 9.12). This admission and confirmation by the Panel is notably relevant as far as the sanction is concerned.

Furthermore, but still on a preliminary basis, the Panel is satisfied by the Player's evidence and confirmation that he may not have become aware of any of his actions until the following day, and that he notably did not feel - and later hear - anything on the field when the Leinster Player complained about his eyes. As a matter of fact, the Panel is also satisfied that the Player, in the rush of the action, may not have been aware of coming in contact at all with the Leinster Player's eyes until he saw the footage, although as submitted below he should have been so.

Moreover, the Panel is also satisfied upon reviewing the footage that there was no particular action by the Player, as submitted by

him during the Hearing, that amounted to him meaningfully pushing down the Leinster Player's head towards the ground.

Leaving aside the above preliminary findings, the first issue which the Panel needs to decide, as correctly submitted by the Player, is whether the incident amounted to foul play at all. In this respect, it is recalled that in citing cases, the burden is on the Player to prove, on the balance of probabilities, that he should not have been the subject of a citing complaint (because he did not commit the act(s) of foul play specified in the complaint and/or those act(s) would not have warranted a red card) (Rule 7.8.11 (a)).

The Player considers in a nutshell that his actions did not amount to foul play, but nonetheless admits that the Panel may well consider that the fact that the Player has put his hand on the Leinster Player in the eye area may constitute an act of foul play.

In the Panel's view, the entire sequence of events cannot be separated in this instance. The Panel indeed considers that there is a general act of foul play with reference to both Rule 9.15 and Rule 9.12.

Upon careful review of the footage, and having heard the Player, the Panel notes in this respect that the Player jumped in the air with little else in mind (as confirmed by the Player) than his objective to win the ball (in the first phase) at any or all costs, and then seems to have worried about his own safety only (in the second phase) rather than any of the other players surrounding him, despite them being in vulnerable positions, *i.e.* in the air (Leinster 13), and in support of the latter (the Leinster Player).

The Panel considers that the Player should have exercised his duty of care, notably toward these two Leinster players.

More specifically when it comes to Rule 9.12, having carefully reviewed the footage, and as further detailed below, the Player takes hold of the Leinster Player's head as he is in the process of climbing for the ball and pushes down for leverage before Leinster 13 grabs the ball.

Due to the nature of his jump and his body movement, the Player loses his balance – which he admitted in the hearing upon questioning – and for which he is entirely responsible (as there was no significant external factor or player that caused such imbalance).

This imbalance caused the Player to maintain a firm grip on the Leinster Player's head to regain balance. During the same, his hand which remained in permanent contact with the Leinster Player's head throughout the incident moves downwards and results with his finger entering the Leinster Player's eye(s).

The contact with the eye is therefore a direct consequence of the overall careless actions of the Player during the entirety of the events, that cannot be separated.

Having established that the act constituted foul play, the Panel shall now determine whether it was reckless.

In so doing, the Panel is mindful of the fact that all match officials, including the TMO, as well as the Leinster Player, and of course also the Player himself, considered the act to be purely accidental. The Panel therefore shares the Player's position that this is a rather unusual setting.

However, with the benefit of hindsight, and having reviewed the footage at length and heard both sides during the Hearing, the Panel is now in a position to make a more thorough assessment than the match officials, and as submitted by the Disciplinary Officer, to apply the relevant test as it deems fit. In so doing, there is no criticism of the match officials. But, again with the luxury and necessary time for the hearing, as opposed to match officials having to make difficult decisions in a very short period of time, the Panel is in a position to carefully review the incident.

After all, this is exactly the purpose of post-match hearings, particularly in a citing context.

Of note to the Panel with respect to the incident itself, is the fact (as indicated above) that the Player put his hand on the Leinster Player's head not only for balance but also, in the Panel's opinion, for leverage (albeit very limited) to gain height.

Contrary to the Player's assertion, the Panel indeed considers that he did not only put his hand on the Leinster Player's head when he was at the maximum height for balance, but also beforehand. This is notably clearly visible between the 13th and 14th second of the footage. Whilst the Panel fully realises that this happened in a split second, and that it could not have reasonably been seen by the Match Officials, it is nonetheless significant for the purpose of establishing whether the act was reckless or accidental.

The Player also submits that the Leinster's 13 fall on the Player's hand may have had an impact on the incident, as evidenced at the 50th second of the footage. The Panel notes that the Leinster 13 may indeed have put additional weight on the Player's hand upon falling, hence causing additional pressure.

However, the Panel notes that by then the Player's hand was already near the eye area of the Leinster Player. This is clearly visible notably at 1:10th minute of the footage.

As a result of the above, the Panel considers that the Player's actions, although far from being intentional, were not purely accidental. The Player indeed bears some responsibility as a result of him touching the Leinster Player's head in order to gain height and find balance.

With reference to the Flannery and Leo decisions on the record, the Panel considers therefore that the Player ought to have known that by touching the Leinster Player's top of the head whilst in the air, he may have made contact with the eye area. Upon direct examination, the Player confirmed that he was not aware of what happened around him, including for instance as to the way the Leinster 13 landed, or whether there was contact with the eye, precisely when he should have been at least wary of the same.

In so doing, the Panel indeed considers that the Player was at least careless in his actions in this respect. More specifically, his actions can be distinguished from a mere accident since his hand is not loose or "dead" as that which would qualify as an unintentional handball in football. To the contrary, he put his hand quite firmly on the Leinster Player's head.

The Player submits in this respect that there is a difference between putting a hand on the top of one's head and making contact with the eye, and that with respect to deciding whether the act was reckless or accidental, the Panel ought to consider specifically the contact with the eye rather than the general conduct. In other words, the Panel should consider whether the Player's act was reckless with respect to his contact with that specific area.

The Panel agrees with the Player.

However, in this instance, the footage shows that the Player's hand comes into contact with the top of the Leinster Player's head and face, with his fingers already very close to the eye area, if not already in the eye. This is notably visible at the 36th second of the footage.

Accordingly, the Panel determines that the Player ought to have exercised more care in his actions, and bears responsibility therefor.

In other words, the Player's action was reckless because by putting his hand in such area, he should have known that contact with the eye was likely.

Having established the Player's recklessness, the Panel shall now decide whether his act amounts to a red card.

In this respect, the Panel notes again that both sides agree that there was contact with the eye. The Leinster Player, when reaching ground, immediately placed his hands on his eyes and alerted the Referee. On the basis of the available evidence, including the Leinster Player's recording, the Panel is satisfied that he may have genuinely feared for his eyes or eyesight, and notes that he was immediately treated on the field though, fortunately, he did not suffer any injury.

Because of the mere fact that there was contact with the eyes, and having determined foul play, the Panel finds that the act in itself is sufficiently dangerous to warrant a red card.

Although the Panel is mindful, as put by the Player, that there are occurrences where one touches an opponent's eyes during a game, or even one's own eyes at times in entirely accidental or unfortunate circumstances, in the present case it has been determined that the Player bore some responsibility, that his action was reckless, and that there is a clear causal link between his actions and the contact with the eye.

Such area being particularly sensitive, the Player owes a duty of care to other players.

Accordingly, the panel determines that the incident warranted a red card justifying entering into the sanctioning process.

DECISION

Breach admitted <input type="checkbox"/>	Proven <input checked="" 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)		
PLEASE TICK APPROPRIATE BOX	Intentional/deliberate <input type="checkbox"/>	Reckless <input checked="" type="checkbox"/>
State reasons		
As above		
Gravity of player's actions – R 7.8.32 (c)		
Contact with the eye(s) in and of itself is sufficiently serious.		
Nature of actions – R 7.8.32 (d)		
As explained above		
Existence of provocation – R 7.8.32 (e)		
n/a		
Whether player retaliated – R 7.8.32 (f)		
n/a		
Self-defence – R 7.8.32 (g)		
n/a		
Effect on victim – R 7.8.32 (h)		
There was more fear than actual damage as confirmed by the Leinster Player .		
Effect on match – R 7.8.32 (i)		
n/a		
Vulnerability of victim – R 7.8.32 (j)		
The Leinster Player was in a relatively vulnerable position since the Player was above him with a hand on his head and eyes.		
Level of participation/premeditation – R 7.8.32 (k)		
n/a		
Conduct completed/attempted – R 7.8.32 (l)		
n/a		
Other features of player's conduct – R 7.8.32 (m)		
n/a		

ASSESSMENT OF SERIOUSNESS CONTINUED

Entry point					
Top end*	Weeks	Mid-range	Weeks	Low-end	Weeks
<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>	6

*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)
Although on 1 April 2021, the Player received a 2-week sanction in domestic (RFU) disciplinary proceedings in relation to rule 9.17 (tackling in the air), the Panel finds that this does not constitute an aggravating factor as such, since it is the only other incident involving the Player.
Need for deterrence – R 7.8.34 (b)
n/a
Any other off-field aggravating factors – R 7.8.34 (c)
n/a

Number of additional weeks: n/a

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	See the April 2021 decision above. There is no doubt otherwise that the Player has good character.
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
The Player is 26 years of age and relatively inexperienced at such level although having played 7s at international level.	Exemplary
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)
n/a	n/a

Number of weeks deducted: 2

Summary of reason for number of weeks deducted:
<p>The Panel deducted 2 weeks and not a maximum of 3 weeks corresponding to 50% of the entry point given that the Player has been sanctioned in April 2021 for what looks like a similar act, namely a challenge/tackle in the air. Moreover, the Player did not acknowledge guilt for the reasons expressed above, it being however noted again that all match officials and the Leinster Player considered the act to be accidental.</p> <p>Given however that the sanction may appear somewhat significant, and bearing in mind the total absence of any malicious intent on the part of the Player, the Panel considered (and indeed discussed with both sides during the Hearing) whether Rule 7.8.37 may be applicable in the present case.</p> <p>However, no relevant off-field mitigating factors were found, and most importantly the sanction does not appear to be <u>wholly</u> disproportionate as prescribed in such Rule.</p>

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 December 2021	Costs	n/a
Sanction concludes	3 January 2022 incl. The Panel has noted that under Rule 7.8.44 Explanatory Note (2), if the Player is (but for any suspension) fit, available and expected to play in more than one Meaningful Match in a week, that week will count as only one week towards any suspension unless the rules applicable to the		

	relevant Meaningful Matches provide for suspensions to be served in terms of matches and not weeks. The Panel has noted in this respect that the Player's game schedule foresees two games in early January, namely on 3 and 9 January 2022. No submission having been made by either side on the applicable domestic rule in this respect, the Panel has determined that it shall apply the meaningful matches principle, it being noted that such two games are 6 days apart which is quite significant and close to a week.
Free to play	4 January 2022

Signature (JO or Chairman)		Date	17 December 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