

EUROPEAN PROFESSIONAL CLUB RUGBY APPEAL COMMITTEE

Venue: Remote hearing by Zoom.
Date: Thursday 16 December 2021 at 8 pm.
Player: Bradley David Fenner Shields (“Mr Shields”)
Club: Wasps
Match: Wasps v Munster
Match Date: 12 December 2021
Match Venue: Ricoh Arena

Appeal Committee: Sir James Dingemans; Donal Courtney; Roderick Dunlop QC
Secretary: Maria Gyolcsos

Attending:

On behalf of the Player: Dave Bassett, (team manager); and Mr Shields.

On behalf of EPCR: Liam McTiernan (advocate)

Observing: Mike Hamlin (head of the independent judiciary of EPCR); and Danny Rumble (EPCR).

Decision of the Appeal Committee: The appeal of Mr Shields against the decision of the disciplinary panel dated 14 December 2021 be allowed. The disciplinary panel had upheld the red card issued against Mr Shields on 12 December 2021 for the offence of a dangerous tackle, contrary to law 9.13. The appeal committee agreed with the disciplinary panel that there was head contact, involving foul play with a high degree of danger, meaning that the red card threshold was passed unless the foul play was unintentional and there was mitigation. It was common ground that the foul play was unintentional, and the appeal committee found that the disciplinary panel was wrong to find that there was no mitigation. There was mitigation in that there was a late change in the dynamics of the tackle, due to the tackle of another player (Wasps number 7). This reduced what would have been a red card to a yellow card for the purposes of World Rugby's Head Contact Process.

DECISION

Introduction

1. On Sunday 12 December 2021 Wasps were playing Munster in the Champions Cup. Mr Shields, who was playing number 4 for Wasps, received a red card for an offence contrary to law 9.13, being a dangerous tackle on Munster number 1.
2. A (remote) disciplinary hearing took place on Tuesday 14 December 2021 before a Disciplinary Panel convened under EPCR Disciplinary Rules (“the panel”). At the hearing Mr Shields appeared and he was represented by Celia Rooney and supported by Dave Bassett, the Wasps team manager. Liam McTiernan appeared on behalf of

EPCR as the disciplinary officer, supported by Danny Rumble. Maria Gyolcsos appeared as EPCR Governance and Relations Executive.

3. The panel found that Mr Shields had not discharged the burden of showing that the referee's decision to issue the red card was wrong. They imposed a sanction of 4 weeks suspension. The coaching intervention programme was approved for the playing, meaning that if the player successfully completed the programme the sanction would be reduced to 3 weeks suspension.
4. Mr Shields appeals against the decision of the panel on the grounds that the red card threshold was not met. This was because the red card should have been reduced to a yellow card because there was mitigation for the purposes of the World Rugby Head Contact Process ("HCP") namely "a late change in dynamics due to another player in the contact", namely Wasps number 7.

The decision of the panel

5. The panel set out a summary of the reports from the referee and the assistant referee. It was apparent that the referee had seen the incident in play and had asked the TMO to show relevant camera angles. The assistant referees had not seen the incident in live play and had only seen the incident in the footage which was replayed on the screen. The summary of the referee's report is "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 fact and the force of the contact brought him to a red card". The panel recorded that there was no injury to Munster number 1.
6. The panel summarised the written and oral submissions made on behalf of Mr Shields. These submissions recorded that it was only the referee who had seen the incident, and that there was no clear contact on the images shown by the TMO. The panel recorded that it was accepted on behalf of Mr Shields that the referee's red card report was "an honest and truthful account of what he saw" but that reliance was placed on Mr Shields' account of why the referee's report was not correct.
7. The panel recorded that it was submitted on behalf of Mr Shields that there was substantial mitigation for the purposes of the HCP. The mitigating factors for the purposes of the HCP were submitted to include: "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”. Further mitigation was said to be that while the tackle was upright, the footage showed that Mr Shields was bending his knees or attempting to do so. It was submitted that “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 attempts to adjust were the best that he could manage in all the circumstances”.

8. The panel set out that Mr Shields gave evidence that he did not believe that there was any head contact (including contact with the neck or throat). Mr Shields believed that his shoulder made contact with the shoulder or chest area of Munster number 1. The panel summarised submissions made on behalf of Mr Shields to the effect that there was mitigation under the relevant World Rugby Head Contact Protocol.
9. The panel then made findings of fact. So far as is material the finding was as follows: “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 panel did not explain in its decision why there was no mitigation.

The grounds of appeal and relevant submissions

10. An appellant has the burden of showing that the decision of the panel was “(a) in error and (b) should be overturned or varied”, see paragraph 8.4.8 of the ECPR Disciplinary Rules, unless there is a de novo hearing. There was no request that there be a de novo hearing and we could see no grounds on which such a hearing should take place.
11. The ground of appeal was that the red card threshold was not met, and that the panel was in error in not taking proper account of the HCP which was intended to assist consistency in the application of sanctions.
12. Mr Bassett, on behalf of Mr Shields, recognised in his written and oral submissions that it was difficult to be certain from the footage as to the point of contact. He therefore did not challenge the panel’s decision in that respect for the purposes of the appeal. He submitted however, that the process does not stop there and raised two issues from the HCP namely “what was the degree of danger” and “is there any mitigation”.

13. As to the degree of danger Mr Bassett submitted that this was a low force collision. Mr Shields' feet were planted and the tackled player was the person making contact because he was being tackled into Mr Shields by another Wasps player, Ben Youngs. Mr Bassett highlighted the fact that Munster No.1 had not suffered any injury, and that the contact by Mr Shields was passive. The Munster No.1 had taken a limited number of steps into the stationary Mr Shields.
14. As to the mitigation Mr Bassett referred to "the extremely significant element of mitigation". So far as is material the HCP highlighted "sudden and significant drop or movement". Mitigation included "sudden/significant drop in height or change in direction from the ball carrier, a late change in dynamics due to another player in the contact, and an effort to wrap/bind and having no time to adjust". Mr Bassett said that the footage showed that Mr Young was carrying out a side on chop tackle, which caused Munster number 1 to change line and instead of being inside Mr Shields came directly at Mr Shields and contacted Mr Shields jaw. Mr Shields had reacted as best he could.
15. Mr Bassett talked through part of the footage which he said showed that Wasps number 7 tackled Munster number 1, which tackle shifted Munster number 1 to his left, altering the line at which Munster number 1 was running towards Munster number 1.
16. Mr McTiernan submitted that the panel had had all the relevant materials before them, the panel had applied the correct test, namely whether Mr Shields had shown that the referee's decision to issue the red card was wrong, and the panel had come to a reasonable conclusion on those materials.
17. Mr McTiernan accepted that the video did show that Wasps number 7 had altered the line of running taken by Munster number 1, and that the panel had not explained why that did not amount to mitigation. He submitted that the appeal committee should consider whether there was any mitigation and that the panel below had not been wrong.
18. We were very grateful to Mr Bassett and Mr McTiernan for their helpful submissions.
The failure of the panel to address mitigation for the purposes of the HCP
19. So far as is material the HCP having established that there was head contact, and that there was foul play asks the question "what was the degree of danger". If the degree of danger is high a red card is required unless: (1) the foul play was both not intentional; and (2) there is mitigation.

20. We agree with the panel that the referee was best placed to judge that there was contact with the head, namely between Mr Shields' shoulder and the throat or neck of Munster number 1. We agree that this was foul play and that there was a high degree of danger, given that Munster number 1 was going forward at some speed when contact was made in his throat and neck area. We therefore do not accept the submissions made on behalf of Mr Shields to the effect that this was a low force collision. This means that a red card was required unless the foul play was not intentional and there was mitigation.
21. It was common ground that the foul play by Mr Shields was not intentional. This means that the real issue was mitigation. Mitigation for the purposes of the HCP which might reduce a red card to a yellow card includes: "a late change in dynamic due to another player in the contact".
22. It was common ground that the footage showed that just before the dangerous tackle by Mr Shields, the line of running by Munster number 1 had been shifted to the left by the tackle by Wasps number 7. This issue had been fairly raised before the panel, but the panel simply said that there was no mitigation. The panel did not explain why the effect of the tackle of Wasps number 7 on the line of running taken by Munster number 1 was not sufficient to amount to mitigation to reduce what would have been a red card to a yellow card.
23. In our judgment the panel below was in error, for the purposes of disciplinary rule 8.4.8, in not explaining why the effect of the tackle by Wasps number 7 did not amount to mitigation to reduce the red card to a yellow card. Having looked at all of the relevant footage it is apparent that the whole dynamics of what Mr Shields was attempting to do was changed by the tackle from Wasps number 7, which pushed Munster number 1 to his left. This in turn meant that Mr Shields' made contact with the neck or throat of Munster number 1, which would not have happened but for the actions of Wasps number 7. We are satisfied on the basis of this material that there was mitigation for the purposes of the HCP which should have reduced the red card to a yellow card. We should, as a matter of fairness to the match officials, make it clear that we have had the benefit of seeing footage from different angles, and in particular the footage showing the back of Munster number 1 as he is pushed to his left by the tackle by Wasps number 7, which was not available to the match officials. In these circumstances under the HCP, the red card should have been reduced to a yellow card.

Other matters

24. In the written submissions adduced on behalf of Mr Shields reference was made to the opinions of various other persons about this tackle. Reports of these opinions do not assist any panel or appeal committee. This is because it is simply the opinion of other persons. The responsibility to make a decision, in accordance with the rules and in a fair process, is that of the panel and the appeal committee. Adducing irrelevant material does not assist either the panel or the appeal committee to undertake that task.

Conclusion

25. For the detailed reasons set out above we have allowed the appeal and consider that the red card should have been reduced to a yellow card because of the mitigation, which was a late change in dynamics due to the actions of Wasps number 7.

Sir James Dingemans
Donal Courtney
Roddy Dunlop QC
17 December 2021