

EPCR SHORT JUDGMENT FORM

Match	Brive	Vs	Saracens
Club's Country	France	Competition	Challenge Cup
Date of match	8 th April 2022	Match venue	Brive
Rules to apply	EPCR Disciplinary Rules 2021/22		

PARTICULARS OF OFFENCE

Player's surname	Muller	Date of birth	November 25, 1993
Forename(s)	Axel	Plea	Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Brive		
SELECT: Red card <input checked="" type="checkbox"/>	Citing <input type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	9.13 – dangerous tackle		
Summary of Sanction	5 weeks' suspension		

HEARING DETAILS

Hearing date	14 th April 2022	Hearing venue	Via Zoom
Chairman/JO	Samantha Hillas QC (England)	Panel member 1	Andrea Caranci (Italy)
Panel member 2	Val Toma (Romania)	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:

Neil Robertson	Jeremy Davidson, Brive Director of Rugby
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List of documents/materials provided to player in advance of hearing:

- Notice of Hearing
- Red card report – Mike Adamson
- Brief statements from both assistant referees (Graeme Ormiston and Ian Kenny) and TMO Sam Grove-White all dated 11th April 2022
- Medical statement from Laura Tulloch, Head of Medical at Saracens dated 8th April 2022

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

From the red card report:

"Saracens were attacking into the Brive half. After reviewing with the TMO, Brive 15 tackled the Saracens

player making direct contact with his shoulder to the head of the Saracens player. The tackler made the tackle in an upright position therefore I deemed him at fault. The degree of danger was high and there was no mitigation. Red card was issued."

The Panel were provided with footage of the incident. The footage shows that:

- Saracens 23 runs at a constant speed from the moment he gets the ball just before the half-way line and until his second stride after crossing the 10 metre line
- From that moment onwards, Saracens 23 starts preparing himself to offload the ball and slows down. The fact his next stride is shorter than the previous one is clearly visible. At this point there is approximately 8 to 10 metres between the Player and Saracens 23
- At the point Saracens 23 moves his arms sideways to offload, there remains at least 3 metres between him and the Player

- Not only did the Player make the tackle in an upright position as set out in the red card report, he jumped into the tackle, coming off his feet whilst making contact with the victim player's head and neck area.

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

The medical statement provided on behalf of the victim player (Ben Harris) reported immediate soreness around his throat and jaw but that he continued and finished the game and no follow-up issues have been reported.

SUMMARY OF PLAYER'S EVIDENCE

The Player provided a letter dated 12th April 2022 and gave oral evidence to the Panel. The Player's evidence in summary was:

- There was a turnover and all of a sudden, the Saracens player broke through the line. He was defending in his 22 and went to tackle before the Saracens player gave ball away
- At the moment of impact, he realised he was too high and his technique should have been better – that is not normally how he tackles
- Although he wrapped my arms, he knew he was high but he had no intention of hurting the player and was relieved he was OK afterwards
- In response to the Panel's questions about his intention given that he actively jumped into the tackle when he had enough time and space to adjust his position, the Player said that he did not see the other player slowing down, it all happened very quickly, it was the end of game, everything came so fast and he felt there was no time to duck down. He accepted however that he made a very quick decision, he tried to collect his energy as much as he could because he was tired and as a result he jumped into the tackle. There was definitely no intention to hurt the player.

On behalf of the Player, Mr Davidson (DOR) said in summary:

- The player has played for Brive for 4 years, speaks English, Spanish and French
- He is a key player - a leader and makes sure everyone looked after in our sport
- He has been exemplary on field
- He has had no previous cards in the past
- He feels guilty for playing him out of position where he was under a lot of stress after 80 mins of running around against the Saracens first team
- He is disappointed that unfortunately the Player was tired and tackled high but this was out of character
- Axel is someone we count on
- He has 2 years left on contract here and the club is very proud of everything he has done at Brive since he has been here

Submissions on behalf of the Player by Mr Robertson can be summarised as:

- Axel is 28 years old

- He is a big lad 1m 86cm and 94kg. Selected Argentina u20s in 2013, Argentina 7s and couple of selections for Argentina national team. In France since 2016 first with Toulon and at Brive since 2018 (4 years)
- The incident took place at the end of a difficult game for Brive, in the 70th minute.
- He was playing full back - not his usual position as usually on the wing and found himself in this case as the last line of defence against 3 large Saracens players threatening to score a try
- Saracens already leading 41-5
- Brive were playing young team as they are focussing on avoiding any chance of relegation from top 14 (currently in 12th position 7 points above Perpignan)
- Axel on field since beginning of game, naturally very tired having regard to the score line
- Saracens wingers came on c10 mins before the incident
- The Player has not contested the red card
- It was not intentional. It was reckless: poor tackle technique
- The Player has already confirmed in his letter that there was no intention to hurt the Saracens winger and fortunately Ben Harris not hurt – he went down because there was a clash but he got up and was able to play on
- The medical report says that Ben Harris continued in the game, finished the game and no issues were reported. It is expected that he will train this week and is available for selection
- Saracens won 5-55
- The Player accepted the red card immediately and left the pitch
- Our view is that this is definitely mid-range and that the Player's actions are not intentional. He was definitely intending to make a legal tackle, trying to wrap the other player, trying to prevent him passing the ball. The ball was in fact passed and a score tried
- Saracens have confirmed that Player apologised to Ben Harris after the match
- There is a very good relationship between the two clubs
- Reiterated again that this was a tough match; Axel is a senior player; he was surrounded by young academy players; it was a home game and they were getting a good beating; he was fatigued; he was out of position; he is not often last line of defence involved in this kind of confrontational tackle; it was three big people against one
- The mechanism of jumping into the tackle looks curious; there was good visibility, but this was bad tackle technique

FINDINGS OF FACT

The Player admitted the foul play and did not seek to challenge the contents of the red card report.

The Panel has to consider whether the foul play was intentional or reckless, as asserted by the Player.

The Panel finds that the foul play was intentional:

1. The Player was in a good position for the tackle, about 8 to 10 metres away when Saracens 23 starts to slow down and remaining at least 3 metres away when Saracens 23 starts moving his arms with a view to offloading the ball.
2. The tackle takes place after Saracens 23 offloads the ball.
3. The Panel finds the Player had sufficient time and space throughout the incident to have the option of either (a) avoiding the tackle entirely or, at the very least, (b) adjusting his position before the tackle.
4. Whilst the Player was tired at the end of a hard game (as reflected by the score line) and was playing out of position, the Panel does not find that this was simply a case of poor tackle technique caused by the Player's fatigue:
 - a. The Player accepts that, at the moment of impact, he was too high in the tackle. The Panel's finding that the Player had sufficient time and space to avoid the tackle and/or adjust his position leads naturally to a finding that the Player was aware *before* the tackle that he was too high and had time to adjust;
 - b. Poor tackle technique/fatigue might, in the Panel's view, have led to the Player failing to drop down low enough for a legitimate tackle. However, it does not explain the Player's positive action in jumping off his feet into the tackle;
 - c. The Player's case was that he summoned up his reserves of energy to consciously make what he knew was likely to be a try-saving tackle and he accepts he did jump into the tackle;
 - d. If a Player jumps into a tackle, the most likely outcome is that he will make contact with the upper body of the ball-carrier. There is a real likelihood that the Player will make contact with the head or neck area of the victim player and this will result in a dangerous tackle;
 - e. As a consequence, the Panel finds that the Player intended to tackle dangerously by jumping into the tackle;
 - f. The degree of danger is compounded by the Panel's finding that the Player could have avoided the tackle entirely.
5. The fact the Player did not intend to cause injury to the victim player (which the Panel accepts) is irrelevant to the issue of whether he intended to tackle dangerously, as is the fact the victim player was, thankfully, not injured.

DECISION

Breach admitted Proven Not proven Other disposal (please state below)

SANCTIONING PROCESS

ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 7.8.32 (a)-(b)	
PLEASE TICK APPROPRIATE BOX	Intentional/deliberate <input checked="" type="checkbox"/> Reckless <input type="checkbox"/>
State reasons	
See above.	
Gravity of player's actions – R 7.8.32 (c)	
The Player intentionally jumped into a tackle with the likely consequence of making contact with the victim player's head and neck area. The victim player had slowed and turned to offload the ball prior to the tackle, so did not anticipate the tackle	
Nature of actions – R 7.8.32 (d)	
See 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)	
The victim player went to ground but was assessed on field as fit to play	
Effect on match – R 7.8.32 (i)	
None	
Vulnerability of victim – R 7.8.32 (j)	
The victim player was not anticipating the tackle as he had already slowed/turned to offload the ball	
Level of participation/premeditation – R 7.8.32 (k)	
Full participation	
Conduct completed/attempted – R 7.8.32 (l)	
Completed	
Other features of player's conduct – R 7.8.32 (m)	

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 checked="" type="checkbox"/>	10	<input type="checkbox"/>	<input type="checkbox"/>
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*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
The Panel found that this was a top end entry point due to the intentional nature of the dangerous tackle, the high likelihood that it would result in contact with the victim player's head and neck area and the consequent potential for serious injury to the victim player. However, the Panel took into account the Player's evidence that he was tired at the end of a very hard game and was playing out of position which, whilst not in any way excusing the intended dangerous tackle, may go some way to explaining his very poor decision-making, to jump off his feet into a high and dangerous tackle. The Panel also took into account the fact the victim player was not injured, that he continued until the end of the game and there are no ongoing ill effects from the incident. Taking into account those factors led the Panel to determine that the starting point of the range for top end offences (10 weeks) was a proportionate and justified sanction.

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)
The Player confirmed as the earliest opportunity that he accepted the offence of foul play offence. Although the Panel disagreed with the Player's case that the foul play was unintentional, the Player was frank in his evidence about the fact he jumped into the tackle and regretted it.	Clean disciplinary record.
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
Very experienced player. See submissions of Mr Robertson.	Extremely courteous during the hearing; frank in responses to questions from the Panel.
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)
The Player apologised to the victim player after the game and continued to express his remorse to the Panel that the incident occurred.	

Number of weeks deducted: 5

Summary of reason for number of weeks deducted:
The player has a clean playing record and the Panel were prepared to accept this incident was out of character for the Player. The Panel took the view the maximum mitigation was merited.

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)

n/a
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: 0

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)	5	Sending off sufficient <input type="checkbox"/>	
Sanction commences	8 th April 2022	Costs	
Sanction concludes	See below		
Free to play	See below		

The Player has four meaningful games for Brive left this season (23.04.22, 30.04.22, 21.04.22 and 04.06.22). Depending on performance in those games, there may be a play off match on the weekend of 11th June which would count towards the Player’s suspension. If Brive are not in the play off, they shall communicate directly with EPCR as to the fifth game of the Player’s suspension. Any disputes as to whether it is a meaningful game may be referred to the Panel.

The Player has also applied to be permitted to replace the last match of his suspension with coaching intervention as part of the Coaching Intervention Programme. This is a matter for World Rugby. EPCR has not objected to the application. The Panel takes the view that notwithstanding the finding that the foul play was intentional, coaching intervention would nevertheless assist the Player and would support the application.

Signature (JO or Chairman)	SAMANTHA HILLAS QC	Date	14 TH APRIL 2022
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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