

## EPCR SHORT JUDGMENT FORM

Match	Toulouse	Vs	Ulster
Club's Country	France	Competition	Heineken Champions Cup
Date of match	9 April 2022	Match venue	Stade Toulousain
Rules to apply	<b>EPCR Disciplinary Rules 2021/22</b>		

### PARTICULARS OF OFFENCE

Player's surname	Mallia	Date of birth	11.09.1996
Forename(s)	Juan Cruz	Plea	Admitted <input type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Toulouse		
SELECT:	Red card <input checked="" type="checkbox"/> Citing <input type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	Law 9.17 A player must not tackle, charge, pull, push or grasp an opponent whose feet are off the ground.		
Summary of Sanction	4 weeks		

### HEARING DETAILS

Hearing date	13 April 2022	Hearing venue	Remote by zoom
Chairman/JO	Sir James Dingemans	Panel member 1	James Corsi
Panel member 2	Becky Essex	Disciplinary Officer	Maria Gyolcsos
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.	Didier Lacroix, President. Jean-Luc Brumont, General Director. Ugo Mola, Head Coach. Jerome Cazalbou, High Performance Manager.
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List of documents/materials provided to player in advance of hearing:

<p>The footage. The reports from the referee and assistant referees. The medical evidence emailed by Ulster.</p>
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### SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/FOOTAGE

<p>Wayne Barnes said: "In the 10<sup>th</sup> minutes of the match, Toulouse number 9 kicked the ball from approximately 10 metres outside of his own 22m. The Ulster 11 jumped to catch the ball and as he did, he was played by the Toulouse 14. I immediately blew my whistle and stopped the game. I reviewed the footage of the incident on the big screen. I saw that Toulouse 14 was not in a realistic position to compete for the ball. He played the Ulster player while both of his feet were off the ground. The Ulster 11 landed on his neck/head. I therefore issued a red card. The Ulster 11 was removed for a HIA. He did not return. Following the match, the Toulouse 14 came into my changing room, apologised for the incident and explained that he had not meant to play the player in the air.</p> <p>Anthony Woodthorpe, assistant referee, said: "after a box kick by T9, I observed T14 taking U11 out in the air. Wayne immediately stopped the game and we reviewed the footage. It was clear that T 14 was never in a position to compete them all, had taken U11 out in the air, causing U11 to land on his head neck area. I then agreed with Wayne that the actions of T14 warranted a red card."</p> <p>Christopher Ridley, assistant referee, said: "the ball was kicked by T9, T 14 then made contact with U11 whilst U11 was jumping to catch the ball. The game was stopped and together we reviewed the footage. T14 was never in a position to compete for the ball, U11 consequently landed on his neck header area. Wayne agreed that the actions of T 14 warranted a red card." ,</p> <p>Tom Foley, the TMO said: "it was apparent immediately that the incident would need to be formally checked. We reviewed it and it was clear that T 14 was never in a realistic position to compete for the ball, made contact with the Ulster player while he was jumping for the ball and the Ulster player landed on his head/neck area. I concurred with Wayne's decision of a red card."</p>
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The footage showed that at 10.05 minutes in to the game the Toulouse number 9 kicked a high ball from the back of the ruck which is chased at speed by the player, who is Toulouse number 14. Ulster number 11 ran forward and jumped to catch the ball. The player ran through a screen of three Ulster players, and ran and jumped nearly underneath the legs of the airborne Ulster number 11, making contact around the area of the thighs of Ulster 11, which flipped the Ulster number 11 in the air. The player was never in a position to catch the ball. Ulster number 11 fell to the ground making contact with the side of his head, neck and shoulders.

Mr Robertson, on behalf of the player, showed a short clip on which various matters had been highlighted. This showed that the player started to chase the kicked ball, that there was a line of three Ulster players running back, and everyone was looking at the ball in the air. The distance between the two Ulster players varied from 3.4 metres to 2.3 metres when the player ran through the gap to jump for the ball and at the same time he was confronted by Ulster 11 who was already jumping to catch the ball. The player attempted to stop but he had overrun the ball under Ulster 11 before jumping, making contact with Ulster 11 when Ulster 11 was in the air.

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

The medical evidence was reported by email. It was to the effect that there was immediate concern about a neck injury. The fact that there was no neck injury was confirmed on the pitch and Mr Moxham was taken off the pitch for a head injury assessment ("HIA"). He failed the first HAI and did not return to play. After the game his HIA2 was normal. On reviewing the footage the Ulster medical team felt it likely that Mr Moxham had sustained a brief loss of consciousness and exhibited tonic posturing pathogenic of concussion. He therefore was managed as a criteria 1 removal and followed the concussion graduated return to play. Mr Moxham missed the game on 16 April 2022 (as well as 69 minutes of the match against Toulouse) but will be fit to play in the game on 23 April 2022.

### **SUMMARY OF PLAYER'S EVIDENCE**

The player accepted the match officials reports as accurate, that there was foul play, and that his actions merited a red card. The player said: "I had no intention to touch Ben [Moxham] in the air or cause injury to him. My intention, all the time, was to contest the ball in the air. The situation was a high kick from our scrum-half. When I saw the kick I realised that it would be a good ball to contest so I started running faster to arrive in a good way to jump for the ball. During my run to the ball, I had to pass the first defensive line of the rival team. There were three Ulster players in front of me. They didn't impact on my run but I had to run fast to get past them and get to the ball. They blocked my view of the Ulster 11 until I was past them. At all times, I was looking at the ball, which was high in the air. When I was arriving, having passed through the three players in the defensive line and preparing to jump, I realise that Ben had already jumped and was above me. I had no chance to stop or to move away because I was coming too fast, there was only a split second until the impact and the situation surprised me."

The player said how he had been concerned for Mr Moxham, had accepted the red card, and had checked how Mr Moxham was at half time. He had apologised to Mr Moxham then, and at the end of the game. The player said that he was very sorry that he had made contact with Mr Moxham in the air. The player was relieved that Mr Moxham would be able to play this coming weekend, and the player had maintained contact with Mr Moxham after the match.

Mr Robertson said that it was a blustery day which affected the ball. Mr Robertson referred to a graph showing that the player had reached a maximum speed of 30 km/h before decelerating before impact to 14 km/h (a decrease of more than 50 per cent). There was no reaction from the Ulster players.

### **FINDINGS OF FACT**

There was a high kick which the player chased. Ulster number 11 ran towards the ball to jump to catch it. The player ran at speed passing in a gap between three Ulster players, while watching the ball, before decelerating in the second before impact. It is apparent that the player had not seen Ulster number 11 until just before the impact, although we find that it was always probable that an Ulster player would compete for the ball and that the player should have expected that. The player was nearly underneath Ulster number 11 as he jumped for the ball, and he was never in a position to compete for the ball given the position of Ulster number 11 in the air. We find that the player did not intend to take out Ulster number 11 in the air, but there was a high degree of recklessness on the part of the player, because it was probable that an Ulster player would have been jumping to catch the ball, and the player should have expected that. There was no reaction from other players suggesting that they recognised that the player had not intended to take out Ulster number 11 in the air. This act of foul play resulted in Ulster number 11 being flipped in the air and coming from height to the ground making contact with the side of his head, neck and shoulders, and there was therefore a high degree of danger. We find, given the medical evidence, on the balance of probabilities that Ulster number 11 suffered a momentary loss of consciousness. Ulster number 11 failed a HIA and had to miss the next week's game. He has since made a full recovery and will play this weekend.

### DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/> Not proven <input type="checkbox"/> Other disposal (please state below) <input type="checkbox"/>
	We found that there was a breach of law 9.17 in that the player had tackled Ulster number 11, whose feet were off the ground.

### SANCTIONING PROCESS

### YOU 11 OUT IN THE AIR. ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 7.8.32 (a)-(b)
<b>PLEASE TICK APPROPRIATE BOX</b> Intentional/deliberate <input type="checkbox"/> Reckless <input checked="" type="checkbox"/>
State reasons
We accepted the player's evidence that he did not intend to tackle Ulster number 11 in the air, and it was apparent from the footage that it was not intentional offending. There was a high degree of recklessness because Ulster number 11 was in the air and the player made contact with him when he was not in a position to catch the ball.
Gravity of player's actions – R 7.8.32 (c)
There was a high degree of danger because Ulster number 11 had been flipped in the air, and landed on the side of his head, neck and shoulders.
Nature of actions – R 7.8.32 (d)
As described above.
Existence of provocation – R 7.8.32 (e)
There was no provocation.
Whether player retaliated – R 7.8.32 (f)
There was no retaliation.
Self-defence – R 7.8.32 (g)

There was no self defence.
Effect on victim – R 7.8.32 (h)
Ulster number 11 landed on his head, neck and then shoulders. He has suffered no lasting injury.
Effect on match – R 7.8.32 (i)
There was no reaction from the other players. The player was sent off.
Vulnerability of victim – R 7.8.32 (j)
Ulster number 11 was in the air and therefore vulnerable.
Level of participation/premeditation – R 7.8.32 (k)
The player was chasing forward to catch the ball, and did not intend to tackle Ulster number 11 in the air.
Conduct completed/attempted – R 7.8.32 (l)
The conduct was completed.
Other features of player’s conduct – R 7.8.32 (m)
None relevant.

**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"/>	8 weeks	<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
<p>We have not selected an entry point above top end. The reasons for selecting the mid-range entry point are as follows. First, this action involved a high degree of recklessness, because although the player did not see Ulster number 11 until the last moment, the player should have anticipated the presence of an Ulster player competing for the ball. Secondly this action involved a high degree of danger, because Ulster number 11 was flipped in the air and came down from height on to the side of his head, neck and shoulders. Thirdly Ulster number 11 suffered a momentary loss of consciousness, he failed his first HIA and had to miss 69 minutes of the first game, and he was not fit to play the week after the match. (He is now fit to play).</p> <p>We note that although the sanctions table provides that any act of foul play which results in contact with the head shall result in at least a mid-range entry point sanction. That might literally be read to require a mid-range starting point in this case because there was contact between the head of Ulster number 11 and the ground. This, however, is not the approach which has been taken to the mandatory minimum mid range entry requirement in other cases. The mandatory minimum mid range entry requirement has been interpreted to apply to contact between the tackler and the head of the tackled player, see <i>Lovotti v World Rugby</i> 7 October 2019. This meant that we were</p>

able to choose a low-end, mid-range or top end entry point, but we chose the mid-range entry point for the reasons given.

### ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

Player's status as an offender of the Laws of the Game – R 7.8.34 (a)

The player has a good disciplinary record apart from one red card in July 2021 for a dangerous high tackle.

Need for deterrence – R 7.8.34 (b)

This is already included in the sanctions table.

Any other off-field aggravating factors – R 7.8.34 (c)

None relevant.

Number of additional weeks: 0 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)
The player accepted his fault, on the pitch and afterwards. The player apologised to Ulster number 11 and to the referee.	The player has a good disciplinary record apart from one red card in July 2021 for a dangerous high tackle.
Youth and inexperience of player – R 7.8.35 (c)	Conduct prior to and at hearing – R 7.8.35 (d)
Not relevant.	The player co-operated fully with the disciplinary process.
Remorse and timing of remorse – R 7.8.35 (e)	Other off-field mitigation – R 7.8.35 (f)

The player was sorry for his actions and apologised as soon as he could.	
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Number of weeks deducted: 4 weeks.

Summary of reason for number of weeks deducted:
The player was entitled to credit for his apology, acceptance of the foul play, and co-operation with the process. We noted his red card in July 2021 but also recorded that this red card was against the background of a good disciplinary record throughout his player career. In the event we considered that the player should be given full credit, which cannot exceed 50 per cent, see 7.8.35 of the Disciplinary Rules 2021/22.

**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 weeks.	Sending off sufficient <input type="checkbox"/>	
Sanction commences	9 April 2022.	Costs	
Sanction concludes	8 May 2022.		
Free to play	9 May 2022		

Signature (JO or Chairman)	James Dingemans	Date	20 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