

## EPCR SHORT JUDGMENT FORM

Match	<b>ASM Clermont Auvergne</b>	Vs	<b>Leicester Tigers</b>
Club's Country	<b>England</b>	Competition	<b>Heineken Champions Cup</b>
Date of match	<b>10 April 2022</b>	Match venue	<b>Stade Marcel Michelin</b>
Rules to apply	<b>EPCR Disciplinary Rules 2021/22</b>		

### PARTICULARS OF OFFENCE

Player's surname	<b>PORTER</b>	Date of birth	
Forename(s)	<b>GUY</b>	Plea	Admitted <input type="checkbox"/> <b>Not Admitted</b> <input checked="" type="checkbox"/>
Club name	<b>Leicester Tigers</b>		
SELECT: <b>Red card</b> <input checked="" type="checkbox"/>	Citing <input type="checkbox"/> Other (specify) <input type="checkbox"/>		
Offence	<b>Reckless or dangerous play towards an opponent contrary to Law 9.11</b>		
Summary of Sanction	<b>Three (3) weeks suspension</b>		

### HEARING DETAILS

Hearing date	<b>13 April 2022</b>	Hearing venue	<b>By Zoom</b>
Chairman/JO	<b>Roger Morris</b>	Panel member 1	<b>David Humphreys</b>
Panel member 2	<b>Frank Hadden</b>	Disciplinary Officer	<b>Liam McTiernan</b>
Appearance Player	<b>Yes</b> <input checked="" type="checkbox"/> No <input type="checkbox"/>	Appearance Club	<b>Yes</b> <input checked="" type="checkbox"/> No <input type="checkbox"/>

Player's Representative(s):

Other attendees:

<p><b>John Shea (Lewis Silkin), Solicitor</b> <b>Leigh Jones, Leicester team manager</b></p>	<p><b>Mike Hamlin, observing.</b> <b>Maria Gyolcsos, EPCR</b></p>
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List of documents/materials provided to player in advance of hearing:

- i. Match Official Report (Red Card) from Nika Amashukeli (Referee).
- ii. Match Official Report (Red Card) from Brian MacNeice (TMO).
- iii. Email from Craig Evans (Assistant Referee), (AR)
- iv. Letter from Liam McTiernan reporting Red Card to Mike Hamlin.
- v. Letter from Mike Hamlin (Chairman of the Judicial Panel) convening the Hearing.
- vi. Email from Mr Shea setting out the Player's responses to the Standard Directions.
- vii. Letter from Dr Remi Gaulmin confirming the medical condition of Fritz Lee (C8) accompanied by a photograph of his sutured forehead.
- viii. Letter of reference from Steve Borthwick on behalf of the Player.
- ix. Email from Leicester Tigers' Medical Lead confirming medical condition of the Player.
- x. Video footage of the relevant incident.

Mr Shea supplied additional footage.

The Chair established there were no preliminary matters that either party wished to raise; that there were no objections to the constitution of the Committee and that the parties agreed the Hearing would be conducted in accordance with the Disciplinary Rules currently applicable to the Tournament.

The Chair explained to the Player the nature of the allegation of foul play made by the Referee and noted that in his responses to the standard directions the Player said that he wished to contest the issuing of a Red Card. He confirmed that remained his position. The first function of the Hearing, therefore, was to examine all the evidence so that the Committee could determine whether the Red Card should be upheld.

Under the Tournament Rules, the burden of proving (on the balance of probabilities) that the Referee was wrong, rests with the Player.

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

In their Reports the Referee, the TMO and the AR made, respectively, the following observations:

### The Referee

*"Clermont were attacking from their own half when Tigers N13 who was coming from a distance made a contact with an opponent not having a ball. After consulting a TMO we, I deemed the act as a reckless because there was direct head contact and the Tigers N13 did not have a control in his action, therefore with having no mitigation, I issued the Red Card."*

### The TMO

*"Clermont were in possession inside their own half. As the C#10 was carrying the ball, the Leicester #13 advanced and made contact with the Clairmont #8 off the ball. I saw clear head on head contact and alerted the Referee to this and I instigated a formal TMO Review.*

*Upon Review the Referee issued a Red Card"*

### The AR

*"I was standing right next to Nika when looking at the big screen and what he has in his Report is exactly what I saw too. I contributed to the conversation before the card was issued so what's written down reflects by view also."*

The video showed Clermont in possession of the ball in mid field between their 22 metre line and the halfway line. A Clermont player retained possession in the tackle and made it available to C9 who passed it to the right and to C10. C10 made to pass it on to C8 but instead dummied a pass, ran to his right and passed to a different Clermont player. He appeared to dummy the pass because the Player threatened the Clermont attacking line. At that point the Player collided with C8. The Referee stopped play, considered the incident with the TMO and the AR and ordered the Player off the field by issuing a Red Card.

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

Dr Remi Gaulmin confirmed that C8 had been struck to the side of his forehead above and slightly to the right of his right eye. As a consequence of the collision C8 suffered a cut which required 12 stitches. Dr Gaulmin had attached a photograph of C8's sutured cut.

Dr Gaulmin confirmed that C8 had undertaken all HIA protocol examinations and that he had not suffered a concussion as a consequence of the collision.

The letter produced by Mr Shea from Joe Barton of the Leicester Tigers' Medical Team confirmed that the Player had also not suffered any concussion (or other injury) as a consequence of the collision with C8.

## SUMMARY OF PLAYER'S EVIDENCE

By reference to the video footage, Mr Shea asked the Player to give his explanation of what move he was attempting to execute in the lead up to the collision with C8. The essence of that explanation was as follows:

- Confronted with a situation in which Clerrmont were moving the ball to their right where they had a numerical advantage and a potential overlap for their most dangerous attacking player, the Player chose a defensive strategy which involved him using his "line speed" to threaten intercepting C10's potential pass and in making that threat, to disrupt Clerrmont's attacking line and to put the skills of C10 under pressure.
- He did not have any intention of tackling C8 although but was trying to make things as difficult as possible for Clerrmont's attacking intentions.
- What he tried to achieve was a strategic risk but not a physical risk to him or an opponent
- He ran at an angle of 45 degrees to his team's defensive line with his eyes focussed on the ball.
- He considered that the line run and the position adopted by C8 was unusual and he did not think that C8 was coming into the same space as he was. He was surprised at the flatness of C8's position.
- He had not sought contact and did not think there was anything he could have done to prevent the collision.
- He considered his defensive decision justified. It was an approach to his defensive duties that he had used many times – even in that game itself.
- He had not seen a collision such as this previously in which two players, both with eyes concentrating on the ball, did not see each other and collided.
- As far as he was concerned what happened was completely unintentional and a total accident.
- Both players had left the field and he had spoken to C8 in the tunnel. He had explained that what happened was an accident and C8 appeared to accept that.

Questioned by members of the Committee the Player gave the following responses:

- He ran at an angle to C8's line of approach because of the nature of what he was trying to execute and the place from where he started
- Because of the opposition numbers stacked to his left and their right and knowing that the Clermont players towards their edge were calling for the ball, he expected that they would try to pass the ball along the line. In that context C8's line was not what the Player had expected.
- He did not immediately before contact turn towards C8. The impression that he might have done was created by his weight loading being on his front, right foot as he tried to decelerate when he realized the ball was not being passed by C10 as he had first anticipated.
- It was only at that point that he was aware of the presence of C8 and by then there was no chance of him stopping.
- The force of the contact was not as strong as it might have been if his intention had been to tackle. In this case he was decelerating and that deceleration reduced the force of the contact.
- He did not think his actions were reckless given the nature of the task he was trying to achieve

- The outcome was unfortunate but it was not because of the Player's recklessness. He agreed that had he been in C8's shoes, he would have wanted a full explanation for the collision but would have accepted an explanation that the collision was an accident. When earlier he had referred to a "difficult skill" he was not referring to his own skills but to the longer pass C10 would need to execute if the Player's strategy had worked.
- He did not accept his actions were reckless because the defensive strategy was there to be executed. He did not accept that a different defensive strategy was likely to be an effective alternative – not only were his team outnumbered but one of the members of the defensive line was a prop who was unlikely to be an effective tackler.
- Coming off his line at speed was, he felt, a justifiable strategy to avoid the potential overlap and prevent Clermont making any ground towards his team's line.

Mr Shea made submissions on behalf of the Player and emphasised some of the points made by the Player and noted above..

The Player's initial, justifiable, strategy was to use line speed to attempt to intercept C10's expected pass or otherwise disrupt Clermont's attacking line to try to prevent an overlap. He could not, argued Mr Shea, have foreseen the possibility of committing a foul as he set himself towards Clermont's attack with legitimate intention. He was not seeking to dominate an opponent and this was very different from a tackle situation. At the point where a collision became inevitable there was nothing the Player could do to prevent it other than trying, as he did, to decelerate and raise his arms in a defensive manner. It was an unavoidable, freak accident. Rugby is a game of collisions and to expect zero risk was unreasonable.

Mr Shea pointed to the cases of Flannery, Leo and Bean as examples of judicial decisions that recognised the possibility that accidents could occur and suggested the circumstances of the current case fitted the definitions of accidents set out in those different decisions.

Mr Shea went on to argue that even if not an accident and therefore a foul, the collision was not so serious as to warrant the issue of a Red Card.

The Player had not been attempting to tackle or to collide with C8 at all. His actions had been passive and not dominant and he had done all he could to avoid a collision.

He reiterated that this was an unfortunate, freak accident that should be treated as such.

## FINDINGS OF FACT AND DECISIONS

The Committee, in private, carefully considered all they had seen and heard and reminded themselves that the standard of proof applicable to their factual determinations is the balance of probabilities.

It was evident that there had been a collision between the Player and C8 and accepted by all parties that there was head to head contact between the two players and that contact had caused the injuries described by Dr Gaulmin.

The Committee was satisfied that whatever happened, there was no deliberate intent on the part of the Player to commit a foul.

They were left therefore to decide whether the collision between the Player and C8 was an accident (and therefore not a foul) or the consequence of actions on the part of the Player that were, in Rugby's terms, reckless. Did he know (or should he have known) that in doing what he did there was a risk of him committing an act of foul play?

In arriving at their decision, they came to the following conclusions.

- The Player, in his defensive line, confronted by a Clermont attacking line with superior numbers, chose to use his line speed in an attempt to disrupt Clermont's potential attacking move. It was a choice between alternatives and not the only option available to him. He chose not to stay in the defensive line and to try and organize it to counter Clermont's attacking threat.
- The Committee accepted that the Player may have aimed to intercept the ball but on his own testimony that was not his sole intention. He said that he was seeking to disrupt the Clermont attacking line and at least hoped to cause C10 to use a more difficult skill (a longer pass) with its greater potential for going wrong.
- That aim was at least in part achieved because C10 did not pass, as originally expected, to C8
- The Committee did not accept that C8 was, as the Player said, in an unusual or unexpected position. He was fully within the sight of the Player when the Player started his advance and the pass the Player said he sought to intercept could only have been a pass from C10 to C8. The Player would therefore, at some point, intersect the line between C10 and C8. The Player's initial direction of running meant that the intersection would inevitably be close to C8 and within the space he would foreseeably occupy.
- C8 was neither in an unusual position nor running an unusual line. He was in a space the Player should have expected him to occupy. The Committee could not accept that the Player was unaware of C8's presence
- Indeed, the Player's actions in charging into that space he could have expected to be occupied by C8, achieved one of his aims, namely that he caused C10 to hold back on his initial pass and to make a different pass to a different player.
- The Player chose to run at speed and at an acute angle into a space occupied by C8 and at the very least was likely to obstruct C8's path and that in itself would have constituted foul play.
- In the Committee's estimation the Player could and should have been aware that opponents would be occupying the spaces into which he was running and doing so at such speed and at an acute angle constituted a reckless act. The contact he made with C8 was an act which was correctly categorized by the Referee as a foul.
- The Player claimed that what happened was an unavoidable accident which occurred following his justifiable strategic decision to use line speed as a means of disrupting his opponent's attack. The Committee did not agree. They considered that the speed and angle of approach, deliberately aimed at disrupting the Clermont attacking line when, at least at the start of his actions, he was aware of the position of the Clermont defender, constituted a recklessness that made his collision with C8 a foul. The fact that his original intention may have been to intercept the ball and avoid collision did not alter that position. The Player, in Rugby's terms, should have known that what he was doing risked him committing a foul. It would have been a Rugby accident if, for example, he had unexpectedly tripped and the trip had caused the collision.

Having determined that the Player had committed a reckless act of foul play, properly charged under Law 9.11, the Committee considered the seriousness of that foul play by reference to the head injury protocol.

Although the Player attempted to reduce his speed the collision was nevertheless a heavy collision. There was contact between the Player's and C8's heads. Although neither player suffered a concussion and although the seriousness of the collision may not have been as much as if there was an attempted tackle, it was nevertheless sufficiently powerful as to cause C8 to be so badly cut that his wound required 12 stitches. The strength of the collision that caused the clash of heads was more than sufficient, in the Committee's estimation, to justify the issue of a Red Card.

The Hearing was re-convened and the Committee's decision relayed to the Player and the parties.

Accordingly, the final task of the Hearing was to determine the appropriate level of sanction. Mr Shea was invited to make his submissions on behalf of the Player.

He pointed to the fact that neither player involved suffered a concussion and although there was an unfortunate cut to C8's head, he suggested the seriousness of what had occurred merited a mid-range entry point. He acknowledged that the head contact between the players removed the option of a low-end entry point. He urged that the Committee should not consider the top-end starting point for sanction.

In terms of mitigation, he suggested that all relevant mitigating factors were present except, perhaps, an acknowledgement on the part of the Player that the Red Card was correctly issued. He suggested that the unusual nature of the case might lead the Committee to conclude that the Player was justified in challenging the Referee's decision.

Mr Shea applied, on behalf of the Player, for a coaching intervention to be applied.

Mr McTiernan explained the practicalities of the coaching intervention protocols.

The Player had nothing further to add of relevant to the Committee's considerations.

The Hearing was further adjourned and the Committee discussed, in private, what sanction should be imposed properly to reflect the seriousness of the Player's offending.

The Committee agreed, for the reasons set out below, that the seriousness of the foul in question merited the mid-range entry point. They noted that under World Rugby directives, the Low End entry point was not, in any event, an available option. They accepted that, despite the injury to C8, the Top End entry point was not appropriate.

The Committee decided to award full available mitigation notwithstanding the fact that the Player had challenged the issue of the Red Card. In doing so the Committee accepted that this was an extremely unusual case involving a judgement as to whether a Player's actions were accidental or reckless. Apart from deliberate, there are no other nuances available to Rugby interpretation. The Committee accepted that the line between accident and reckless is a fine one and the Player should not be penalised further for maintaining his actions were the accidental side of that fine line.

When the Hearing was re convened, the Committee delivered their decision, confirmed they would accept an application for a coaching intervention and, finally, reminded the parties of their right to appeal the Committee's decision.

### 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 type="checkbox"/> <b>Reckless</b> <input checked="" type="checkbox"/>
State reasons
The Player did not deliberately commit a foul. The foul committed was the consequence of a reckless attempt to perform a legitimate manouvre
Gravity of player's actions – R 7.8.32 (c)
There was contact head on head but neither player suffered a concussion. The opponent required 12 stitches to a cut to his forehead.
Nature of actions – R 7.8.32 (d)
Charging at speed towards the opponent's attacking line and colliding with C8 who was not in possession of the ball.
Existence of provocation – R 7.8.32 (e)
None
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 (and the Player) left the field but neither suffered a concussion although C8 required 12 stitches to a cut on his forehead
Effect on match – R 7.8.32 (i)
The Player's team was reduced to fourteen men but otherwise none
Vulnerability of victim – R 7.8.32 (j)
The speed of the charge gave the victim little or no time to defend himself
Level of participation/premeditation – R 7.8.32 (k)
No premeditation but full participation
Conduct completed/attempted – R 7.8.32 (l)
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>	<b>SIX</b>	<u>Weeks</u>	<u>Low-end</u>	<u>Weeks</u>
<input type="checkbox"/>		<input checked="" type="checkbox"/>			<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

#### RELEVANT OFF-FIELD MITIGATING FACTORS

<b>Acknowledgement of guilt and timing – R 7.8.35(a)</b>	<b>Player’s disciplinary record/good character – R7.8.35 (b)</b>
Although the Player contested the Red Card the Committee considered the case to be extremely unusual and considered the line between accidental and reckless to be so fine that a challenge was understandable and should not count against the Player	A perfectly clean record and vouched good character
<b>Youth and inexperience of player – R 7.8.35 (c)</b>	<b>Conduct prior to and at hearing – R 7.8.35 (d)</b>
Not a relevant consideration in this case	Exemplary. Fully engaged with and respectful of the process.
<b>Remorse and timing of remorse – R 7.8.35 (e)</b>	<b>Other off-field mitigation – R 7.8.35 (f)</b>
The Player had spoken to te victim immediately after the incident and apologised for what the victim accepted was accidental	N/A

**Number of weeks deducted: THREE**

Summary of reason for number of weeks deducted:
Despite challenging the red card, all other mitigating features were present and in the circumstances of this particular case the Committee considered it would be wrong to deny the Player the advantage of full mitigation.
The Committee also agreed to consider an application for a coaching intervention.

#### ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS

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)
None

Number of additional weeks:

**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)	<b>THREE</b>	Sending off sufficient <input type="checkbox"/>	
Sanction commences	<b>Immediately</b>	Costs	N/A
Sanction concludes	<b>Subject to a coaching intervention at 24.00 hours on 26 April 2022</b>		
Free to play	<b>27 April 2022</b>		

Signature (JO or Chairman)	<b>Roger Morris</b>	Date	<b>14 April 2022</b>
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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