

EPCR SHORT JUDGMENT FORM

Match	Sale Sharks	Vs	Ulster Rugby
Club's Country	England	Competition	Champions Cup
Date of match	11 December 2022	Match venue	AJ Bell Stadium
Rules to apply	EPCR Disciplinary Rules 2022/23		

PARTICULARS OF OFFENCE

Player's surname	WARWICK	Date of birth	12 March 1991
Forename(s)	ANDREW	Plea	Qualified Admitted <input checked="" type="checkbox"/> Not Admitted <input type="checkbox"/>
Club name	Ulster Rugby		
SELECT: Red card <input type="checkbox"/>	Citing X Other (specify) <input type="checkbox"/>		
Offence	Law 9.13. A player must not tackle an opponent early, late or dangerously		
Summary of Sanction			

HEARING DETAILS

Hearing date	15 December 2022	Hearing venue	Remote
Chairman/JO	Roger Morris (Wales)	Panel member 1	Frank Hadden (Scotland)
Panel member 2	Leon Lloyd (England)	Disciplinary Officer	Liam McTiernan
Appearance Player	Yes X No <input type="checkbox"/>	Appearance Club	No X <input type="checkbox"/>

Player's Representative(s):

Other attendees:

Derek Hegarty Patrick Murphy	Maria Gyolcsos Danny Rumble
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List of documents/materials provided to player in advance of hearing:

The following materials were available to the parties in advance of the hearing:

- (i) The Citing Commissioner's Report from Wejdane Limame
- (ii) Video footage
- (iii) Player's responses to standing directions and the documents referred to by him.
- (iv) Email from match referee
- (v) Email from match TMO
- (vi) Email from Sale Sharks' doctor.

At the start of the meeting the Chair confirmed the identities of all present; that there were no preliminary issues to be raised; that there were no objections to the constitution of the panel and that the hearing would be conducted under the EPCR Disciplinary Rules for season 2022/23.

In his responses to the standing directions provided for in the tournament Rules, the Player had accepted committing an act of foul play but argued that the seriousness of his foul play was such that the correct sanction would have been at most a yellow card. He confirmed that remained his position.

It was agreed that the initial purpose of the hearing was to determine whether or not the Player admitted he had committed warranted the red card the Citing Commissioner said it deserved.

Mr Hegarty offered some context to the Player's position by reference to World Rugby's Head Contact Protocol (HCP). He accepted that the head contact in this instance was, in terms of the HCP, "avoidable" and in all the circumstance the foul tackle the Player admitted committing just about passed the test for a yellow card but definitely not a red card.

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

In his report of the incident, the Citing Commissioner wrote:

"In the first round of EPCR Champions Cup, a game between Sale Sharks and Ulster Rugby, Sunday 11/12/2022, in the first half, Minute 03'05" of match time, after a kick from Ulster, S 12 (Manu TUILAGI) receives the ball, carrying the ball, he runs towards the line of defence, was tackled by U1 (Andrew WARWICK), U1 (Andrew WARWICK) defending, has a clear view, preparing his two arms to tackle, but he doesn't bend down sufficient, it has a contact between his head and the head of S12 (projection strike to face)

The alleged foul play was a dangerous tackle (head to head contact), there is a direct contact with head, it was a clear foul play with high degree of danger and there are no mitigating factors.

The tackled player S12 (Manu TUILAGI) stayed in the ground until the doctors arrived, HIA Protocol was practiced, with a large laceration to his lower lip. He left the field for HIA and he did not return.

In this time the TMO insisted on the referee to review the incident because he considered that there is a contact with head to clarify, after reviewing referee did not take action."

The Referee, Mathieu Raynal, in an email, said:

"Hi Liam,

We thought at the time that we didn't see a clear foulplay because tackler

- was passive, never move, never lead the tackle

- was crouch enough to consider a legal position

- use the arms for wrap

- ball carrier bend and lean on the tackler's head initiate the collision and contribute to accidental head clash.

That was our view when that happened.

Regards

Mathieu"

And the Television Match Official, again by email, wrote:

"Hi Liam

First, we decide to put the situation on the big screen.

We see a head contact.

The tackler is in a credible position to tackle, he remains stationary and does not project his head towards the blue player and he use his arms. In addition, he suffers the tackle.

The blue player initiates the contact and he is responsible for the vitality and strength of the collision.

We conclude by accidental contact and we consider that the yellow player has not committed any fault.

Regards.

Philippe Bonhoure."

The **video footage** showed that SS12 from an Ulster goal line drop out, collected the ball in the middle of the pitch about 5 metres inside the Ulster half. He ran, full tilt, with the ball towards the Ulster posts and was tackled by the Player some three or four metres short of the Ulster 22. This was the tackle that gave rise to the citing complaint. As a result of the collision, SS12 left the field of play and did not return. The Referee consulted with the TMO but deemed no foul play had occurred and re-started play with a scrum.

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

A medical report was provided by Dr Imran Ahmed, Sale Sharks' doctor, in the following terms:

"In the first half I saw Manu receive a kick and run towards the opposition.

He appeared to go into a heavy contact and go to ground.

Once the ruck started to clear it was obvious that his teammates were concerned for his welfare and he appeared concussed with a large laceration to his lower lip.

On reviewing the footage, it appears contact was made between Manu's jaw and the opponent's head.

Manu will be managed as a criteria 1 concussion and will likely miss at least 12 days in accordance with current protocols.

He also suffered a significant laceration that was closed by a specialist surgeon. This will likely take a similar length of time to heal."

SUMMARY OF PLAYER'S EVIDENCE AND SUBMISSIONS

The video footage was first played and watched in silence. The Player was invited, with assistance from Mr Hegarty, to comment on the video and explain his actions. The essence of what he said was as follows:

- The ball was dropped out from Ulster's goal line and caught by SS12 who started carrying hard toward the Player and his team.
- He initially thought that SS12 was running towards a colleague to the Player's left and he therefore readied himself and adjusted his body position to make an "assist" tackle.
- SS12 then veered towards the Player and to deal with this different threat, he tried to adjust his feet position whilst lowering his body but everything happened so quickly
- He realised he was not, in the light of SS12's momentum, going to make a "dominant" tackle and tried to lower himself in order to perform a "soak" tackle trying to wrap the ball and, accepting the momentum of the tackle was towards him, fall backwards with SS12.
- In trying to execute this planned tackle, there was a big head collision between him and SS12.

Mr Hegarty referenced specific parts of the video footage that highlighted the points made by the Player and, in answering Mr Hegarty's questions, the Player made the following further points.

- As he was lowering his body position, getting his arms ready to affect a soak tackle, SS12 raised his arm in front of his torso so that the position of SS12's hand made lowering the Player's body position more difficult.
- He had not expected SS12 to adopt the position he was in when the collision occurred and the fact that SS12 had something like a 30 metre run towards him, made it difficult to get the Player's timing right.
- The contact had the effect of driving him back and up, consistent with the Player's attempt to manage the backwards movement of a passive tackle.

Mr McTiernan asked the Player if he was attempting a conventional tackle or a wrap tackle. The Player said he was trying to get his height below the ball and to wrap it into his tackle.

In response to questions from the Panel:

- The Player accepted there was a clear line of sight to SS12 for a long distance but as he approached the tackle, SS12's focus and line of running veered from the Player's teammate (with whom he had expected to perform an assist tackle) to the Player himself and that change of focus had happened very quickly.
- He accepted that there was no big sidestep or other great movement from SS12.

- He repeated his assertion that his aim was a wrap tackle whether as an assist or as the main tackler.
- He said there was no time to get his body lower.

Mr Hegarty and Mr McTiernan were asked to comment on the various written materials to be considered by the Panel.

As far as the Citing Report was concerned it was noted that an incorrect name was used to identify Ulster 1 in the body of the report although the heading was correct. Mr McTiernan explained that the error was due to incorrect numbering on the official Ulster team sheet and that the report had been changed. Inadvertently, one reference to the incorrect name had not been altered by the Citing Commissioner. Mr Hegarty accepted this as a genuine error which did not affect the hearing.

In terms of the match official reports, Mr Hegarty accepted they came to a different conclusion from that put forward on behalf of the Player. Nevertheless, the officials' conclusions were relevant factors to be considered by the panel. Mr Mc Tiernan said that the officials' conclusions were but one of a number of analyses that were possible from the video footage and were not binding on the Panel.

Mr Hegarty made the point that, unusually, there was no statement from the other player.

Mr Hegarty then made the following submissions in summary of the Player's position.

- It was a difficult situation for the Player to manage and difficult for him to assess the correct response to SS12 running from such a distance.
- In accepting he had committed a foul the Player accepted that, in terms of the HCP, the head collision was avoidable.
- But also, in terms of the HCP, the actions of the Player were neither intentional nor highly reckless.
- He pointed to what he said were Low Danger indicators in the Player's actions and to the absence of High Danger factors. The Player had brought no speed or force to the collision.
- The Player was stationery, did not lead with arm or forearm or head; was not dynamic but passive; and displayed a high level of control.
- In referring to the Player's "passive" tackle, he referred to the cases attached to the Player's responses to the standing directions which indicated that a passive tackle might be considered a yellow card offence.
- In response to an interjection from the panel, Mr Hegarty said that he definitely was not trying to shift responsibility for any recklessness to the ball carrier.
- If the Panel was not in agreement with the assertion that this was a yellow card offence and considered it to fall within the territory of a red card, then there were sufficient mitigating features present, as set out in the HCP, to persuade the Panel to reduce their thinking from red card to yellow card.

Mr McTiernan sought to persuade the Panel that the correct application of the HCP should lead them to conclude a red card was appropriate and therefore uphold the citing complaint. The Player had ample opportunity to choose a different form of tackle from that he executed and the severity of the injury to SS12 was illustrative of the level of danger and force in the tackle performed by the Player.

Mr Hegarty wished to make two final points. It was first clarified that Mr McTiernan had referred to a "wrap" and not a "rip" tackle. He then pointed out that the seriousness of the injury resulting from an incident was not determinative of culpability for that incident.

The hearing was then adjourned for the Panel to consider in private whether or not the Citing Complaint should be upheld.

DISCUSSIONS AND FINDINGS OF FACT

The Panel considered matters in private and in doing so reminded themselves that their factual findings were to be made on the balance of probability. They considered carefully all they had seen and heard, in particular what the Player himself had said. They did so by reference to the HCP.

The Player had been cited under Law 9.13.... a player must not tackle early, late or dangerously. He had accepted he committed a foul. This tackle was neither late nor early. It follows therefore that the Player accepted he had executed a dangerous tackle. His acceptance of that as a fact was, at least in part, due to the use of "avoidable" in the HCP.

The Player, on his own testimony, had perpetrated an avoidable, dangerous tackle. If that dangerous tackle was to be avoided, the Player needed to have chosen to do something different from what he described as a passive tackle intended to wrap the ball. In terms of the HCP **"the 'power of choice' for tacklers is crucial"**.

The Panel considered this tackle by reference to the Low Danger and High Danger factors set out in the HCP. Mr Hegarty had highlighted the Low Danger items as indicative, here, of a yellow card. Mr McTiernan had emphasised those indicative of a red card.

In arriving at their conclusions, the Panel did not accept the notion that a passive tackle was necessarily a tackle of low force or low speed, or that the force and speed brought to the collision by the ball carrier should exonerate the passive tackler from the consequences of that tackle. If the passive tackler chooses to perform his tackle in a near upright position with his head level with the head of an onrushing opponent, as, the Panel determined, in this case, it seemed to the Panel perfectly foreseeable that the two heads might very well collide and do so with force and speed.

The panel concluded that SS12 was carrying the ball at speed in full sight of the Player. Although SS12 veered from his original line of running, there was no acute change of direction that might excuse or mitigate the actions of a tackler. Neither did SS12 lower his height as he ran towards the Player. So, again in terms of the HCP, a change of the runner's height was absent as a factor mitigating of the Player's actions. The collision in the tackle was of significant force (as witness the injuries to SS12), at high speed and avoidable if the Player had made a different choice.

In terms of the HCP, the Panel, by a majority, concluded there was a high degree of danger in the tackle executed by the Player, that it met the red card test and that the Citing Complaint would therefore be upheld.

The hearing was reconvened and the Player told of the Panel's decision.

Mr Hegarty was invited to make his submissions in relation to entry point and the appropriate level of sanction. He noted the requirement to consider at least a mid range entry point which meant a starting point suspension of six weeks. He urged that a higher entry point was not appropriate. In considering mitigation, he suggested that the qualified plea of the Player should not deprive him of a reduction in sanction for the acceptance of culpability. He noted but one previous red card and a small number of yellow cards in a long and otherwise blameless rugby career. He was justified in seeking the full level of mitigation available in the Rules. He also suggested that a coaching intervention programme was appropriate in this case.

The Panel considered, in private, the appropriate level of sanction to reflect the level of offending. They agreed that the mid range was the correct starting point and after careful thought saw no reason to penalise the Player for challenging only the seriousness of the offending and not the offending itself. He accepted he had committed a foul in the unusual circumstances of an incident that an experienced and respected referee considered not even worthy of a penalty.

The Panel were happy to allow full mitigation so reducing the sanction to a period of three weeks. They were also happy to acknowledge that a coaching intervention programme is appropriate in this case.

The hearing was again reconvened and the decisions of the panel relayed to the parties.

The parties have a right of appeal against this decision.

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DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/> Not proven <input type="checkbox"/> Other disposal (please state below) <input type="checkbox"/>
	Breach admitted but seriousness contested

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
There was no intention to commit a foul and it was not an accident. The Player made a reckless, poor choice.
Gravity of player’s actions – R 7.8.32 (c)
Sufficient to concuss the opponent
Nature of actions – R 7.8.32 (d)
Being too high in an attempted passive wrap tackle
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)
Concussion and a lacerated mouth causing him to leave the field and miss at least 12 days' playing
Effect on match – R 7.8.32 (i)
None
Vulnerability of victim – R 7.8.32 (j)
No greater than any player subjected to a dangerous tackle
Level of participation/premeditation – R 7.8.32 (k)
Full but not premeditated
Conduct completed/attempted – R 7.8.32 (l)
Completed
Other features of player's conduct – R 7.8.32 (m)
None

ASSESSMENT OF SERIOUSNESS CONTINUED

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

Acknowledgement of guilt and timing – R 7.8.35(a) As soon as practical even if qualified	Player’s disciplinary record/good character – R7.8.35 (b) Good and respected character with minimal previous transgression
Youth and inexperience of player – R 7.8.35 (c) An experienced servant of the game	Conduct prior to and at hearing – R 7.8.35 (d) Exemplary. Fully engaged with the process.
Remorse and timing of remorse – R 7.8.35 (e) Alerted referee as soon as the other player went to ground. Apologised at half time and again after the match	Other off-field mitigation – R 7.8.35 (f) N/A

Number of weeks deducted: **Three**

Summary of reason for number of weeks deducted: In the circumstances the panel saw no good reason to deny full mitigation particularly given the wide range of views of seriousness from ‘play on’ to red card

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: **NONE**

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)	Three	Sending off sufficient <input type="checkbox"/>	
Sanction commences	Immediately	Costs	
Sanction concludes	Midnight Sunday 1 Jan 2023 but midnight 23 Dec 2022 if coaching intervention applied. The Panel would approve an intervention		
Free to play	24 Dec 2022 or 2 Jan 2023 depending on coaching intervention		

Signature (JO or Chairman)	Roger Morris	Date	15 December 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