

EUROPEAN CHALLENGE CUP 2022/2023
DECISION OF DISCIPLINE COMMITTEE

Hearing – 16.01.2023, remotely by Zoom

In respect of:

Bristol Bears (“the Club”)

and

An allegation of misconduct (“the Complaint”) arising out of the Club’s selection of Elliot Stooke (“the Player”) for two matches in the European Challenge Cup (“the Tournament”) Rounds 1 and 2 between the Club and, respectively, USA Perpignan and Zebre Parma in which matches the Player was not eligible to play.

Members of the Discipline Committee (“the Committee”):

Roger Morris (Wales) (Chair)

Kathrine Mackie (Scotland)

David Martin (Ireland)

In addition to the Committee, those present at the Hearing were:

Liam McTiernan EPCR Disciplinary Officer

Pat Lam, Bristol Bears’ Director of Rugby

Tom Tainton, Bristol Bears’ Team Manager

Gavin Miller, Bristol Bears’ Chief Executive

Maria Gyolcsos, EPCR

Decision of the Committee

- i. That 5 competition points be deducted from the total of points won by Bristol Bears in the matches played in Rounds 1 and 2 of the pool stage of the European Challenge Cup for season 2022/2023.
- ii. That Bristol Bears pay a fine of €10,000 to EPCR but payment of that fine is suspended until the end of season 2023/2024 so that the suspended payment shall only become payable in the event of Bristol Bears being guilty, before then, of a similar act of misconduct in any of the tournaments in which they play.

Hearing

Materials and papers considered during the Hearing were as follows:

- Letter of complaint dated 12th of January 2023 written by Mr McTiernan setting out the basis of the Complaint and requesting that a Disciplinary Committee be appointed.
- Notice of Hearing dated 13th of January 2023 issued by Mr Mike Hamlin, Chair of the EPCR Disciplinary Committee, convening the Hearing.
- The Player's Contract with Bristol Rugby Club Limited.
- Additional Player undertaking dated 5th of December 2022 signed by Jack Targett, Bristol Team Manager.
- Email dated 16th of January 2023 (together with attachments) written by Mr McTiernan addressed to the Chair of the Committee setting out an agreed position between EPCR and the Club.
- Email exchanges between the Chair of the Committee and Mr McTiernan.
- The attachments referred to above comprising various previous cases which Mr McTiernan cited in support of the submissions advanced in his Emails.

There were no preliminary issues to be considered.

Factual Background and Chronology

1. As required by the Tournament Rules, the Club properly registered its Tournament Squad with EPCR in good time before the Tournament was due to start.
2. In the event, several of the Club's forward players suffered long term injuries so depleting the Club's Tournament Squad to the point where it needed to be strengthened in order to bolster the Club's ability to perform competitively, both in the Tournament and in its domestic league, the Gallagher Premiership.
3. The Player (who had been employed by Wasps Rugby Club but who was made redundant when that club was placed in administration) was seeking re-employment as a rugby player.
4. Towards the end of November 2022, the Player and the Club concluded an agreement whereby the Player would be employed by the Club as a rugby player to play both in the Tournament and in the Club's domestic league. The terms of the concluded agreement were that the Player would be employed by the Club until the end of the 2022/2023 rugby season.
5. The Player had hoped to negotiate a longer term deal and therefore requested and was given an additional provision in his Contract giving him an option to terminate the

Contract, by notice, on the 28th of December 2022 if before then he was offered what he considered a better contract by a different club.

6. After the Contract had been signed, the Club registered the Player with the RFU and then with EPCR. At that stage and as required by the Rules, EPCR was given a copy of the Player's Contract.

7. Because the Player was an extra player added to the Club's Tournament Squad, his registration was required to follow the Tournament's Additional Player provisions as set out in the Tournament Rules. Those rules required, inter-alia, that the Club gave an undertaking to the Tournament that the "Additional Player" they sought to register was contractually bound to be available to play for the Club for a continuous period of at least 3 months.

8. The undertaking to be given to the Tournament by the Club was in the form set out in Appendix 8 of the Tournament Rules. The terms of the requisite undertaking as given by the Club were as follows:

"That for a single continuous period of at least 3 months:

- a) The Contract that the Club and the Additional Player entered into on [28.11.2022] (under which the Additional Player is obliged to participate in all appropriate player activities, including playing for the Club, if selected) will continue to be performed and remain in full force and effect; and***
- b) The Additional Player will have no Contract and/or registration and/or other arrangement with any other rugby union body, rugby union person, rugby union entity or rugby union club such as would prevent the Additional Player from playing for the Club".***

9. Duly registered as above, the Player played for the Club in two Tournament fixtures – Round 1 against USA Perpignan on 9th December 2022 and Round 2 against Zebre Parma on 18th December 2022. In both matches the Player came on to the field of play as a substitute.

10. As a matter of record, the score when the Player came on to the field against Perpignan (19 – 5 in favour of the Club) remained the same until the end of the match. In the match against Zebre, Zebre, although they lost the match, scored more points than the Club from the point that the Player came on to the field until the end of the match.

11. After the second match had been played, the Player received an offer of a contract to play for Montpellier Herault Rugby. The Player considered the Montpellier offer to be better than his contract with the Club. Accordingly, the Player exercised his option to terminate his Contract with the Club. He served notice to terminate on 18th December 2022 so terminating his Contract on 28th December 2022.

12. It follows that the Player did not play for the Club for the requisite continuous period of three months.

13. As a result of the above, there was a prima-facie breach of the Tournament Rules in relation to the registration of an Additional Player.

14. EPCR conducted an investigation to establish the facts of the matter following which the Complaint of misconduct by the Club was issued.

EPCR Position

In his email dated 16th January 2023 addressed to the Chair, Mr McTiernan said that, having fully investigated the matter, the Club and EPCR had “reached a shared position” with which EPCR was content. The Club was also happy with the position and had invited him to address the Committee on behalf of both parties.

Mr McTiernan said that the Club accepted they had breached Tournament Rules 6.1, 6.5, 7.1, 7.3 and Appendix 8 thereto. These were the Rules pertinent to the registration and eligibility of Additional Players. In accepting the breach, the Club also accepted it had selected the Player, who was not eligible to play, in the matches he had played in Rounds 1 and 2 of the Tournament.

Mr McTiernan confirmed that the Club had co-operated fully with his investigation and had demonstrated to EPCR’s satisfaction that what had happened was “an honest mistake” arising from the Club’s desire to “do the right thing” by a player who had been made redundant following the suspension of Wasps from the Gallagher Premiership and the consequential termination of his playing contract.

When the Club negotiated the contract with the Player, it did not appreciate that by granting him an option to terminate his contract, the Club would find itself in breach of relevant and important Tournament Rules.

The Additional Player undertaking was signed by the then Team Manager who had no knowledge of the detail of the Player’s contract or that it contained an early release provision. At the same time, the Club’s Director of Rugby was not aware of the undertaking that was necessary or that it was being given by the Team Manager.

Mr McTiernan said that the Club had apologised profusely and had committed to review its working practices to prevent a repetition of its misdemeanor. Mr McTiernan confirmed the Club accepted it had breached the Rules and therefore the Committee need only address itself to the appropriate sanction.

Previously, in matches in which ineligible players had played, the result of the relevant match had been voided and a replacement result of 28 – 0 to the opposition substituted.

Under the Tournament's previous format, imposing such a sanction had served to provide an outcome that was fair not only to the participants in the match but also the other teams in the relevant pool. Under the Tournament's current format, to apply the previous sanction might serve to create relative parity between the Club and the two teams against whom the ineligible player had played but to do that would prejudice the ability of the other, uninvolved, clubs in the pool to qualify for the next round. And that would not be fair to them.

For that reason and having tested a variety of different mathematical options, EPCR suggested that the fairest way of appropriately penalising the Club whilst balancing the interests of all the other clubs in the Tournament was to deduct 5 points from the Club's accumulated total of points won so far in the Tournament.

In addition to a penalty in terms of points, Mr McTiernan suggested a fine of €10,000 would be appropriate.

Mr McTiernan had also confirmed that, as part of the process of registering an Additional Player, it was required that the Club provide EPCR with a copy of the relevant Additional Player's Contract. EPCR had therefore had sight of the Player's contract before he had played any matches in the Tournament and so were in a position to question the Player's registration at an early stage. Mr McTiernan pointed out that the Contract document is lengthy and was accepted by EPCR at face value as being in the standard form of all Player Contracts issued by Clubs playing in the Gallagher Premiership.

The Club's Position

Mr Lam confirmed that Mr McTiernan had accurately set out the position and apologised for the Club's inadvertent breach of the Tournament Rules. He (and Mr Miller) fully accepted that, however inadvertent, the breach of the Rules should not have happened and would not have happened had the Club's internal procedures been more robust. They confirmed that they had already conducted a review of those procedures and had put in place new checks and balances which were designed to prevent future repetition.

The Committee questioned Mr Lam about the reason for the short period of time during which the Player had the ability to exercise his option to terminate his contract and wished to be reassured that the Club had not sought to manipulate the Regulations to give it short term advantage without longer term commitment.

Mr Lam said that he had been directly responsible for negotiating the contract and that the contract offered was the best the Club could offer at that juncture. In an effort to be fair to the Player, he had agreed that the Player should have an option to terminate the contract early. The termination date agreed by Mr Lam had been as short as he could negotiate to balance fairness for the Player with the Club's desire to have a settled position for the rest of the current season.

In terms of the penalty proposed by EPCR, the points deducted might not disadvantage the Club to the extent that the deduction prevented its ability to qualify for the next stage of the Tournament, but it did disadvantage the Club to the extent that a home tie in the next stage of the Tournament would now be difficult to secure. A home tie would clearly have a playing advantage but, as Mr Miller pointed out, the loss of the home tie in the Tournament (on top of already having lost two of the Club's planned home fixtures – in the Gallagher Premiership against Wasps and Worcester) was a further significant financial blow to the budgeted revenues of the Club at a time when all Clubs desperately needed whatever revenue they could raise.

Committee Discussion and Decision

The Committee discussed, in private, all that they had read in the papers provided in advance of the Hearing and all they had heard directly from the parties during the Hearing.

The Committee accepted that the Club's breach of the Tournament Rules was inadvertent and borne of honest mistake and poor internal procedures rather than of any intent to manipulate the Rules for short term advantage.

The Committee was grateful to Mr McTiernan for the thorough and straightforward way he and his colleagues had dealt with matters and for his efforts in arriving at a consensus with the Club.

The Committee particularly noted (and accepted) that part of the reason for the Club's error was the consequence of the Club, commendably, trying to be fair to the Player.

The Committee also noted that the Club had already undertaken a review of its procedures and had accepted without demur that mistakes such as those they had committed set the Tournament in poor light and should not happen in a competent professional environment.

Further, the Contract had been provided to EPCR before the Player was registered as an Additional Player. EPCR had the opportunity to deal with the possibility of the Player being ineligible before he had even played.

The Contract was a lengthy document although in apparently standard form. Even in standard form contracts, however, there needs to be specific provision for the individual concerned. That specific provision is generally contained in but one or two pages.

In this instance the relevant particulars were contained in one page as Schedule 1 to the standard form Contract. The Committee gently suggests that EPCR might look at its own procedures. It would not be onerous to train appropriate personnel to identify and read small parts of standard contracts so that problems such as that facing the Club might be identified and averted before they become a breach of the Rules.

In circumstances such as these breaches of the rules, it is difficult to arrive at a perfect mathematical formula that adequately penalises the breach but which at the same time does not prejudice the position of other innocent parties or the integrity of the Tournament itself.

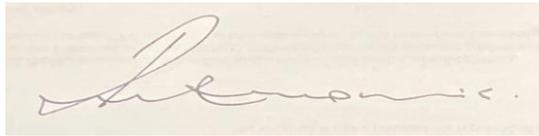
After some thought and analysis, the Committee accepted that a points deduction of 5 points was the fairest way to penalise the Club and at the same time to be fair to all participants including those not directly involved in the matches that gave rise to the breach of the Rules.

In terms of the suggested fine, again the Committee accepted Mr McTiernan's suggestion that the sum of €10,000 was appropriate but felt that an examination and review of the Club's procedures was more important. The Club had said it had reviewed its procedures. The Committee wished that review to be tested over this and next seasons. Payment of the fine would therefore be suspended so that it would only be payable if there was another similar breach by the Club (in any of the Tournaments in which the Club is involved) before the end of Season 2023/2024.

The Hearing was reconvened and the Committee's decisions relayed to the parties.

The parties were reminded of their rights of appeal.

Signed

A rectangular area containing a handwritten signature in dark ink on a light-colored background. The signature is cursive and appears to read 'McTiernan'.

Date 20th January 2023