

DECISION OF THE INDEPENDENT JUDICIAL COMMITTEE EPCR

**Held at Sofitel Hotel, Heathrow, London
on 14 December 2016**

In respect of

Phil Burleigh of Edinburgh Rugby (“**the Player**”)

and

the ordering-off of the Player in the match played between Edinburgh Rugby –v– Stade Français Paris played at Murrayfield on 10th December 2016 for an act of foul play of striking an opponent contrary to Law 10.4(a) of the Laws of Rugby Union.

Disciplinary Committee Appointed to Hear the Case

- Simon Thomas (Wales) (“Chairman”)
- Marco Cordeli (Italy)
- Rhian Williams (Wales)

Decision of the Disciplinary Committee

- (i) The Player accepted that his actions constituted an act of foul play contrary to Law 10.4(a) of the Laws of Rugby Union and did not seek to argue that the referee’s decision to order him off was wrong. The Disciplinary Committee concluded that the Player’s act of foul play warranted a red card.
- (ii) The Player is suspended from taking part in a Game of Rugby up to and including Sunday, 18th December 2016. This represents a one week suspension commencing 10th December 2016.

Introduction

1. The Disciplinary Committee was appointed by Professor Lorne D Crerar, Chairman of EPCR's Independent Disciplinary Panel pursuant to the Disciplinary Rules found in the Participation Agreement of the Champions Cup, 2016/2017. The Committee was appointed to consider the ordering-off of the Player (the red card) in the match played between Edinburgh Rugby –v– Stade Français Paris at Edinburgh on 10th December 2016 in the Champions Cup 2016/2017.

2. Mr Craig Maxwell-Keys had been appointed as the referee to the match and had ordered the Player from the field for an act of striking an opponent (Pascal Papé, SF5) by striking him with an open hand to his face after a ruck had occurred in the 55th minute of the match. The law cited by the referee was Law 10.4 (a).

3. Present at the hearing in addition to the Committee were the following persons:-
 - Mr Phil Burleigh (“the Player”)
 - Mr Jonny Petrie, Managing Director, Edinburgh Rugby.
 - Ms Giuliana Zeuli, Italian/English interpreter.
 - Mr Liam McTiernan, Disciplinary Officer, EPCR.
 - Mr Danny Rumble, Regulations Executive, EPCR.
 - Miss Jennifer Rae, Solicitor and Clerk to the hearing.

Preliminary Matters and Procedures

At the commencement of the hearing, the Chairman noted the identities of all present and narrated the red card report, reminding the Player that the complaint was in respect of an allegation that the Player had committed an act of foul play by striking an opponent contrary to Law 10.4(a).

The Chairman reminded all parties that the EPCR Disciplinary Rules found in the Participation Agreement of the Champions Cup 2016/2016 (“the Disciplinary Rules” and “DR” in the singular) would apply. The Chairman outlined the procedure to be followed to determine the matter. The Player and all agreed to proceeding on that basis.

The Chairman established what evidence had been placed before him prior to the hearing and enquired as to whether all present had received the same in good time. The Chairman then enquired as to whether any additional evidence was to be presented before him. The evidence for consideration was as follows:-

- The notice convening the hearing.
- The referee's report on the red card.
- The email from Mr David Sainsbury, Television Match Official.
- The Player's response to the standing directions.
- The broadcast footage of the incident.

There were no preliminary issues which arose.

It was confirmed that the Player accepted that his conduct constituted an act of foul play contrary to Law 10.4(a) which had merited a red card by the referee and that the hearing would therefore concentrate on establishing the facts surrounding the incident and to determine what sanction (if any) should be imposed in accordance with the Rules.

The Referee's Report

The referee's report confirmed that after the elapse of 55 minutes of the match when the score was Edinburgh Rugby 15 and Stade Français 20, the Player had struck an opponent.

The narrative of the report read as follows:

"The whistle had gone for a penalty kick when for no apparent reason, Edinburgh 12 (the Player) struck Stade Français 5 (Papé). Upon reviewing this with the TMO, a red card was shown."

The referee's report confirmed that he was within 5 metres of the incident.

TMO Report

Mr Sainsbury had provided an email to the Disciplinary Officer which confirmed that there was nothing that he could add to the transcript of the conversation between he and the referee which was contained on the broadcast footage. He confirmed that he had seen an

open-palm slap to the face without provocation. He did not make any recommendation as to sanction, but then he agreed with the referee that a red card was the proper sanction in light of the (recent World Rugby referee) directives (concerning strikes to the head).

Match Footage

The match footage was played in real time and in slow motion.

This showed that at a ruck, the Player entered the ruck in an effort to secure the ball, but he was then challenged by Papé who appeared to grasp him in order to move him away from the tackle area. The camera angle is shown from the Player's left-hand side and from Papé's right-hand side. After the referee blew the whistle to stop play, Papé could be seen grasping the Player's jersey near the throat area with his left hand at which point the Player rose up and with a fast motion appeared to slap him to the face. This resulted in Papé holding his face and falling to the floor seemingly hurt. He remained on the floor for a period of time. The referee stopped play, watched the replay of the incident on the big screen at the ground, and consulted with the Television Match Official. He could be heard to state that because of the recent World Rugby directive issued to referees concerning the danger of contact with players' heads that the appropriate sanction was a red card. The Player was then shown the red card by the referee and he walked off the field. During the period after play had been stopped to the period that he leaves the field, he appeared to have been interacting in a cordial manner with members of the opposite team.

Mr McTiernan then described what he regarded were the salient points of the video. He suggested that the Television Match Official was seemingly not initially supportive of a red card being issued to the Player.

He said that as a consequence of what was regarded as the exaggerated effect of the reaction by Papé to the slap, the Citing Commissioner appointed to the match, Mr Eddie Wigglesworth of Ireland, had issued a Citing Commissioner Warning for Papé's act contrary to good sportsmanship under Law 10.4(m) of the laws. The Disciplinary Committee noted that a Citing Commissioner Warning is issued in circumstances where the Citing Commissioner considers that the conduct of the player, so warned, just falls short of a red card.

The Chairman enquired of Mr McTiernan whether he intended to provide or had asked for a statement from Papé but he said he did not deem it appropriate in light of the Citing

Commissioner Warning issued to Papé, The Chairman also enquired whether Papé had indicated an intention to argue that the Citing Commissioner Warning had been wrongfully issued against him under DR 5.1. Mr McTiernan confirmed he had not and it appeared unlikely although the 48 hour time limit for so doing had not yet fully elapsed.

Player's Evidence

Mr Burleigh gave evidence which accorded with his response to the directions acknowledging that his actions warranted a red card and apologising for them, but wanted to put his actions into context to explain that his conduct was a reaction to inappropriate conduct on the part of Papé towards him at the ruck immediately preceding his strike.

He explained that when he had joined the ruck, Papé had approached him. From the opposite side to the camera angle (the Player's right side and Papé's left side) Papé had struck him near his right ear with Papé's left hand. It had been quite a hard strike and he had felt pain. As he then rose from his stooped position over the ball, Papé then grabbed at his throat area and stuck his fingers in the area of his throat, again causing him concern. Papé then grabbed (within the same movement) at the top of his shirt and instantaneously, without any premeditation or intent to cause injury to Papé, the Player raised his right hand in a fast upward motion and made contact with Papé's face. He described how the video showed that his hand and wrist were not rigid, but were loose, and therefore the impact to Papé was not significant. He said he had wanted to send a message to Papé that he should "bugger off". In other words, to get away from him and to release his grasp. Papé had then fallen to the ground and the Player described how even Papé's own team mates were incredulous as to Papé's play-acting. He said he spoke to a number of them in the two or three minutes until the referee had made his red card decision and they were sympathetic to the Player's position in light of what had occurred.

Upon questioning from the Chairman, the Player accepted that the video evidence did not depict any contact by Papé's left hand to the Player's right ear area, but he was adamant that it had occurred and that this, along with the fingers in the throat area had caused him to react in the way that he did. He deeply regretted what had occurred and apologised to the panel for what had happened.

The Player accepted upon questioning from Mr Cordelli that rather than considering himself in actual danger as what might occur, he simply did not know what Papé might do next and

did not know whether the incident would escalate further and it was this concern that caused him to react and strike out at Papé with his open hand.

This concluded the Player's evidence in relation to the incident.

Procedure as to Sanction

The Chairman explained that in accordance with the Rules, the Committee consider sanction in a three-stage process.

Firstly, the Committee would pay regard to DR 7.8.32 which contains a list of entry point criteria and in light of the entry point criteria, the Committee would decide whether the incident merited a lower-end entry point, mid-range entry point, or top-end entry point in accordance with Appendix 3 to the Rules which encompassed World Rugby's Appendix 1 to Regulation 17 which provides a table of sanctions for different types of foul.

The Chairman then explained that once entry point had been determined, the Committee would then consider the existence (if any) of off-field aggravating factors before considering in accordance with DR 7.8.35 whether there were any mitigating factors to take into account to reduce any suspension.

The Player understood the process and agreed to proceed on that basis.

The Committee heard from both the Disciplinary Officer and the Player's representative on these issues and retired in private to deliberate as to sanction.

The Disciplinary Officer and the Player's representations were in accordance with each other and there was no significant dispute as to the facts or the assessment of the seriousness of the matter.

The conclusions of the Disciplinary Committee were as follows:-

Entry point

- (a) The Committee concluded that notwithstanding the Player had indicated his actions were reckless rather than intentional, his actions clearly involved an intentional strike to the Papé, but not so as to injure or hurt him, but rather to warn him to get away from the Player.

- (b) Recklessness did not apply.
- (c) As to the gravity of the offending, the strike was with an open hand and was relatively light and had no real effect upon Papé notwithstanding what the Committee regarded as play-acting.
- (d) As to the nature of the actions and the manner in which the offence was committed including the part of the body used, the Committee noted that this was a strike with an open hand where the Player's wrist appeared to be loose rather than rigid.
- (e), (f) & (g) The Committee concluded that the Player had given credible evidence that his conduct was precipitated by a strike to his face and then fingers being put in his throat region which would have caused him alarm, particularly as Papé then moved to grab him immediately prior to the strike. It could therefore be said that the Player's conduct was borne out of a degree of provocation, and of concern for his own safety
- (h) As to the effect of the Player's actions on the victim, the Committee was satisfied that in reality there was virtually none. Although Papé had gone to ground as if he had suffered a significant blow, the Committee was satisfied this was not true and that his own behaviour may well have influenced the referee's decision.
- (i) As to the vulnerability of Papé, the Committee concluded that Papé was not particularly vulnerable as he was already in a physical confrontation with the Player and might have expected some retaliation to his actions towards the Player.
- (j) As to the level of participation in the offending and the level of premeditation, the Committee was satisfied that whilst the Player had obviously participated in the offending, there was not premeditation. Rather, it was a reaction.
- (k) The Committee was satisfied the Player's conduct was completed and not merely attempted.

- (l) There was no other significant feature of the Player's relevant to the matter.

Based on the assessment of the seriousness of the Player's conduct as described above, the Committee was unanimous that this was a low-end entry point which merits a starting point of a two-week suspension.

Aggravating factors

The Committee agreed with both the Disciplinary Officer and the Player's representative that there were no aggravating factors present in this case and therefore there was no need to increase the sanction.

Mitgating factors

As to mitigating factors under DR 7.8.35, the Committee concluded that there were a number. These included the fact that the Player had acknowledged at an early stage his actions did indeed constitute a red card and that he would not seek to challenge the referee's decision.

The Player was 30 years of age and had played for a number of years both with Edinburgh Rugby (50 appearances) and 30 appearances in the Super Rugby and never before had received a red card nor had any citing been upheld against him. He therefore had an unblemished record.

The Player's conduct at the hearing had been good.

Whilst he had not demonstrated remorse to the victim player, the Committee was satisfied that even if he had had the opportunity of doing so, but had failed to do so, this would not be held against him in light of Papé's conduct on the field which was objectionable and which had been the subject of a Citing Commissioner Warning.

The Committee reminded itself when applying a reduction from the entry point for mitigation one starts at 0% and works up to a maximum of 50%. Even taking this into account, the Committee was satisfied that the Player was entitled to 50% (i.e. the maximum) mitigation which would reduce the suspension to one week.

The Committee had earlier pointed out to the Player and his representative its powers to go beyond even a 50% reduction where it concluded under DR 7.8.37 there were off-field mitigating factors (as here); and without yet a further reduction, beyond 50% of the entry point the resultant sanction would be wholly disproportionate to the level and type of offending.

The Committee was satisfied, however, that by applying the maximum mitigation of 50% from the entry point resulting in one week, it could not properly be said the imposition of a one-week suspension for the Player's foul play would be wholly disproportionate to the level and type of offending. Accordingly the Committee would not exercise its powers under DR 7.8.37.

The Decision

The hearing was reconvened and the Chairman outlined the decision that the Player would be suspended from the Game of Rugby up to and including the 18th December 2016 which represents a one week suspension.

Appeal

The Chairman reminded the parties that they had a right to appeal the decision pursuant to DR 8.

Dated: 14th December

Simon Thomas
Chairman