

Decision of the Disciplinary Committee

European Professional Club Rugby (“EPCR”)
Held at Sofitel, Heathrow Terminal 5, London
Wednesday, 17th December 2014

In respect of

Delon Armitage (RC Toulon) (“the Player”)

and

A misconduct complaint with regard to events that took place during and after the European Rugby Champions Cup 2014/15 Round 3 match between Leicester Tigers (“Leicester”) and RC Toulon (“Toulon”) on 7th December 2014 at Welford Road, Leicester (“the Match”)

Disciplinary Committee appointed to hear the case (“The Committee”):

Antony M. Davies (England), Chairman
H. Pat Barriscale (Ireland)
Roger Morris (Wales)

Decision of the Committee:

- (i) In what is described herein as “the on-pitch incident”, the Committee was not satisfied that the Player had carried out the act of misconduct alleged and dismissed the complaint.
- (ii) In relation to the incident described herein as “the Legends Lounge incident”, the Committee found that the Player had committed the act of misconduct alleged and upheld the complaint.
- (iii) The Committee ordered that the Player be suspended from playing for a period of Twelve weeks, namely from 17th December 2014 to 8th March 2015. He may play again on 9th March 2015.
- (iv) The Player was ordered to pay one quarter of the administration costs of EPCR relating to the hearing and its preparation, together with the sum of €5,000 towards the legal costs of the hearing.

Introduction

1. The Committee was convened by Professor Lorne D. Crerar, The Chairman of the EPCR Disciplinary Panel pursuant to the Disciplinary Rules contained within the European Rugby Champions Cup 2014/15 Participation Agreement, in respect of a misconduct complaint made by Mr. Roger O'Connor, Disciplinary Officer, EPCR, dated 12th December 2014.

2. The misconduct complaint against the Player alleged that in the on-pitch incident and/or the Legends Lounge incident, the Player conducted himself in an unsportsmanlike manner by making a number of comments to (or within earshot of) spectators (including, in some cases, a number of children), using foul and abusive language during and after the Match. The complaint alleged that such behaviour constituted misconduct because :

(a) It was conduct behaviour and/or statements that were unsporting and/or insulting and/or that brought or had the potential to bring the sport of Rugby Union, the Tournament, other Clubs or persons and/or EPCR into disrepute (misconduct under clause 3.2 of the Disciplinary Rules);

(b) It was a failure by the Player to conduct himself in accordance with the highest standards of discipline and sporting behaviour and therefore a breach of clause 2.1 of the Disciplinary Rules (which constitutes misconduct under clauses 3.2 and 3.3.2 of the Disciplinary Rules); it involved unsportsmanlike conduct during and after the Match (which constitutes misconduct under clause 3.3.20 of the Disciplinary Rules); and/or

(c) In respect of the on-pitch incident, it was an act against good sportsmanship in the playing enclosure which constitutes foul play under Law 10.4(m) and therefore misconduct under clause 3.2 of the Disciplinary Rules.

3. Present at the hearing on 17th December 2014, in addition to the members of the Committee, were the following persons :

The Player

Mark Milliken-Smith Q.C, Counsel representing the Player

Julian Pike, Solicitor, Farrer & Co.

Oliver Lock, Farrer & Co.

Max Duthie, Solicitor, Bird & Bird, representing the Disciplinary Officer

Roger O'Connor, Disciplinary Officer, EPCR

Lauren Pagé, Bird & Bird assisting Mr. Duthie

Liam McTiernan, Regulations Executive EPCR

Preliminary matters and procedure

4. At commencement of the hearing, the Chairman confirmed the identities of all present and established that the Player was before the Committee in relation to the misconduct complaint. The Chairman reminded all parties that the EPCR Disciplinary Rules found in the Participation Agreement for the European Rugby Champions Cup 2014/15 ("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 his representatives and all present agreed to proceeding on that basis and had no objection to the Committee or its members hearing the case.

5. The Chairman established that there were no preliminary matters to be argued by any of the parties and narrated the terms and the misconduct complaint. The Chairman also established what evidence had been placed before the Committee prior to the hearing and enquired as to whether all

present had received the same in good time. It was confirmed that they had.

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6. The Player denied both acts of misconduct alleged against him in the complaint.

Evidence in support of the complaint – the on-pitch incident

7. Mr. Duthie told the Committee that following the Match a number of allegations about the Player's conduct were brought to the attention of the Disciplinary Officer. Some of those allegations made by spectators at the Match were that during the first half of the Match, when the RC Toulon players were standing behind the posts as a Leicester penalty kick was being taken, the Player said to, or within earshot of spectators at the Match, including a number of children, "*in-bred c*nts*".

8. Mr. Ryan Flack gave evidence by telephone. He is a season ticket holder in the Goldsmith Stand and his seat is A61. Approximately halfway through the first half, Leicester Tigers were awarded a penalty kick towards the Goldsmith Stand posts and the Toulon players gathered behind the posts whilst the kick was being taken. He said he heard the Player use the words "*in-bred c*nts*" to a team member. His ears pricked up. He was certain he heard the words. He was upset by them. At half time he walked past other people in the front row of the Stand and asked if they had heard anything. When they confirmed they had heard the same words, he decided to report the incident to a Steward and was asked to report the matter to the Supervisor, which he did. He had taken the decision to report it because he was upset by what had been said. He was with his children and there were other children in the front row of the Stand, aged from ten upwards. A number of the other spectators who confirmed they had heard the same words were known to him, but not all. He was 100% sure he had heard the words and that they were said during the almost silence which precedes kicks at goal at Welford Road. He said that the Player was looking towards his team mate over his right shoulder and he saw the right side profile of the Player's face. It was not said in a shout or a whisper, and the Player's team mate, to whom it was said, was a few paces away. It was not directed at spectators. When he heard the words, he turned to see where they had come from. He did not actually see the Player speak the words and his lips move. He said there was no inter-reaction between the Player and the crowd, or vice versa.

9. Mrs. Brenda Meade gave evidence by Skype. She is a season ticket holder in the Goldsmith Stand, row A, seats 51, 52 and 53. She heard nothing abusive or untoward during the game, apart from what the Player had said. She thought there might have been other words in addition to "*in-bred c*nts*", but she could not be sure. The Player seemed to be talking to another player about the crowd. She said she and the others round her were certain they had heard the same words. Her fourteen year old granddaughter turned to her and asked "did he really say that about us". She had replied that it sounded like it. She thought that the words were said after the kick had been taken and that the kick was successful. At half time she spoke with Mr. Flack, whom she knows, and confirmed what she had heard. She thought it was the left hand side of the Player's face that was turned towards them. When they discussed at half time what they had heard, that discussion was between people who knew each other and some were members of the same family, but also involved people who were not season ticket holders and were strangers whom they had never met before and have not seen since. She was positive that Mr. Williams had taken a successful goal kick and the words were said after that.

10. Mr. Duthie referred us to written statements of Mr. Steve Haylett, the Safety Officer, Paul Taylor, Steward Supervisor, and Glynis Barnes, Head of HR, which recorded what they had been told by Mr. Flack, Mrs. Meade and a Miss Vickers.

11. We viewed a video of the incident which assisted us in identifying the protagonists and their

relative positions. The clip commenced with the awarding of the penalty and ended with the Player catching the ball (the kick was unsuccessful) and throwing it to a team mate for the re-start drop-out. At the point prior to the kick being taken and during the period of quiet, it appears to depict the Player speaking with a team mate, Mr. Mitchell.

12. We were also shown an e-mail from Natalie Vickers, who recorded the words used by the Player as follows :

*“Have you heard the in-bred c*nts” and also “the f**king pussies wouldn’t come down here”.*

She felt that the comments were made direct to the Tigers fans and she was shocked by them, particularly as there were children at the end of the row.

The Player’s case in relation to the on-field complaint

13. The Player informed the Committee that he was into his third year at Toulon. He is frequently subject to banter and abuse and particularly so since an incident in the Final the previous season against Clermont. Some was friendly banter, but some was over the top. He does not respond to it, there is often swearing, comments about money and particularly unfavourable comparisons between himself and his brother who plays for the same team. He says he doesn’t speak to the crowd when playing because he gains nothing from it.

14. On 7th December 2014 during the Match he had no banter with the crowd. The penalty was awarded, he walked back between the posts. He saw his team mate Drew Mitchell, who was having some inter-reaction with the crowd. Tigers’ reserves were warming up in the in-goal and silence descended for the kick to be taken. He had no inter-reaction at all with the crowd. He did not use any words towards them or whilst close to them and denied emphatically that he had used the words *“in-bred c*nts”* at all. There was some chanting by Tigers fans but nothing untoward and he was not upset by any of it. He was told about the complaint on the bus to the airport.

15. Drew Mitchell gave evidence. Both he and the Player take abuse from crowds. They are full-back and wing respectively and therefore closest to the crowd. He said that the Player often gives the crowd a cheeky smile or a wink, which can wind them up even more because it shows he is not getting riled by the abuse. He said he remembered the penalty in question and discussing positioning with the Player in the event that the kick was missed. The crowd goes entirely silent at the Tigers’ games, which is different from France, so was noticeable. He remembered someone in the crowd getting a dig in about his weight and enjoying the diet in France. The words “excess baggage” were used and he responded with light hearted banter, sticking his stomach out and saying how good the food and wine were in France. He did speak with the Player but only about positioning and he was only a few yards away from the Player whilst they had their discussion. He was certain that the Player did not use these words or any abusive words during this conversation or at any other time he was in his vicinity.

16. We considered e-mails from the Match Officials. The Assistant Referees were in the vicinity of the players and the complaining spectators, but no-one appeared to have heard anything untoward, and particularly not the words allegedly used.

Decision in relation to the on-field incident

17. We considered the evidence carefully. It is not unusual in these cases for there to be inconsistencies, and indeed we found inconsistencies on both sides. The video clip was helpful in confirming the logistics and positioning of the various protagonists and did indeed put the Player in the vicinity described by the complainants. It did also confirm the evidence from the Player and Mr.

Mitchell about their inter-reaction and we were mindful that prior to the hearing neither player had seen the video clip. On balance, it appeared to support their evidence as to their discussion and its timing.

18. The video did not appear to show any inter-reaction between the Player and the crowd. It confirms the close proximity of the Match Officials. The complainants all stated that the comment allegedly made by the Player was made to Mr. Mitchell. It was made for him to hear within the earshot of the crowd, yet he was adamant that he did not hear the Player use such words, or indeed any words other than the planning to receive the kick. To find to the contrary would imply that Mr. Mitchell had been untruthful in his evidence in order to extricate the Player from the disciplinary process. Having heard Mr. Mitchell give his evidence and be questioned, we did not take the view that he was. We found him a credible witness.

19. Set against this, we found a number of inconsistencies in the evidence of Mrs. Meade and Mr. Flack. Their recollections of the timing and position of the Player and Mr. Mitchell were inconsistent. Only Miss Vickers heard the additional words. The other witnesses were certain that nothing else was said other than the words "*in-bred c*nts*". Miss Vickers' statement was also inconsistent regarding the positioning. According to Mr. Flack's evidence as to timing, Assistant Referees who were in the immediate vicinity must have heard the words allegedly used. We found there to be no evidence of any witness who actually saw the Player utter the words complained of and we felt the absence of inter-reaction between the Player and the complainants to be material.

20. On the balance of probabilities, we could not be satisfied that the phrase attributed to the Player was used by him at the time alleged and in the particular incident. We therefore do not uphold the misconduct complaint.

Evidence in support of the Legends Lounge incident

21. The essential facts surrounding this complaint were not in dispute. After the game, the Player was walking from the team bus to the Legends Lounge, which is situated in the Met RX Stand. He walked round the perimeter of the field. The players make their way to the Legends Lounge for their post-match meal and the walkway at the front of the Met RX Stand is where supporters and autograph collectors are to be found. Waiting to collect autographs from Tigers and Toulon players was the eleven year old son of a Mr. Stephen Hampson. The Player signed Master Hampson's programme, though he declined to be photographed with him. Initially, the Player's demeanour was of co-operation and he seemed happy to sign autographs. As the Player left the pitch level walkway and started to go up the steps to the Legends Lounge entrance, there was an interaction with a group of Tigers fans. The Player admitted in his evidence that he had sworn at them and had used the words "*f*ck off*" twice and raised his hand/arm in a dismissive wave away, which he had not intended to be threatening.

22. Mr. Stephen Hampson attended the hearing to give oral evidence. He referred to his written statement of 11th December 2014 and confirmed that it was accurate. He described the incident following the Player giving his autograph to his son. He said that he remained on the walkway at pitch level and became aware of somebody shouting some very unpleasant language from the vicinity of the stand. He looked up to see that it was coming from the Player as he transited through the rows of seats approximately fifteen metres away from him. He was shouting and swearing in a very threatening manner in the direction of a small mixed group of male and female Leicester Tigers supporters gathered on the walkway some five to ten metres away from him and to his right. His son was near the bottom row of the stand and approximately ten metres away from the Player at this point.

23. Mr. Hampson told the Committee that the Player seemed very agitated and was shouting in an intimidating and threatening manner and used the words "*f*ck off, I'll f*cking come down there and sort*

*you out. F*ck off – come on then, come on then f*ck off.*” At this time he was waving his left arm in the direction of the targets of his abuse. There was then some low level jeering and cheering from the direction of the group of supporters concerned and other voices, though he could not be specific as to identity of those jeering and cheering as he was looking only at the Player at this point.

24. Shortly after the first altercation, Mr. Hampson said he heard the Player shout *“Come on then, come on – f*ck off”*. He appeared to be beckoning the targets of his abuse towards him with hand movements. The Player was still shouting down in the general direction of the group of supporters as he walked further up the stand towards the Legends Lounge. He could not discern exactly what was being said at this point.

25. Mr. Hampson described the scene in front of the Met RX stand as fairly typical after a match, with approximately twelve children in the age range eight to fourteen years in the immediate area as well as another mixed group of Tigers fans, twelve to fourteen in number, standing around the central gate waiting to meet players who would come across the pitch. After the incident had ended, Mr. Hampson described himself as being completely aghast at what he had just witnessed and did not speak to any other adults around him as he just wanted to concentrate on reassuring his son that the incident was over and that there was nothing to worry about. His son had seemed shocked and confused by what he had just witnessed and said to his father *“Tigers players are always very friendly and happy to chat”*.

26. Mr. Hampson reflected on the incident during the ninety minute drive home and concluded that the incident was so serious that it could not go unreported. He contacted Leicester Tigers by telephone the following day to lodge a formal complaint about the behaviour of the Player and was asked to put his complaint in writing, which he did. When asked to clarify aspects of his written complaint, he described his son as being left shocked and confused by the behaviour of someone he had previously held up as a hero and role model. He felt that this type of behaviour could not be condoned under any circumstances and was completely unacceptable from a professional sportsman, especially in front of young children.

27. Mr. Hampson was questioned at considerable length by Mr. Milliken-Smith QC. He said he had not heard what had been said to the Player by the group of Tigers supporters, but imagined that something had caused him to turn round and react as he did. When asked about the Player’s hand/arm gestures, he was quite certain that they were not consistent with waving away dismissively. They were entirely consistent with beckoning towards the Player in an aggressive manner. He confirmed that he did not feel threatened personally, but that the situation he found was intimidating with a potential to escalate. He had not taken any alcohol and had no involvement with the Press. He did not know any of the complainants in relation to the on-field incident.

28. He remained clear as to what he had seen and heard and had not discussed it with anyone else or got any other account. He was asked whether his interpretation of the body language could have been in error. He said he was certain that it was aggressive rather than benign and in no way could be described as either genteel or dismissive.

The Player’s defence to the Legends Lounge incident

29. The Player reiterated that he is frequently the subject of banter and abuse. After the game he had put his bag on the team bus and then walked round to the Met RX stand. On his way, he had signed autographs and was in a good mood. He did not know where the Legends Lounge was and was heading for the middle of the new stand. He said that there were eight or nine kids hanging around. As he went up the stairs of the stand he remembered a group of people who had drinks in their hands and with whom he had some interaction. Comment was made by them to which he

responded with words to the effect *“Yes I remember my first drink as well”*. He continued to walk upwards towards the Legends Lounge and became aware of another group to his right. There was what he described as some banter and he admitted that he swore. He said that he told them to *“f*ck off”* and raised his hand/arm in a dismissive wave away. He did not intend to be threatening. He was just trying to find the Legends Lounge. There were more comments made and he said he told the group to *“f*ck off”* again and did some “shooing away” with his arm.

30. The incident happened very quickly and was over in less than ten seconds. He said he never felt threatened by either group and did not threaten them. He went into the bar and signed autographs and shirts. He did not accept that he had been shouting. No-one took issue with him about his use of language and he was not aware of any complaint being made until the next day.

31. When questioned by the Committee about why he reacted to people who had been drinking, he said it was light banter. He repeated back to them what they had said to him. He accepted that he had told them to *“f*ck off”* twice. He said he did not use the words aggressively, though they were goading him. He accepted that it was not appropriate to use that language. He did not know why Mr. Hampson thought he appeared aggressive and inappropriate in front of children sufficient to warrant him taking action on it the next day. He invited the Committee to investigate social media to see the level of abuse which is levelled at him.

32. The Committee asked the Player about his view of the image of the game and its principles which centre upon the five values of rugby and specifically integrity, discipline and respect. He accepted that it was not appropriate to tell spectators to *“f*ck off”*, irrespective of the issue of aggression. He did not believe he had shown any lack of respect. He did not intend any offence. He simply met swearing with similar.

33. When questioned by Mr. Duthie, he maintained that his swearing at the spectators had been carried out in a dismissive, rather than aggressive, manner and that he had not shouted. He did not regard his behaviour as anything serious or confrontational and did not threaten or insult anyone.

Decision and finding in relation to the Legends Lounge incident

34. We considered the evidence carefully and in the same manner as we had for the on-pitch incident. In this case, we had an admission from the Player that he had sworn twice at spectators, but a denial that that amounted to misconduct. Mr. Milliken-Smith submitted to us that Mr. Hampson had not found that the comments were threatening and the Player had at worst tarnished the reputation of Mr. Hampson’s son’s role model. There was no evidence that anyone felt threatened by the Player. He conceded that the Player’s behaviour had been “not appropriate”. Mr. Duthie submitted to us that the comments were made to, and in the earshot of, spectators, including children, that they were foul and abusive and if, as a matter of fact, we found the comments had been made, that would be tantamount to misconduct as defined by the Disciplinary Regulations.

35. We reminded ourselves as to the evidence given orally by Mr. Hampson and the way he had responded to a lengthy cross-examination and period of questioning. We were very impressed by Mr. Hampson as a witness. He gave his evidence in a careful and considered manner. Rather than cross-examination undermining or diluting the cogency of his evidence, we felt that it improved it and he presented as an entirely honest, open, frank and credible witness.

36. On the other hand, we were not impressed by the Player when he gave evidence and was questioned. He presented himself as the victim and sought to justify what he had done and said. Wherever there were inconsistencies between his account and that of Mr. Hampson, we had no

hesitation in preferring the evidence of Mr. Hampson. He had no reason to make his complaint and attend before the Committee if his evidence were untrue. He had done so because he concluded the incident was so serious that it could not go unreported. There was ample corroboration of Mr. Hampson's evidence in the Player's admission that he had sworn twice and gesticulated at the Tigers supporters and we had no hesitation in concluding that on the basis of the Player's own admission he was guilty of misconduct under the Disciplinary Regulations. We made the further finding that the nature and tenor of his behaviour was as Mr. Hampson described. We also made the finding that such behaviour was carried out in the presence of children as young as eleven, who were waiting to collect autographs from their heroes and role models.

Approach to sanction

37. We heard from Mr. Duthie and Mr. Milliken-Smith QC in relation to sanction, mitigation and in relation to the Player's record. The sanction in these cases is "at large"; our powers being set out in DR7.8.29. We were not assisted greatly by the case law summary provided by Mr. Duthie as all cases are fact sensitive and depend upon their own merits. We considered the Player's disciplinary record and found the following :

- January 2011 – the Player received an eight week suspension, following the upholding of allegations of misconduct in pushing and using threatening and/or abusive and obscene language towards an anti-doping official following a Premiership match. In that case, the Player had used his right hand to push the Doping Control Officer out of his way and had subjected him to a tirade of foul mouthed abuse. He had appealed against the finding and the sanction imposed of eight weeks' suspension. That appeal had been dismissed.
- In April 2011, and shortly after his return, he received a suspension of three weeks for striking Northampton's Stephen Myler during a Premiership match.
- In November 2011, he received a suspension of three weeks for a dangerous high tackle on Tom Biggs and two weeks for a strike with the knee on Dave Attwood, both in the same match.
- In January 2012 he was arrested and received a Police caution following an altercation outside a Torquay nightclub.
- Since joining Toulon, and in the season 2012/13, he received a six week suspension for a dangerous lifting tackle during a match against Montpellier.

38. In assessing the entry point, our starting point was to measure the Player's behaviour against the sanctions for verbal abuse of Match Officials, verbal abuse of players and other acts contrary to good sportsmanship. We considered whether a financial penalty would be appropriate, but felt that it would be meaningless in terms of deterring the Player from further offending and would send the wrong message to the game. Those with substantial financial resources are better placed to mitigate the consequences of their behaviour in the event that they receive only a financial penalty. The Player's behaviour which has been described to us, coupled with his previous record leads us to the view that only an immediate suspension is appropriate to mark the opprobrium of the Game for the Player's conduct.

39. We took an holistic approach to sanction. The Player is without doubt an exceptionally talented individual, but he has an appalling disciplinary record, both on and off the field. We acknowledge that he has had to withstand exceptional pressure not confronting most players and that he may well be subject to his own club's disciplinary process at the conclusion of these proceedings. However, the offending is in direct contravention of three of the five values of rugby set out in the IRB Playing Charter, namely integrity, discipline and respect. It is through discipline, control and mutual respect that the spirit of the game flourishes and in the context of a game as physically challenging as

rugby, these are the qualities which forge the fellowship and sense of fair play so essential to the game's on-going success and survival. It is part of the function of Disciplinary Committees to act as guardians of these principles and values.

40. We also note that this is the Player's second misconduct hearing in relation to post match incidents and was carried out in front of young children. It was an incident in which he reacted to provocation in which he became loud, abusive and threatening. No-one from the target group has complained, but a parent of an eleven year old child described that child as being visibly shocked by such behaviour.

41. We feel we would be failing in our duty to the game if, having heard all that we have, we did not impose an immediate suspension and our view is that the appropriate starting point for that should be eight weeks. We considered the Player's previous record and concluded that he is an habitual offender against the laws of the game and one for whom there needs to be a deterrent to combat a clear pattern of offending, both on and off the field. We therefore feel it appropriate to add to the starting point of eight weeks an additional period of four weeks, making a total of twelve weeks' suspension.

42. We next considered the question of mitigation. The Player had denied the charge throughout and though he did admit that he had sworn and gesticulated to the spectators, he did not accept that that constituted misconduct. He showed no remorse in his evidence or at any stage during the proceedings. Mr. Milliken-Smith QC submitted that he had been provoked, but we have already considered that matter in our entry point suspension period – it is not a mitigating factor requiring a reduction in the entry point sanction.

Sanction

43. Accordingly, the Player is suspended from playing the game of Rugby Union for a period of **TWELVE WEEKS**, that is from 17th December 2014 to 8th March 2015. He may play again on the 9th March 2015.

Costs

44. The Player will pay one quarter of the administration costs together with €5,000 legal fees.

Appeal

45. The Player was reminded as to his rights of appeal against finding and sanction as set out in the Regulations.

19th December 2014

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Antony M. Davies, Chairman

H. Pat Barriscale

Roger Morris