

## EPCR CHAMPIONS CUP 2016

### Decision of an Independent Disciplinary Panel

Held at The Sofitel Hotel Heathrow London on 26<sup>th</sup> October 2016

In respect of Keith Earls, No 11 Munster ('The Player')

AND

A dismissal of The Player by Referee Jerome Garces (France) in respect of an allegation of a tip tackle contrary to Law 10.4(j) in the match between Munster v Glasgow Warriors on Saturday 22nd October 2016 at Thomond Park Limerick Munster Ireland.

#### Disciplinary Panel

Mike Hamlin Chairman (England)

Roddy Dunlop QC (Scotland)

Andrea Caranci (Italy)

#### Attending:

The Player

Derek Hegarty – Lawyer representing The Player

Niall O'Donovan – Munster Team Manager

Daniela Ascoli – Italian Interpreter

Liam McTiernan - Head of Regulations & Compliance, EPCR Rugby

Danny Rumble - EPCR Regulations & Compliance Executive

### DECISION OF THE DISCIPLINARY PANEL

The Panel upheld the dismissal based upon The Player's admission and found that The Player committed an act of foul play, namely, a Tip Tackle contrary to Law 10.4(j).

The Player is suspended from taking part in the game of rugby union for a period of 2 weeks. The Player is suspended until midnight 6<sup>th</sup> November 2016 which represents a 2 week suspension pursuant to the 2016/17 EPCR Disciplinary Rules. The Player is free to resume playing on 7<sup>th</sup> November 2016.

The Panel made no award of costs.

### INTRODUCTION

1. The Panel was appointed as an Independent Disciplinary Panel by Professor Lorne Crerar, Chairman of EPCR Disciplinary Panel, pursuant to clauses 7.1.2 and 7.5.4 of the Disciplinary Rules. The Panel was appointed to consider the dismissal against The Player in the above match in accordance with European Rugby Champion Cup Disciplinary Rules 2016/17 ('the Rules').
2. Jerome Garces (France) was appointed as Referee to this match and dismissed the Player for 'a tip tackle' contrary to Law 10.4(j).

3. Pursuant to clause 7.5.5. of The Rules standing directions set out at Section B of Appendix Six and a supplementary direction for updated medical evidence on 25<sup>th</sup> October were issued pre-hearing.

#### PRELIMINARY MATTERS AND PROCEDURE

4. At the commencement of the hearing, The Chairman noted the identities of all present. It was confirmed by Mr Hegarty and The Player that The Player's position remained as set out in his response to the directions, namely that he admitted he committed an act of foul play and would not seek to challenge the award of the red card.
5. The Chairman reminded all present that The Rules applied. The Chairman outlined the procedure to be adopted. The issue for the panel was one of sanction only. All present agreed to proceeding on that basis. No Preliminary or procedural matters had been raised in The Player's response to standard directions and that remained his position at the hearing.
6. The Panel considered the following evidence:
  - Letter from Mr McTiernan to Professor Lorne Crerar dated 24<sup>th</sup> October 2016
  - The Dismissal Report of Jerome Garces
  - The Player's response to standing directions
  - Notice of Hearing
  - The DVD of the incident
  - The written statement of ( Glasgow Warriors No 2)
  - A medical statement from the Glasgow Doctor
  - The Player's evidence and oral submissions Mr Hegarty and Mr O'Donovan

#### SUMMARY OF THE EVIDENCE

7. The Player was alleged to have tackled GW No 2, contrary to Law 10.4(j). The Referee's report states: "Tip tackle by Munster 11 on Glasgow 2. Munster 11 lift return and drive No 2 who lands on his head".
8. Fraser Brown, the GW2, stated: "I cannot remember the tackle other than being off balance and trying to brace for when I hit the ground. After the decision had been made and Keith had been sent off he made a few comments directed at me calling me a cheat for trying to get him sent off. I was unable to speak to Keith afterwards as I was being treated for an unrelated injury by medical staff but I have spoken to him since and he has unreservedly apologised for both his actions during the game and as he was leaving the field. In my opinion the tackle was clumsy and mistimed, there was no malice in it no intent to cause harm or injury and an unfortunate incident which resulted in a dangerous situation. No injury was caused and I was fit to continue playing. The comments made afterwards uncalled for as I have never been a dirty player or someone that you could call a cheat. However, although I don't appreciate as being characterised as such I do believe these comments were made in the heat of the moment and at a time of high emotion and are not reflective of Keith's normal behaviour. After speaking to Keith I am confident that the action on the pitch was an unfortunate accident and that his reaction was out of character and something he deeply regrets."

Dr James Robson, Glasgow Warriors doctor confirmed that GW2 having fallen on the back of his neck and upper back received on field medical assessment and was deemed fit to play on. GW2 did not suffer any injury and if it were not for another injury sustained later in the game to his leg he would have been fit to play the following week.

9. The panel also received, in support of the dismissal, recorded match footage from various angles which was viewed in real time, slow motion and frame by frame. The DVD shows in the 19<sup>th</sup> minute of the match The Player grasp the right leg of GW2 behind his right knee with both hands. He then lifts GW2's right leg. The Player's head is to the right of GW2's torso. The Player is not looking at GW2 he is looking at the ground. GW2 is holding the ball in his left hand. It can be seen that GW2 is bigger and heavier than The Player. GW2's right leg goes above the horizontal as a result of the lift and GW rotates in the air, The Player's left arm and elbow are above the horizontal and as GW2 descends to the ground The Player lets go of GW2 whose left elbow and both forearms hit the ground fractionally before the back of GW's head, neck area and upper shoulders hit the ground simultaneously. The Referee carefully reviews the incident with the Television Match Official and then awards the red card to The Player. The Player leaves the field of play and as he does so he gesticulates at the Glasgow players, appears to mouth certain obscenities and when he reaches the touch line he kicks out at a blue water carrier/container. GW2 receives on field medical assessment and plays on.

10. Mr Hegarty on behalf of The Player, in compliance with the pre-hearing directions stated:

(i) The Player accepts in principle that the dismissal report is a true and accurate account of the incident that resulted in the award of the red card. However, The Player reserves the right to make submissions in the context of mitigation in relation to two specific references in the report which he does not accept as accurately reflecting the incident. These are firstly the reference to driving the Glasgow player into the ground and secondly the reference to the Glasgow player landing on his head.

(ii) The Player accepts that he committed an act of foul play.

(iii) The Player accepts that the act warranted a red card.

(iv) The Player will not try to show that the referee's decision to show him a red card was wrong, nor will The Player assert that the referee's decision was wrong.

11. At the hearing, Mr Hegarty in support of his submission that the offence merited a low end entry point, told the Panel he agreed that The Player had made a mistake in the process of undertaking a strong aggressive tackle. The tip tackle was neither intentional nor deliberate. He was reckless. Fortunately, GW2 was not injured and was able to carry on playing. There had been no impact on the game. There was an absence of any evidence that The Player had driven GW2 into the ground and there is an attempt to mitigate GW2's fall to the ground. There were no other factors present which were relevant to the assessment of the seriousness of the offence. The Player had an impeccable record, he had played more than 200 games for Munster over a period of 10 years and never appeared before a disciplinary panel. In these circumstances it was appropriate to determine that the correct entry point was low end, namely 4 weeks. Mr O'Donovan would address the panel on his character but The Player was 29 years of age having commenced playing at the age of 5 or 6. He had 52 caps for Ireland and had played for The British and Irish lions. The mitigation factors were such that the panel should allow a 50% reduction from the entry point of 4 weeks. Mr Hegarty went further and submitted that Rule 7.8.37 was engaged in that 2 weeks would be wholly disproportionate to the level of offending, taking into account the unique background circumstances of this offending and that a lesser sanction than 2 weeks should be imposed.

12. The Player told the Panel that he had attempted initially to execute a text book tackle by grasping GW2 around the waist with both hands but he lost his balance on his right foot and both his hands grasp GW2's left leg. He was to the side of GW2 and GW2 twisted slightly after he had lifted his right leg. In the heat of the moment he didn't quite realise the uncomfortable position GW2 was in and he let go of GW2's leg and GW2 fell to the ground. He lost control of GW's right leg. Questioned by the Chairman he acknowledged that his actions and words spoken as he left the field were wrong and totally inappropriate. He had apologised after the game for the tackle and his conduct as he left the field to the Glasgow players generally and personally spoke to GW2 after GW2 had been treated by his medical team as confirmed by GW2's statement above. This was confirmed by GW2 in an email statement.

13. Niall O'Donovan, the Munster Team Manager told the panel that the Player had a distinguished and impeccable record. He came from a disadvantaged part of Limerick and had, through rugby become a role model for many youngsters in Limerick. His off field work for Childrens' charities in the area was well known. He was a patron for various charities and an ambassador for a charity known as Make a Wish. He also worked for a suicide counselling team and was responsible for coaching a local school team from a deprived area. The difficulties which the team had endured since the death of Anthony Foley and the funeral on 21<sup>st</sup> October contributed greatly to a unique emotional scenario which had significantly affected The Player who was one of just 3 players from the existing team who had played with Anthony Foley. Not only had he been the head coach, he had been a senior player when The Player first played for Munster and a role model and friend to The Player. The funeral had taken place the day before the match.

14. Mr McTiernan on behalf of EPCR made no submissions relating to the entry point nor any reference to The Players conduct/actions as he left the field of play after he had been dismissed by the referee. However, in relation to off field aggravating features which the panel in accordance with the Rules are obliged to consider, he invited the panel to exercise its discretion and find that there are no such factors in this case. Aggravating factors may be (i) the Player's status as an offender of the Laws of the game; (ii) the need for a deterrent or (iii) any other off-field aggravating factor. The Panel were aware of the relevant memoranda issued by World Rugby (the IRB as was) in relation to "tip tackles" and dangerous tackling generally. The principal relevant memorandum, which remains in force, is the memorandum of 8<sup>th</sup> June 2009 which provides that incidents of foul play involving the components of a "tip tackle" are dangerous and must be dealt with severely. Mr McTiernan made two submissions. Firstly, that it was probable that this memorandum would be revoked by World Rugby in November 2016 and secondly that the factual scenario of the on field offending (against the backdrop of highly unusual and unique circumstances which are unlikely to be repeated), was such that it was not necessary to aggravate the entry point. Not all tip tackle cases had been aggravated based on the need for a deterrent since 2009 and this was a case which the panel could on the facts of the offending exercise its discretion accordingly. The Player had commenced his tackle with both arms and had continued in circumstances which made the tackle reckless, coupled with GW2 twisting in the air may have been a contributing factor.

SANCTION

15. In assessing the seriousness of the offence pursuant to the Rules the Panel considered each of the factors set out in the Rules and determined as follows:-

- (i) The offending was neither intentional nor deliberate.
- (ii) The offending was reckless. The initial grasping was lawful but the grasping of GW2's right leg behind the area of the knee and the subsequent lifting above the horizontal was unlawful. The Player ought to have realised that by lifting the leg in the manner which he did, then there was a risk that GW2 would be put in a vulnerable and potentially dangerous position. Nevertheless, he continued to lift GW2 whose right leg went above the horizontal. GW2 was bigger and heavier than The Player and he failed to control the tackle or take sufficient steps to ensure that GW2 came to ground safely. The position of The Player's left elbow in a bent manner suggests some intent to upend GW2, although GW2 does to a limited extent twist slightly as The Player loses control of GW2. The Panel were satisfied there was no evidence that The Player drove GW2 into the ground. GW2 head neck and shoulders landed on the ground as set out in paragraph 9 above.
- (iii) The offending was fairly grave in that this type of tackling is inherently dangerous which involved The Player using his arms and shoulders.
- (iv) Provocation, retaliation and self defence factors were not present.
- (v) GW2 was not injured in the incident and was able to play on and sustained no subsequent injury or symptoms from the incident. He subsequently sustained a leg injury which was not related to this incident.
- (vi) The incident occurred in the 19<sup>th</sup> minute of the match. There was no immediate effect on the match save for some posturing and general pushing and shoving by players from both sides immediately after the incident.
- (vii) GW2 was rendered vulnerable by The Player's actions and GW2 had no ability to prevent himself striking the ground and being at risk of sustaining injury.
- (viii) The Player participated in the offending but the panel determined it was not premeditated.
- (ix) The conduct of the Player was completed
- (x) There was one other feature of The Player's conduct which was relevant to his on field offending and that was his petulant, inappropriate and unacceptable conduct as he left the field of play.

The Panel considered whether this offending should be characterised as lower end, mid-range or top end. Intent and injury are frequently determinative factors in respect of the entry point. In this case the offending was reckless, there was no injury but a risk of injury, GW2 was vulnerable as in all offences of this type. The Player's conduct as he left the field was a relevant consideration as was his emotional state of mind. It was an inescapable fact that this match was played against a unique and unlikely to be repeated sad set of circumstances. The panel had to balance the factors to reach a fair conclusion both for The Player and the game in general. After very careful consideration and having regard to the nature of the reckless offending, the absence of injury, the

vulnerability of GW2 and the Player's departing conduct, the panel determined that it was appropriate to characterise the seriousness of the offending as being low end, which in accordance with the Rules, results in a 4 week entry point.

Having regard to the memorandum of 8<sup>th</sup> June 2009 (which is comprised within the appendix to the Rules) and the Tip Tackle case law, having carefully considered Mr McTiernan's submission not to find that there is a need for a deterrent to combat a pattern of offending in the game, with some reservations, the panel decided not to aggravate the period of suspension by 1 week.

16. Pursuant to the Rules the Panel made the following determination in respect of mitigating factors:

- (i) The Player admitted he had committed an act of foul play at the earliest opportunity and did not seek to minimise his conduct in any way. He also complied with all pre hearing requirements promptly.
- (ii) The Player has an unblemished disciplinary record and is of excellent character evidenced by his off field work with charities and school children and a role model, which in part is diminished by this offending.
- (iii) The Player is 29 years of age and has been playing professionally for 12 years, therefore a mature experienced player.
- (iv) The Player's conduct before the Panel was courteous and appropriate. The Panel were impressed with how he conducted himself throughout.
- (v) The Player demonstrated remorse by personally apologising to GW2 and the Glasgow players immediately after the game.
- (vi) There are no other off field mitigating factors save for the unique and sad background against which this match was played.

Based upon the above mitigating factors the Panel determined that The Player is entitled to a reduction in sanction from the 4 week entry point of 50%. Mr Hegarty's submission that 2 weeks suspension was wholly disproportionate pursuant to Rule 7.8.37 was, with respect without merit and therefore rejected. The level of sanction is not wholly, totally or entirely disproportionate for offending of this nature. The Player was eligible to play meaningful games for him for all the forthcoming weekends. The Player is therefore suspended from playing for a period of 2 weeks until midnight on 6<sup>th</sup> November 2016. He is free to play again on 7<sup>th</sup> November 2016.

17. The Player's right of appeal was drawn to his attention pursuant to the Rules.

Mike Hamlin (England)  
Chairman  
1<sup>st</sup> November 2016.

