

# DISCIPLINARY DECISION



Match	England U20s V South Africa U20s		
Player's Union	South Africa	Competition	World Rugby U20s Championship
Date of match	12 <sup>th</sup> June 2018	Match venue	Narbonne
Rules to apply	Tournament Disciplinary Program.		

## PARTICULARS OF OFFENCE

Player's surname	Van Der Merwe	Date of birth	4 <sup>th</sup> April 1998
Forename(s)	Tiaan		
Referee Name	Dan Jones (Wales)	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	Law 9.12 A player must not verbally abuse anyone. Verbal abuse includes, but is not limited to, abuse based on: religion, colour, national or ethnic origin, sexual orientation.	SELECT:	Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other <input type="checkbox"/>

## HEARING DETAILS

Hearing date	16 <sup>th</sup> June 2018	Hearing venue	Palais des Congres Perpignan
Chairman/JO	Jean Noel COURAUD		
Other Members of Disciplinary Committee	Beth Dickens ( <i>ex-Scotland player</i> ) by Skype Jamie Corsi ( <i>ex-Wales player</i> ) by Skype		
Appearance Player	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	Appearance Union	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

Player's Representatives:

Mr Adrian Montzinger by Skype

Mr Bafana Nhleko

Mr Zak Burger

Mr Cohen Kiewit

Mr Daniel Van Brussel

Mr Dale Toy by Skype

Observers: Four Rugby Africa representatives who were part of a Disciplinary Training exercise.

Interpreter: Mr Gilles Fabre

List of documents /materials provided to the Player in advance of hearing

Citing Report

Match Official Report,

video clips

Statement of England N°4 (Joel Kpoku)

Statement of England N° 7(Ben Curry)

Statement of England N°3 (Joseph Heyes)

Team Sheet

Section 12, Terms of Participation, U20 Championship 2018

Disciplinary Officer: Mr Ben Rutherford (World Rugby)

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

### **The Citing Report stated *inter alia*:**

*"I was Citing Commissioner for the U20 World Cup match between England and South Africa on 12.6.18. At the conclusion of the game I was approached by the match referee (Dan Jones – Witness) and one of the England team officials. They informed me that one of the England team (N° 4 JOEL KPOKU) has been verbally abused during the game by a South African player..."*

### **The Referee Report:**

The referee provided a report which confirmed that he had not heard the abuse allegedly directed by the Player at Joel Kpoku but that the England captain and number 7 Ben Curry had reported the allegation to him during the game which he asked his performance reviewer to note for subsequent review after the match.

### **The video footage:**

Three different video footage files were reviewed.

It shows an exchange of words between the Player and the English player Joel Kpoku when they move to prepare for a scrum.

A particular attitude by the English player is displayed who appears to flex his torso. He makes a facial expression with the mouth open.

The Player then makes a gesture with his mouth while appearing to look at Joel Kpoku. He then smiles which provokes a reaction by the English player, Joseph Heyes.

The referee is close to the incident.

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

### **Ben Curry "England7" Statement:**

England7 stated *inter alia* that *"In the setup of the scrum at 49.30 Joel became very angry. The referee told me to calm Joel down..."* The statement continued, setting out that England7 approached England4 who advised that he believed he had been verbally abused.

### **Joel Kpoku "England4" Statement:**

England4 stated *inter alia* *"As we were preparing for a scrum, I think early in the second half, my team mate, Joe Heyes, who was one of our props, asked me if I had heard what the South African hooker (Tian van der Merwe) had said. I replied 'No'..."* England4 stated that England3 relayed to him what he had heard. England4 reacted to what he was told by speaking to the South African hooker. England4 then *"told my captain, Ben Curry (No. 7) what had happened and he spoke to the referee who said he would look into it afterwards. I then got on with the game and nothing else happened with any of the South African guys..."*

### **Joseph Heyes" England3" Statement:**

England3 stated *inter alia* *"A short time after the start of the second half, probably about 45 minutes in, we had a scrum midfield on the left side."*

*As the South African pack were approaching in preparation for the scrum, No. 2 for South Africa was in heated conversation with our No. 4, Joel Kpoku. As Joel got into his second row position behind me on his knees, I saw the South African No. 2 makes [offensive] sounds... [sic]*

*I turned around and asked if he (Joel) had heard this, but he said 'No' he hadn't heard anything and asked me what he (South African No.2) had said..." England3 and England4 then had a conversation in relation to what England3 believed he had heard after which England4 reacted by shouting at the Player.*

**The Player's statement:**

The Player had provided responses to the pre-hearing directions. He stated and submitted *inter alia*:

1. *The player admits that he played as the No. 2 in the match against England on 12 June 2018.*
2. *At this stage the Player does not foresee any preliminary matters to be argued on behalf of the Player.*

*The Citing Commissioner's report*

3. *The player denies that the Citing Commissioner's report is a true and accurate account of the events as it relates to the incident. The player does not deny that an incident occurred but denies the conclusions and assumptions the Citing Commissioner deducts from the actions of the player...*
4. *The Player intends to show the Citing Commissioner was wrong in citing the Player...*
5. *The player will rely on all relevant authorities and defences generally applicable to disciplinary hearings of this nature as provided for in the World Rugby Handbook Rules and Regulations.*

*Summary statement*

6. *The Player admits that there was a verbal exchange between him and the England number 4 during the 49<sup>th</sup> minute of the match. However, the aforementioned exchange was a continuation of an earlier exchange, between the same players at the previous scrum. During the course of the earlier exchange the England number 4 made a general comment towards the forwards of the South African players that they are tired and in doing so he stuck out his tongue suggesting how tired the South African's players were.*
7. *After the next breakdown and while preparing to set up the scrum the Player and the England number 4 continued to have a verbal exchange. It was at this point that the Player said to the England number 4: "That is what your mother will look like &%%\$£@!" At this point the Player used an expletive describing his genital area.*

8. ...

Evidence

9. *The Player will rely on the following evidence:*

9.1 *He will testify in his own defence;*

9.2 *His teammates, who was in close proximity of the incident will make statements supporting his version;*

9.3 *The Player's agent and team members will testify about his character as it relates to the charge;*

10. *The Player will insist that the referee that officiated the match testify at the hearing to answer questions from the legal representative. “*

At the beginning at the hearing the Player clarified his position.

He admitted that the verbal abuse set out in his written response to the directions was a breach of Law 9.12 and that he did not challenge the citing being upheld in that respect.

England3 appeared at the hearing by telephone and was cross-examined by Adv Montzinger (with the Committee's permission) and asked questions by the Committee and Mr Rutherford. He stated that there was a lot of noise prior to the scrum and he did not hear the offensive comment in relation to England4's mother prior to the facial gesture from the Player which he did see. He said that he may have misinterpreted the facial gesture not having heard the preceding comment. He believed he had heard the Player make noise/sound while making the facial gesture.

The Player's representative elected not to call the referee or the character witnesses noted in the written response to the directions during the hearing.

**FINDINGS OF FACT**

The Player admitted at the hearing that he committed a verbal abuse, namely, *“That is what your mother will look like while sucking my cock”* accompanied by a highly-offensive facial gesture imitating a sucking motion directed at England4.

He admitted he committed a breach of Law 9.12. He (nor his representative) did not assert that this conduct did not warrant being cited i.e. that it meets the red card threshold. The Committee agreed that this conduct was verbal abuse of a highly-offensive sexual nature which did meet the red card threshold.

The Player stated that his comment followed exchanges with England4.

It is possible to hear the offensive comment on the referee microphone audio. It is not possible to hear any sound being made by the Player including while making the sexual gesture with his face.

### DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/>	Not proven <input type="checkbox"/>	Other disposal (please state) <input type="checkbox"/>
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### SANCTIONING PROCESS

#### ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 17.19.2(a)-(b) (or equivalent Tournament rule)	
Intentional/deliberate <input checked="" type="checkbox"/>	Reckless <input type="checkbox"/>
State Reasons	
The offence was intentional and deliberate. It was a verbal abuse after an an exchange between the Player and England4.	
Gravity of player’s actions – R 17.19.2(c) (or equivalent Tournament rule)	Nature of actions – R 17.19.2(d) (or equivalent Tournament rule)
It was a serious and gross verbal abuse of a highly-offensive sexual nature in relation to a player’s mother accompanied by a highly-offensive sexual gesture	Verbal abuse
Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule)	Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule)
There was some sort of provocation by England4	None
Self-defence – R 17.19.2(g) (or equivalent Tournament rule)	Effect on victim – R 17.19.2(h) (or equivalent Tournament rule)
None	None
Effect on match – R 17.19.2(i) (or equivalent Tournament rule)	Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule)
None	None
Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule)	Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule)
Full participation	Conduct completed
Other features of player’s conduct – R 17.19.2(m) (or equivalent Tournament rule)	

None

**ASSESSMENT OF SERIOUSNESS CONTINUED**

Entry point					
<u>Top end*</u>	<u>Weeks</u>	<u>Mid-range</u>	<u>Weeks</u>	<u>Low-end</u>	<u>Weeks</u>
<input type="checkbox"/>		<input checked="" type="checkbox"/>	<u>12</u>	<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

**ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS**

Player's status as an offender of the Laws of the Game – R 17.19.4(a) (or equivalent Tournament rule)
NA
Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule)
NA
Any other off-field aggravating factors – R 17.19.4(c) (or equivalent Tournament rule)
NA

Number of additional weeks:

**RELEVANT OFF-FIELD MITIGATING FACTORS**

Acknowledgement of guilt and timing – R 17.19.5(a) (or equivalent Tournament rule)	Player’s disciplinary record/good character – R 17.19.5(b) (or equivalent Tournament rule)
The Player admitted a breach of Law 9.12 at the hearing	The Player has a clean disciplinary record
Youth and inexperience of player – R 17.19.5(c) (or equivalent Tournament rule)	Conduct prior to and at hearing – R 17.19.5(d) (or equivalent Tournament rule)
The Player is young and inexperienced	His conduct at the hearing was good
Remorse and timing of remorse – R 17.19.5(e) (or equivalent Tournament rule)	Other off-field mitigation – R 17.19.5(f) (or equivalent Tournament rule)
The Payer was remorseful	None

Number of weeks deducted:

Summary of reason for number of weeks deducted:  
 The Disciplinary Committee was prepared to allow the maximum reduction of 50% for full mitigation.

**SANCTION**

**NOTE:** PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 17.14.5(f)

Total sanction	6 weeks suspension	Sending off sufficient <input type="checkbox"/>
Sanction commences	16 <sup>th</sup> June 2018	
Sanction concludes	20 <sup>th</sup> August 2018	
Matches/tournaments included in sanction	<b>17<sup>th</sup> June 2018:</b> U20 Championship France <b>24<sup>th</sup> June 2018:</b> Supersport Rugby Challenge pool game: Golden Lions v Blue Bulls <b>30<sup>th</sup> June/1<sup>th</sup> July 2018:</b> Quarter final Supersport Rugby Challenge	

	<b>7/8<sup>th</sup> July 2018:</b> semi-final Supersport Rugby Challenge <b>14/15<sup>th</sup> July 2018:</b> Final Supersport Rugby Challenge <b>18<sup>th</sup> August 2018:</b> SA Rugby U21 Championship: Golden Lions V Eastern Province
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Costs	None
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Signature (JO or Chairman)		Date	17 <sup>th</sup> June 2018
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**NOTE:** YOU HAVE 48 HOURS FROM NOTIFICATION OF THE DECISION OF THE CHAIRMAN/JO TO LODGE AN APPEAL WITH THE TOURNAMENT DIRECTOR – R 17.22.2(a) (or equivalent Tournament rule)